Hawaii Department of Human Services
State of Hawaii

RFI No: HMS-224-17-02-HPO

FY2016 Balance of State (HI-500)
Continuum of Care (CoC) Competition

Request for Information (RFI) Table of Contents

Section 1 - Administrative Overview

I. Administrative Overview
II. Applicant and Project Sponsor
III. RFI Organization
IV. Procurement Timetable
V. Orientation
VI. Proposal Submittal
VII. Contracting Office
VIII. Additional Materials, Documentation and Verification
IX. Cancellation of RFI
X. Mistakes in Proposals
XI. Selection of Applicant/Project Sponsor for a Federal Application
XII. Compliance with Laws and Rules
XIII. Hawaii Compliance Express (HCE)
XIV. General and Special Conditions of Contract

Section 2 - Service Specifications

I. Introduction
- A. Overview, Purpose and Need
- B. Continuum of Care (CoC) Participation
- C. Criteria of the Bridging the Gap (BTG) CoC Application
- D. Target Populations
- E. Geographic Location
- F. Sources of Funding
- G. Term of Contracts
- H. Budget and Financial Requirements
- I. Additional Requirements

II. General Requirements
- A. Data Universal Numbering System (DUNS) Number Guide
- B. E-snaps Electronic Submission for Applications
- C. Matching and Leveraging of Funds
- D. CoC Participation and Coordination of Services
- E. Homeless Management Information System (HMIS)
- F. Federal Requirements

III. Service Activities

Section 3 - Proposal Application Instructions

General Instructions for Completing Applications
I. Program Overview

II. Experience and Capability
- A. Necessary Skills
- B. Experience
- C. Quality Assurance and Evaluation
- D. Participation in the CoC
- E. Facilities

III. Project Organization and Staffing
- A. Staffing
- B. Project Organization

IV. Service Delivery
- A. Description of Service
- B. New Project Proposals
- C. Performance Outputs and Outcomes Measurements
- D. Monitoring Results

V. Financial
- A. Pricing Structure
- B. Other Financial Related Materials

VI. Administrative Requirements
- A. Federal Applicant Documents
- B. Required Exhibit 2 Charts, Narratives and Attachments

VII. Other
- A. Litigation

Section 4 - Proposal Evaluation

I. Introduction

II. Evaluation Process
- A. Phase 1 – Evaluation of Proposal Requirements
- B. Phase 2 – Evaluation of Proposal Application
- C. Phase 3 – Recommendation for Award

III. Evaluation Criteria
- A. Phase 1 – Evaluation of Proposal Requirements
- B. Phase 2 – Evaluation of Proposal Application
- C. Recommendation for Award

Section 5 – Attachments/Exhibits

A. Proposal Application Checklist (2 pages)
B. Sample Table of Contents (1 page)
C. Project Summary for New Programs/Projects (5 pages)

D. AG General Conditions (14 pages)
E. Dept. of Housing and Urban Development Notice of Funding Availability (NOFA) for the Continuum of Care Programs FY2016 (53 pages)
F. CoC Programs Interim Rule: 24 CFR 578 (47 pages)

Section 1
Administrative Overview

I. Administrative Overview

This Request for Information (RFI) is issued by the Department of Human Services (DHS) Homeless Programs Office (HPO) under the provisions of Chapter 103F, Hawaii Revised Statues (HRS), the related administrative rules, and the U.S. Department of Housing and Urban Development (HUD) regulations.

HPO seeks applications from qualified nonprofit agencies providing permanent housing assistance and supportive services to persons experiencing homelessness. Selected applicants will be included in the Balance of State, Continuum of Care's (CoC), Bridging the Gap (BTG), federal grant application for funds under the HUD CoC Program. The CoC Program is authorized by subtitle C of title IV of the McKinney-Vento Homeless Assistance Act, (42 U.S.C. 11381–11389) (the Act), and the CoC Program regulations are found in 24 CFR part 578 (the CoC Program interim rule). The FY 2016 funds for the CoC Program were authorized by the Consolidated and Further Continuing Appropriations Act, 2016 (Public Law 114-113, approved December18, 2015) (the FY 2016 HUD Appropriations Act).

Approximately $1.9 billion is available in this FY 2016 CoC Program Competition Notice of Funding Availability (NOFA). HUD may add to this amount any available funds that have been carried over or recaptured from previous fiscal years. All of the requirements in the FY 2016 application process, including requirements for the entire CoC Consolidated Application and the total amount of funding available are contained in this NOFA. The available amount of funding may not be sufficient to fund anticipated eligible renewal projects in FY 2016, HUD will continue to require Collaborative Applicants to rank all projects, except CoC planning and Unified Funding Agency (UFA) Costs, in two tiers. Tier 1 is equal to 93 percent of the CoC's FY 2015 Annual Renewal Demand (ARD) approved by HUD on the final HUD-approved Grant Inventory Worksheet (GIW). Tier 2 is the difference between Tier 1 and the CoC's ARD plus any amount available for the permanent housing bonus as described in Section II.B.4. of the 2016 NOFA.

HPO sought applications from qualified nonprofit agencies providing permanent housing assistance and supportive services to persons experiencing homelessness in RFI HMS-224-17-01-HPO, which was posted on July 26, 2016. However, responses for new project applications resulting from the initial posting were insufficient to utilize the total amount of funds available for Permanent Housing (PH) Bonus projects. HPO is currently seeking additional new PH project applications for placement in Tier 2.

An interested applicant and/or project sponsor, hereinafter referred to as applicant/project sponsor, is charged with the presumptive knowledge of, and compliance with, all requirements of the cited authorities. Prospective applicants should read through the FY 2016 CoC Program NOFA (attached and incorporated as Exhibit E) and the CoC Program Interim Rule, 24 CFR part 578 (attached and incorporated as Exhibit F) in their entirety to prepare for new project submissions. Important documents relating to the above and outlining the CoC competition are located at: **https://www.hudexchange.info/programs/coc/.** Submission of a valid proposal by any interested applicant/project sponsor shall constitute admission of such knowledge on the part of such interested applicant/project sponsor.

II. Applicant and Project Sponsor

For the purposes of this RFI, the terms **Applicant/Project Sponsor** shall be as such:

1. Applicant: An entity that applies as a direct grantee with HUD for funds and must complete all HUD SF-424 forms in e-snaps. If selected for funding, the applicant becomes the grantee and is responsible for the management of the grant.
2. Project Sponsor: An entity that is responsible for carrying out the proposed project activities. A project sponsor does **not** submit the HUD, SF-424 form.

III. RFI Organization

This RFI is organized into five sections:

Section 1	Administrative Overview: Provides applicants with an overview of the procurement process.
Section 2	Service Specifications: Provides applicants with a general description of the tasks to be performed, delineates provider responsibilities, and defines applicable deliverables. .
Section 3	Proposal Application Instructions: Describes the required format and content for the proposal application.
Section 4	Proposal Evaluation: Describes how proposals will be evaluated by the DHS.
Section 5	Attachments: Provides applicants with information and forms necessary to complete the application.

IV. Procurement Timetable

Note that the procurement timetable represents DHS's best estimated schedule. Contract start dates are subject to the issuance of a written notice to proceed.

Activity	Scheduled Date
Public notice announcing Request for Information (RFI)	August 17, 2016
Proposal submittal deadline	August 24, 2016
Proposal evaluation period	August 29, 2016
Notice of Selection	August 30, 2016
Contract start date	2017

V. Orientation

An orientation for this RFI will not be held.

VI. Proposal Submittal

A. Electronic Submission for Applications

HUD requires the electronic submission of CoC applications through its e-snaps system, which is available at www.hud.gov/e-snaps or can be accessed via the HUD Exchange website at https://www.hudexchange.info/e-snaps/. All agencies submitting CoC applications must use e-snaps. In addition, HPO requires additional hard copy documents that are detailed in this RFI.

Project applicants must establish an e-snaps user ID and password before accessing the Project Application.

Project applicants are strongly encouraged to review training materials about e-snaps that are available via HUD Exchange website at https://www.hudexchange.info/e-snaps/fy-2016-coc-program-nofa-coc-program-competition/

Questions regarding the CoC NOFA and e-snaps can be submitted to HUD's OneCPD Ask A Question (AAQ) at https://www.hudexchange.info/get-assistance/ . HUD strongly suggests utilizing the "Export to PDF" function in e-snaps to print a hard copy of all submission documents for your records.

B. HUD Administered Projects vs. HPO Administered Projects

Three (3) of the CoC's projects are direct grants between nonprofit agencies and HUD. In these situations the nonprofit agency is considered the applicant to HUD and the recipient of HUD funds. For many of the CoC's projects, the DHS is the recipient of grants from HUD and is considered the applicant to HUD. The DHS administers these grants for nonprofit agencies, which are considered subrecipients through subrecipient agreements.

HUD's CoC Program Interim Rule requires that if a new Project Application includes funding for rental assistance, the rental assistance must be administered by a State, unit of general local government, or a public housing agency.

Nonprofits considering rental assistance in their new Project Application must contact DHS contractor, Carlos Peraro at carlos@cperaroconsulting.com or (808) 429-6941 and/or Judy Ishida, HPO Program Specialist at jishida@dhs.hawaii.gov or (808) 586-7064 for consultation about administering the rental assistance in compliance with HUD's rule. New Project Applications with rental assistance funding must also follow the instructions below:

1. Follow HUD's instructions to register and create an e-snaps profile. Make sure to add all projects when prompted for multiple Project Application documents.
2. Complete the Project Application documents through the agency's e-snaps profile. Renewal projects of which DHS is the grantee will be created in e-snaps and will be accessible for project sponsors to complete.
3. If the agency is a DHS administered grant, after the Project Application is filled out, DO NOT submit it to e-snaps. Provide Carlos Peraro with the user name and password so that the Project Application documents can be inputted into the DHS e-snaps profile. Please send Carlos the agency's e-snaps information and submit the hard copy documents to HPO by the August 25, 2016 deadline noted. Please contact Carlos Peraro at carlos@cperaroconsulting.com or at (808) 429-6941 with any questions or concerns.

Applicants who submit New Project Applications without rental assistance funds will execute contracts for the CoC funding directly with HUD. The DHS will not be a party to new Project Applications without rental assistance funds nor be responsible for the administration and monitoring of new Project Applications without rental assistance funds.

C. The submitted proposal shall be comprised of two (2) parts:

1. General Requirements and Program Information. Submit one (1) original and four (4) copies.
2. Administrative Requirements and Federal Requirements. Submit only one (1) per proposed project.
3. Stamp original as an "Original," and stamp all copies with "Copy".

The sealed proposals will be received at the DHS-HPO Office at 820 Mililani Street, Suite 606, Honolulu, Hawaii 96813 until 12:00 p.m. Hawaii Standard Time (HST) on Wednesday, August 24, 2016. Email and facsimile transmission **shall not** be accepted. The official time shall be that which is recorded on the time stamp clock of DHS for hand-delivered proposals. Deliveries by private mail services, such as Federal Express, shall be considered hand deliveries. All mail-in proposals delivered/postmarked by the United States Postal Service must be **received** not later than12:00 p.m. HST on Wednesday, August 24, 2016. All proposals submitted by the deadline shall be considered for inclusion in the consolidated CoC Application. Proposals postmarked or hand delivered after the

submittal deadline shall be considered late and rejected. There shall be no exceptions to this requirement.

VII. Contracting Office

The RFI Coordinator or his/her designated representative is listed below:

Harold Brackeen III, Acting Homeless Programs Adminstrator
Homeless Programs Office
Hawaii Department of Human Services
820 Mililani St., Suite 606
Honolulu, Hawaii 96813
Telephone: (808) 586 -7072
Fax: (808) 586-5180

DHS reserves the right to change the RFI Coordinator without prior written notice.

VIII. Additional Materials, Documentation and Verification

Upon request from the DHS, each interested applicant/project sponsor shall submit any additional materials and documentation reasonably required by DHS in its evaluation of the proposals.

DHS reserves the right to contact the respective CoC, State, Federal, County Governments and other agencies named in this application for verification of information provided in the proposal submitted by the interested applicant/project sponsor.

IX. Cancellation of Request for Information

This RFI may be canceled and any or all proposals may be rejected in whole or in part, when it is determined to be in the best interest of the DHS.

X. Mistakes in Proposal

While interested applicant/project sponsors are bound by their proposals, circumstances may arise where a correction or withdrawal of proposals are proper. An obvious mistake in a proposal may be corrected or withdrawn, or waived by the interested applicant to the extent that it is not contrary to the best interest of DHS or to the fair treatment of other interested applicants. Mistakes in proposals shall be handled as provided for in section 3-122-16.07, Hawaii Administrative Rules (HAR).

XI. Selection of Applicant/Project Sponsor for a Federal Application

The selection of an interested applicant/project sponsor for inclusion in the CoC Application for federal funding shall be based on the criteria and requirements

No work is to be undertaken by the successful applicant/project sponsor prior to the contract commencement date. DHS is not liable for any costs incurred prior to the official starting date.

XII. Compliance with Laws and Rules

1. The interested applicant/project sponsor shall comply with all laws, ordinances, codes, rules and regulations of the Federal, State and County governments which in any way affect its operations and to adhere to instructions prescribed by DHS for the effective administration of a program. The interested applicant/project sponsor shall complete all disclosures and certifications as required by HUD.

2. The interested applicant/project sponsor shall comply with section 17-2026 of the HAR, including without limitation, the administrative and program requirements.

3. The interested applicant/project sponsor shall comply with the Office of Management and Budget (OMB) audit requirements in 45 CFR Part 75, Subpart F, Section 75.501

XIII. Hawaii Compliance Express (HCE).

Providers may register with HCE for online proof of DOTAX and IRS tax clearance Department of Labor and Industrial Relations (DLIR) labor law compliance, and Department of Commerce and Consumer Affairs (DCCA) good standing compliance. There is a nominal annual fee for the service. The "Certificate of Vendor Compliance" issued online through HCE provides the registered provider's current compliance status as of the issuance date, and is accepted for both contracting and final payment purposes. Refer to this section's part II. HCE's website is: http://vendors.ehawaii.gov/hce

XIV. General and Special Conditions of Contract

The State's General Conditions for Health and Human Services Contracts that will be imposed contractually are attached hereto and incorporated herein by reference as Exhibit D (AG Form 103F) of Section 5.

Special conditions may be imposed by DHS. DHS reserves the right to make small or major modification to any quantity of items or reporting requirements contingent upon unforeseen conditions or recommendations by the CoC.

[END OF SECTION]

Section 2

Service Specifications

I. Introduction

A. Overview, Purpose and Need

DHS is the Collaborative Applicant for BTG and is responsible for the submission of the Continuum of Care Homeless Assistance Programs FY2016 NOFA application on behalf of Kauai, Maui and Hawaii. As the Collaborative Applicant, DHS is coordinating this year's RFI solicitation and CoC application. This RFI solicitation shall be only for services provided in Kauai, Maui and Hawaii Counties. BTG is a membership organization of homeless service providers, other professionals, and units of local and state government, program participants, and other community representatives in the three counties. BTG is a planning, coordinating, and advocacy body that develops recommendations for programs and services to fill gaps in the neighbor island CoC.

1. Annual Renewal Demand Amount

   The ARD (24 CFR 578.17(b)(2)) is the total amount of all the CoC's renewal projects that will be eligible for renewal in the FY2016 CoC Program Competition. It is the sum of the annual renewal amounts of all projects within the CoC's geographic area eligible to apply for renewal in the FY2016 CoC Program competition, before any adjustments to leasing, rental assistance, and operating line items based on Fair Market Rent (FMR) changes.

   BTG's ARD for the FY 2016 CoC Program Competition is estimated at $2,004,278. The NOFA states that HUD will publish final ARD information, and the State will issue an addendum with that information when it is released.

2. Tier 1 and Tier 2 Funding Levels

   HUD will continue the Tier 1 and Tier 2 funding process and CoCs and applicants should ensure there is a thorough understanding of the information provided in this NOFA. HUD will establish each CoC's Tier 1 and Tier 2 amounts based on the final HUD-approved Grant Inventory Worksheet (GIW). A report that lists each CoC's ARD Tier 1 amount, CoC planning, and permanent housing bonus amount available will be posted to the HUD Exchange website no earlier than August 5, 2016. Section VIII. of this NOFA provides additional information regarding project selection.

   a. Tier 1 is equal to 93 percent of the CoC's ARD amount approved on the final HUD-approved GIW and projects in this tier will be conditionally selected from the highest scoring CoC to the lowest scoring CoC, provided the project

applications pass both eligibility and threshold review. Any type of new or renewal project application can be placed in Tier 1. However, in the event HUD is required to drastically reduce the total amount of funds available under this NOFA, the Tier 1 amount per CoC will be reduced proportionately among all CoCs which could result in some Tier 1 projects falling into Tier 2. Therefore, CoCs should carefully determine the priority and ranking for all project applications in Tier 1 as well as Tier 2, which is described below.

b. Tier 2 is the difference between Tier 1 and the CoC's ARD plus any amount available for the permanent housing bonus (before adjustments are made to permanent housing leasing, operating, and rental assistance line items based on changes to FMR) as described in Section II.B.4. of this NOFA. This does not include the amounts available for CoC planning and UFA Costs. Project applications that are in Tier 2 will be selected for FY 2016 CoC Program funding using the process described in Section II.B.17. of this NOFA. Projects placed in Tier 2 will be assessed for eligibility and threshold requirements, and funding will be determined using the CoC Application score as well as the factors listed in Section II.B.17. of this NOFA.

c. If a project application straddles the Tier 1 and Tier 2 funding line, HUD will conditionally select the project up to the amount of funding that falls within Tier 1 as stated above; and then, using the CoC score and other factors described in Section II.B.17. of this NOFA, HUD may fund the Tier 2 portion of the project. If HUD does not fund the Tier 2 portion of the project, HUD may award project funds at the reduced amount, provided the project is still feasible with the reduced funding (e.g., is able to continue serving homeless program participants effectively).

d. As previously stated, CoC planning and UFA Costs are not ranked and; therefore, will not be included in Tier 1 or Tier 2. CoC planning and UFA Costs projects that pass eligibility and review threshold will be conditionally selected using CoC scores from the highest scoring CoC to the lowest scoring CoC.

While the CoC will determine the order in which projects are ranked, HUD will calculate the tiers based on all project applications that pass eligibility and threshold review.

3. Tier 2 Point System and Selection Process

HUD will award a point value to each new and renewal project application that is in Tier 2 using a 100-point scale:

a. *CoC Score.* Up to 50 points in direct proportion to the score received on the CoC Application rounded to the nearest whole point. CoCs must receive at least 198 points out of the 200 CoCApplication points available to receive the

full 50 points for the CoC Application score. For example, if a CoC received 100 out of 200 points on the CoC application, the project application would receive 25 out of 50 points for this criterion.

b. *CoC Project Ranking.* Up to 35 points for the CoC's ranking of the project application(s). In order to more evenly distribute funding across CoCs and take into account the CoCs ranking of projects, point values will be assigned directly related to the CoCs ranking of projects. The calculation of point values will be 35 times the quantity (1-x) where x is the ratio of the cumulative funding requests for all projects or portions of projects ranked higher by the CoC in Tier 2 plus one half of the funding of the project of interest to the total amount of funding available in Tier 2. For example, if a CoC is eligible to apply for projects totaling $500,000 in Tier 2 and applies for 5 projects ranked in Tier 2 of $100,000 each: the highest ranked project would receive 31.5 points and then the subsequently ranked projects would receive 24.5, 17.5, 10.5, and 3.5 points.

c. *Project Type.* Up to 5 points will be based on the type of project application submitted and the population that will be served with the following points available for the following project types:
   (1) 5 points for renewal and new permanent housing, permanent supportive housing and rapid rehousing, renewal safe haven, Homeless Management Information System (HMIS), Support Services Only (SSO) for centralized or coordinated assessment system or transitional housing that exclusively serves homeless youth projects;
   (2) 3 points for renewal transitional housing, except those transitional housing projects that exclusively serve homeless youth which will be scored as discussed in paragraph (1); and
   (3) 1 point for renewal SSO project applications other than those for a centralized or coordinated assessment system.

d. *Commitment to Policy Priorities.* Up to 10 points for how the permanent housing project application commits to applying the Housing First model. Transitional housing projects, safe haven, and SSO projects that are not for centralized or coordinated assessment can receive up to 10 points for how the project demonstrates that it is low-barrier, prioritizes rapid placement and stabilization in permanent housing and does not have service participation requirements or preconditions to entry (such as sobriety or a minimum income threshold). HMIS projects and SSO projects for a centralized or coordinated assessment system will automatically receive 10 points.

e. *BTG's Decisions on Project Ranking are:*

(1) Competitive scoring will dictate whether proposals will be placed in Tier 1 or Tier 2. For the project which may straddle Tier 1 and Tier 2, then Section II.B.16.c of the NOFA will apply.
(2) Support Services Only (SSO) projects will not be included in BTG's consolidated application.
(3) If a Permanent Supportive Housing project does not score high enough to be placed in Tier 1, its score shall be evaluated against the scores of all other new applicants for placement in Tier 2.
(4) HMIS projects will have automatic placement in Tier 1.

4. Bridging the Gap CoC - Permanent Housing Bonus Project

For the purposes of this RFI, BTG has decided that CoCs may create new projects through the Permanent Housing bonus up to five (5) percent of the CoC's FPRN, estimated at $100,214, for the following types of new projects:

a. New permanent supportive housing projects that will serve 100% chronically homeless families and individuals; and

b. New rapid re-housing projects that will serve homeless individuals and families coming directly from the streets or emergency shelters, and includes persons fleeing domestic violence situations and other persons meeting the criteria of paragraph (4) of the definition of homeless.

B. CoC Participation

An interested applicant/project sponsor is expected to actively participate in their respective counties' chapters of the CoC and is expected to coordinate services with private and public agencies in the community. Active participation includes but is not limited to: attendance at general and subcommittee meetings, chairing a subcommittee and participating in activities of the respective chapter.

C. Criteria of the BTG CoC Application.

CoC Consolidated Applications will be assessed on a 200 point scale.

1. **CoC Coordination and Engagement.** HUD will award up to 43 points to CoCs that demonstrate coordination with other systems of care that serve homeless individuals and families, including sources of funding other than the CoC Program; an inclusive and outcome-oriented community process, including an organization structure(s) and decision-making process for developing and implementing a CoC strategy that is inclusive of representatives from both the private and public sectors, has a fair and impartial project review and selection process; and has created, maintained, and built

upon a community-wide inventory of housing for homeless individuals and families. (See Attachment F, pages 33-36 for detailed criteria and itemized point allocation.)

2. **Project Ranking, Review, and Capacity.** HUD will award up to 30 points to CoCs that clearly demonstrates the existence of a coordinated, inclusive, and outcome-oriented community process for the solicitation, objective review, ranking, and selection of CoC Program project applications that includes a GIW that does not require revisions that would have increased the CoC's ARD after HUD issues the final approved GIW to accurately reflect those projects eligible for renewal, and a process by which renewal projects are reviewed for performance and compliance with 24 CFR part 578. (See Attachment F, pages 36-37 for detailed criteria and itemized point allocation.)

3. **Homeless Management Information System.** HUD will award up to 18 points to CoCs that clearly demonstrate the existence of a functioning HMIS that facilitates the collection of information on homelessness using residential and other homeless services and stores that data in an electronic format. (See Attachment F, pages 37-38 for detailed criteria and itemized point allocation.)

4. **Point-in-Time Count (PIT).** HUD will award up to 9 points to CoCs related to the collection, use, and submission of 2016 PIT count data. (See Attachment F, page 38 for detailed criteria and itemized point allocation.)

5. **System Performance.** HUD will award up to 40 points based on CoC system-wide performance related to reducing homelessness within the CoC's defined geographic area as reported to HUD via Homelessness Data Exchange (HDX). (See Attachment F, pages 38-40 for detailed criteria and itemized point allocation.)

6. **Performance and Strategic Planning.** HUD will award up to 60 points based on the CoC's plan for and progress towards reducing homelessness within its geographic area and decreasing the number of recurrences of homelessness. (See Attachment F, pages 40-42 for detailed criteria and itemized point allocation.)

7. The project application contains all information specific to projects requesting new or renewal funding in the 2016 NOFA competition. Each project sponsor must submit a project application for each of its new or renewal projects. The CoC Program NOFA contains additional threshold requirements that must be met for new or renewal projects to be considered for funding. Training documents for e-snaps project application elements are located at: https://www.hudexchange.info/

8. All renewal project applications, including rental assistance, shall be limited to **one (1) year** grant terms and **one (1) year** of funding.

9. Projects ranked within the Tier 2 level of funding will be scored competitively against any new reallocation project applications.

10. After the initial five (5) year grant term, S+C renewal projects may renew at the number of units under lease at the time of the GIW submission if the leases can be verified. Usually this means renewing at a higher number of units and ultimately an increase in funding.

D. Target Populations

The target populations are homeless individuals and families defined under the HEARTH Act's final rule on the definition of homelessness.
The final rule can be referenced at:
https://www.hudexchange.info/resource/1928/hearth-defining-homeless-final-rule/

Please read through the CoC NOFA and other training material at:
https://www.hudexchange.info/e-snaps/fy-2016-coc-program-nofa-coc-program-competition/ for more information on eligible participants and project threshold requirements.

E. Geographic Location

The geographic locations and codes covered under this CoC application are: Hawaii County - 159001; Kauai County - 159007, and Maui County - 159009.

F. Sources of Funding

Funding availability for the 2016 NOFA will be contingent upon the availability of funds appropriated by the United States Congress and allocated by HUD.

G. Term of Contracts

1. Renewal Projects. Awards made under the CoC, S+C and Supportive Housing Programs are eligible for renewal for FY16 funds if they are currently in operation and have an executed agreement that is dated no later than December 31, 2016 and expires in Calendar Year (CY) 2017 (January 1, through December 31, 2017). (More details in Section IV.B.1 and 3.)

2. New Programs Initial Term of Assistance:
The initial grant term for new projects applications may be 1-year, 2-years, 3-years, 4-years, 5-years, or 15 years, with exceptions as detailed in Section IV.B.2.

3. Conditions for Extension. The option to extend the Contract will be at the sole discretion of the State and HUD.

H. Budget and Financial Requirements

1. Payments shall be made in monthly or quarterly disbursements upon submission of invoices and financial reports pursuant to specific written instructions from the State. Payments shall be made in accordance with the approved budget and the Compensation and Payment Schedule prescribed by the DHS. Payments shall be subject to the availability of funds and the satisfactory performance of all terms and conditions.

2. An amount equal to five percent (5%) of the total contract amount shall be withheld as final payment subject to satisfactory submittal and reconciliation of all reports, and subject to section HRS sections 103-32.1 & 103-53.

I. Additional Requirements

Applications must include responses to the following questions:

1. Will this project be designated as low barrier? If so, the application must state that the Applicant/Project Sponsor shall not screen out potential participants based on those clients possessing:

   a. too little or little income
   b. active or history of substance use
   c. criminal record, with exceptions for state-mandated restrictions
   d. history of domestic violence

2. Will this project adopt a Housing First approach? If so, the application must state that the Applicant/Project Sponsor shall quickly house clients without preconditions or service participation requirements.

II. General Requirements

A. Data Universal Numbering System (DUNS) Number Guide. An interested applicant/project sponsor is required to obtain a DUNS Number for Federal grant registration purposes. The DUNS Number verifies the legal name, physical address, trade style or does business as (dba) for each organization and is the initial step in the Central Contractor Registration (CCR) process. Registering in the CCR is also a requirement for applying and obtaining federal funding. An interested applicant/project sponsor is required to provide their DUNS number and be registered in the CCR as a prerequisite for submitting a Project Application. For information on how to obtain a DUNS Number and register in the CCR please use the following URL:
http://portal.hud.gov/hudportal/HUD?src=/program_offices/administration/grants/duns

B. E-snaps Electronic Submission for Applications. An interested applicant/project sponsor is strongly encouraged to review training materials about e-snaps that are

available on HUD's website: https://www.hudexchange.info/ DHS reserves the right to make changes to this section based on HUD guidance and clarification.

C. **Matching and Leveraging of Funds.** Matching or leveraging requirements are required for the proposed projects in this RFI. Matching requirements are detailed in the CoC Program Interim Rule, 24 CFR 578.73.

1. The interested applicant/project sponsor shall demonstrate the capability to coordinate, integrate, match, and/or leverage the project(s) with other mainstream services such as health care, social services, and employment programs for which homeless populations may be eligible.

2. Written matching and/or leveraging commitments are required in the RFI proposal. Written agreements shall be documented on letterhead stationery, signed and dated (within 60 days of the application deadline) by an authorized representative, and shall at a minimum, contain the following elements: the name of the organization providing the contribution; the type of contribution (including without limitation, cash, child care, and case management, etc.); the values of the contribution; the name of the project and its sponsor organization to which the contribution will be given; and the date the contribution will be available. Documentation of the project's match requirement must be maintained in the grantee's financial records on a grant specific basis. HUD may request match documentation in accordance with program requirements stated above. Multiple project applications designating a single match source must submit a spreadsheet apportioning the match for each project.

D. **CoC Participation and Coordination of Services**
The interested applicant/project sponsor is expected to demonstrate active participation in their respective Continuum's planning and coordination processes. CoC participation scoring and evaluation shall be based on the following criteria:

1. Participation in the CoC process;
2. General meeting attendance;
3. Subcommittee attendance and CoC activities planning and participation;
4. The capability to coordinate services with other agencies and resources in the community; and
5. The interested applicant/project sponsor is expected to demonstrate the ability to coordinate services with private and public agencies in order to facilitate a broad range of social services for which homeless persons may be eligible.

E. **HMIS.** The collection of information for persons experiencing homelessness is required by HUD. The HMIS assists in providing unduplicated counts of homeless persons as well as client and program level data for all CoC programs statewide. The interested applicant/project sponsor receiving federal, state, and local funds is required to participate in the HMIS. HMIS data entry shall be accomplished within

standards established by the State's HMIS Data Quality Plan. Domestic violence providers are prohibited from participating in the HMIS under the Violence Against Women Act of 2005 ("VAWA") amendment to the McKinney-Vento Act incorporated herein by reference. Therefore, such providers shall be required to collect client level data in a comparable database. The software used for the comparable database shall not comingle the domestic violence victim service provider data with the actual HMIS data within the same database.

F. Federal Requirements

1. The interested applicant/project sponsor shall complete the applicable federal certifications stated in Section 3 VI of the RFI, and listed in Attachment A, Proposal Application Checklist.

2. Projects funded under this NOFA shall operate in a fashion that does not deprive any individual of any right protected by the Fair Housing Act (hereinafter "42 U.S.C. 3601-19"), Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), Title VI of the Civil Rights Act of 1964 (hereinafter "42 U.S.C. 2000d"), and the Age Discrimination Act of 1975 (hereinafter "42 U.S.C. 6101").

3. The interested applicant/project sponsor shall comply with the Office of Management and Budget ("OMB") audit requirements in 45 CFR Part 75, Subpart F, Section 75.501.

4. Housing Quality Standards. The interested applicant/project sponsor shall comply with the housing quality standards for acceptable conditions for sanitary facilities, food preparation and refuse disposal, space and security, thermal environment, illumination and electricity, structure and materials, interior air quality, water supply, lead-based paint, accessibility, site and neighborhood, and fire safety. Inspections must be completed prior to the signing of a lease. Follow up inspections of housing units must be completed to ensure that the units meet acceptable occupation standards and to ensure that rehabilitation has been performed in accordance with regulations. Units shall be inspected on an annual basis and upon a change of tenancy.

III. Service Activities

Provisions at 24 CFR 578.37 through 578.63 identify the eligible costs for which funding may be requested under the CoC Program. HUD will reject any requests for ineligible costs. The CoC funds may be used for projects under five program components:

1. Permanent Housing
   a. Permanent Supportive Housing (PSH)
   b. Rapid Re-housing (RRH)
2. Homeless Management Information System (HMIS)
3. Supportive Services Only (SSO)*
4. Transitional Housing (TH)

5. Homelessness Prevention (for CoCs designated as high performance communities only)

*SSO projects will not be included in the BTG consolidated application. (See Section 2.A.e.)

Collaborative applicants may use up to 3 percent (3%) of the Final Pro-Rata Need (FPRN) for CoC Planning activities.

The CoC interim rule and NOFA are available at: https://www.hudexchange.info/e-snaps/fy-2016-coc-program-nofa-coc-program-competition/. The HEARTH Act consolidated the SHP, S+C and SRO programs into one CoC program. The components above are fully described in 24 CFR 578.37 of the CoC Program interim rule.

DHS strongly encourages all applicants and/or project sponsors and other interested stakeholders to read the 2016 NOFA in its entirety. See Exhibit E.

[END OF SECTION]

Section 3
Proposal Application Instructions

General instructions for completing applications:

1. Proposal Applications shall be submitted to the DHS using the prescribed format outlined in this section.
2. The Applicant/Project Sponsor shall submit originals and copies as stated in Section 1. VI.
3. Multi-grant applicants shall be allowed to consolidate renewal projects into one hard copy application to reduce duplication of effort. However, required individualized documents (i.e., summary sheets, match/leverage commitments, annual performance reports, etc.) must be submitted for each project and clearly designated by project name.
4. The numerical outline for the application, the titles/subtitles, and the Applicant/Project Sponsor organization and RFI identification information on the top right hand corner of each page should be retained.
5. Page numbering of the Proposal Application should be consecutive, beginning with page one and continuing through for each section. See sample table of contents in Section 4.
6. Proposals must be submitted bound with a 2 or 3 prong fastener.
7. Tabbing of sections is required.
8. The Applicant/Project Sponsor must also include a Table of Contents with the Proposal Application. A sample format is reflected in Section 5, Attachment B of this RFI.
9. A written response is required for each item unless indicated otherwise. Failure to answer any of the items will impact upon an Applicant's/Project Sponsor's score.
10. Applicants/Project Sponsors are strongly encouraged to review evaluation criteria in Section 4, Proposal Evaluation when completing the proposal.
11. This form (SPO-H-200A) is available on the SPO website (www.spo.hawaii). However, the form will not include items specific to each RFI. When using the website form, the Applicant must include all items listed in this section.

The Proposal Application consists of the following <u>required</u> sections:

1. Proposal Application Identification Form (SPOH-200)
2. Table of Contents
3. Project Information
4. Administrative Requirements
5. Federal Requirements

I. Program Overview

The applicant/project sponsor shall give a brief overview to orient evaluators as to the program/services being offered. The applicant/project sponsor shall clearly and concisely summarize the content and purpose of the proposal in such a way as to provide the State with a broad understanding of the entire proposal. The applicant/project sponsor shall include a description of their organization, the goals and objectives relating to the program/services, and how the proposed services will address the problems or needs identified in Section 2 of this RFI.

II. Experience and Capability

A. Necessary Skills

The applicant/project sponsor shall demonstrate that it has the necessary skills, abilities, and knowledge relating to the delivery of the proposed services.

B. Experience

DHS requires that the applicant/project sponsor have at least one (1) year of experience with the project area for which the proposal is being made. The applicant/project sponsor shall provide a description of projects/contracts pertinent to the proposed services. The applicant/project sponsor shall include points of contact, addresses, and e-mail/phone numbers. The State reserves the right to contact references to verify experience.

C. Quality Assurance and Evaluation

The applicant/project sponsor shall describe its plans for quality assurance and evaluation for the proposed services, including methodology.

D. Participation in the CoC

1. The applicant/project sponsor shall demonstrate participation in its respective CoC. The State reserves the right to contact the CoC regarding the applicant's stated participation and attendance.

2. The applicant/project sponsor shall identify the staff person(s) and/or position(s) attending the CoC meetings and describe the authority the staff person has to make commitments on behalf of the agency.

3. The applicant/project sponsor shall describe the extent of its subcommittee participation. The applicant/project sponsor should include the type of subcommittee attended, number of meetings attended from January, 2015 to December, 2015, and whether or not their organization has a chair or member

on the subcommittee. This self-report will be verified by attendance records obtained directly from the respective CoC chapter.

E. Facilities

The applicant/project sponsor shall provide a description of its facilities and demonstrate its adequacy in relation to the proposed services. If facilities are not presently available, it shall describe plans to secure facilities and describe how the facilities meet applicable Americans with Disabilities Act (ADA) requirements, and have special equipment that may be required for the services.

III. Project Organization and Staffing

A. Staffing

1. Proposed Staffing

The applicant/project sponsor shall describe the proposed staffing pattern, client/staff ratio and proposed caseload capacity appropriate for the viability of the services.

2. Staff Qualifications

The applicant/project sponsor shall provide the minimum qualifications, including experience and credentials of the staff assigned or projected staffing for the program. Please describe the knowledge and experience of the agency's proposed project director and/or staff, including the day-to-day operations of the program. Attach resumes and relevant professional background/experience of each staff position. Services must be provided by persons with training and/or expertise appropriate to the type of service offered. Staff must be capable of assessing the needs of the targeted population.

B. Project Organization

1. Supervision and Training

The applicant/project sponsor shall describe its ability to supervise, train and provide administrative direction relative to the delivery of the proposed services.

2. Organization Chart

The applicant/project sponsor shall reflect the position of each staff and line of responsibility/supervision. Include position title, name and full time equivalency. Both the "Organization-wide" and "Program" organization charts shall be attached to the Proposal Application.

IV. Service Delivery

A. Description of Service. The applicant/project sponsor shall describe its approach to applicable service activities and management requirements from Section 1 of this RFI.

B. New Project Proposals. The applicant/project sponsor shall clearly describe their proposed program within the parameters defined by HUD in Section 2 of this RFI.

New project proposals must complete the new project summary sheet found in Section 5 of this RFI and submit this summary with your proposal application. This summary sheet will be instrumental in evaluating your proposal.

C. Performance Outputs and Outcomes Measurements

The applicant/project sponsor must clearly describe outcome measures, benchmarks and data collection methods relative to the proposed Scope of Services. The program's objectives and outcomes should be appropriate and achievable with regard to the targeted client base, the stated problem, and the proposed service activities.

D. Monitoring Results

If applicable, the applicant/project sponsor must submit the most recent monitoring report related to any State or Federal homeless-related program. If findings were received, the applicant/project sponsor must show documentation of findings being resolved and closed.

V. Financial

A. Pricing Structure

1. Please include your written commitments, dated within 60 days of the application deadline, for all project match and/or leveraging. The written agreements shall be documented on letterhead stationery, signed and dated by an authorized representative, and shall at a minimum contain the following elements: 1) the name of the organization providing the contribution; 2) the type of contribution such as cash, child care services, case management services, etc.; 3) the monetary value of the contribution; 4) the name of the project; 5) the date the contribution will be available, 6) the name of the sponsor organization to which the contribution will be made, and 7) multiple project applications designating a single match source must submit a spreadsheet apportioning the match for each project.

2. A portion of the applicant's/project sponsor's proposal shall be evaluated on the relationship between funds requested for housing activities and funds requested for supportive services activities among new and renewal projects. Housing activities include all eligible requests for funds for rental assistance, acquisition(s), rehabilitation, construction, leasing, and operations when used in connection with housing. HMIS costs and administrative costs are excluded from this calculation percentage of the applicant's grant request for housing related expenses. Housing related expenses include, but are not limited to, rental assistance, housing operations, and the cost of leasing housing. HMIS costs and administrative costs will be excluded from this calculation.

3. State Procurement Office (SPO) budget forms are not required to be submitted in your agency's proposal. However, the DHS and HUD require that all budget forms be completed in your e-snaps project application and included in the hardcopies requested with the proposal application. This includes all project budgets explicitly detailing what HUD will be paying for if your project is accepted. E-snaps will provide a Quantity column to explain in writing the amounts your project is requesting. E-snaps will generate a summary budget after all costs have been entered.

   Renewal projects must be renewed for the same amounts and services currently allowable under your renewal grant. If your project is over budget or cannot meet applicable match requirements, the DHS may reject your proposal or ask that your proposal be revised.

B. Other Financial Related Materials

In order to determine the adequacy of the applicant's accounting system, the following documents are requested as part of the Proposal Application.

1. Latest single audit report.

2. Latest audit which meets the requirements of the Office of Management and Budget.

3. Any response to the audit findings for the latest single audit.

VI. Administrative Requirements

A. Federal Applicant Documents. The following documents are to be submitted for each applicant/project sponsor.

1. **All attachments required to be submitted with the Project Application in e-snaps for new and renewal proposals must be included in the proposal packet.**

B. Required Exhibit 2 Charts, Narratives and Attachments

These documents are to be submitted electronically through e-snaps for each project.

1. Please note that the HUD defined name for the Bridging the Gap Continuum of Care is **Hawaii Balance of State CoC**, and the CoC number is **HI-500.** All projects located on the rural counties or with the State as the applicant must use this number when filling out Project application documents.

2. Only applicant/project sponsors for new projects must include information related to eligibility as defined in the NOFA.

VII. Other

A. Litigation

The applicant shall disclose and explain any pending litigation to which they are a party, including the disclosure of any outstanding judgment(s).

[END OF SECTION]

Section 4
Proposal Evaluation

I. Introduction

The evaluation of proposals received in response to this RFI will be conducted comprehensively, fairly, and impartially. Structured, quantitative scoring techniques will be utilized to maximize the objectivity of the evaluation.

All proposals will be initially reviewed to determine if the proposed project meets the minimum requirements for participation in the CoC program. Particularly, proposals must 1) be submitted by an eligible agency; 2) serve eligible CoC beneficiaries; 3) contain eligible activities appropriate for the population to be served; and, 4) be financially feasible and cost effective. All minimum requirements shall be met or proposals will be returned to the proposing agency.

II. Evaluation Process

The procurement officer or an evaluation committee of designated reviewers selected by the head of the state purchasing agency or procurement officer shall review and evaluate proposals. When an evaluation committee is utilized, the committee will be comprised of individuals with experience in, knowledge of, and program responsibility for program service and financing.

DHS reserves the right to request written clarifications or revisions during the evaluation process. The DHS reserves the right to award renewal grants provided that the applicant has not exhibited serious capacity issues in prior grants, including performance and financial problems, or unresolved monitoring findings for which there is no evidence that the grantee is working towards appropriate resolution.

The evaluation will be conducted in three (3) phases as follows:

A. Phase 1 - Evaluation of Proposal Requirements
B. Phase 2 - Evaluation of Proposal Application
C. Phase 3 - Recommendation for Award

Evaluation Categories and Thresholds for New Projects

Evaluation Categories	Possible Points
Administrative Requirements	Required
Proposal Application	
Program Overview	0 points
Experience and Capability	60 points
Project Organization and Staffing	10 points
Service Delivery	60 points
Financial	20 points
TOTAL POSSIBLE POINTS	**150 Points per evaluator**

150 pts per evaluator X four (4) evaluators = 600

The applicant/project sponsors' scores in the "Service Delivery" category will be utilized to break any initial ties in scoring. If subsequent tie-breaks are needed, the applicants' score in the category of "Experience and Capability" will be used.

III. Evaluation Criteria

A. Phase 1 - Evaluation of Proposal Requirements

1. **Administrative Requirements**
   a. All Items on the Proposal Application Checklist
   b. All e-snaps requirements as outlined in Section 3 VI of the RFI.
   c. Registration with the State Procurement Office
   d. Tax Clearance Certificate/Vendor Compliance Certificate

2. **Proposal Application Requirements**
   a. Proposal Application Identification Form (SPOH-200)
   b. Table of Contents
   c. Program Overview
   d. Experience and Capability
   e. Project Organization and Staffing
   f. Service Delivery
   g. Financial
   h. Other

B. Phase 2 - Evaluation of Proposal Application

NEW Projects Evaluation Form

1. Experience and Capability	**60 Points**
☐ Does the applicant/project sponsor have the necessary experience to implement the	

proposed project as evidenced by similar past projects and programs which serve the intended client group? Does the applicant/project sponsor have adequate management and professional staff to successfully implement and manage the proposed project? **(5 Points)** ☐ Does the applicant/project sponsor have the necessary experience to implement the proposed project based on experience with past projects and programs which are related to, but not similar to the proposed project? Does the applicant/project sponsor need to recruit and/or train additional management and professional staff prior to the implementation of the proposed project to augment existing staff? **(3 Points)** ☐ The applicant/project sponsor does not have relevant or related past experience. The applicant/project sponsor needs to recruit and/or train new personnel to manage and operate the proposed project? **(0 Points)**	
Has the applicant/project sponsor ever received a monitoring finding from HUD or HPO for any homelessness related program? ☐ No **(5 Points)** ☐ Yes, but findings were subsequently resolved and closed. (3 Points) ☐ Yes **(0 Points)**	
If the applicant/project sponsor currently administers a CoC Program project, did the project serve the number of individuals/families as documented in the application? ☐ 80 – 100% **(5 Points)** ☐ 50 – 79% **(2 Points)** ☐ 0 – 49% **(0 Points)**	
Participation in the Continuum of Care Process ☐ Does the applicant/project sponsor have the authority to make commitments on behalf of the agency? **(15 Points)** ☐ The staff person(s) attending for the applicant does not have the authority to make commitments on behalf of the agency. **(0 Points)**	
General Meeting Attendance (January 2015-December 30, 2015) ☐ Did the applicant/project sponsor attend 67-100% of their CoC's general meetings? **(15 Points)** ☐ Did the applicant/project sponsor attend 34-66% of their CoC's general meetings? **(3 Points)** ☐ Did the applicant/project sponsor attend 1-33% of their CoC's general meetings? **(1 Points)**	

☐ The applicant/project sponsor did not attend their CoC's general meetings? **(Minus 5 Points)**	
Subcommittee and CoC Activities and Planning Participation ☐ Does the applicant/project sponsor chair and coordinate a subcommittee and/or CoC activities and planning processes? **(10 Points)** ☐ Does the applicant/project sponsor actively and regularly participate in subcommittees and/or CoC activities and planning processes? **(7 Points)** ☐ Does the applicant/project sponsor occasionally participate in subcommittees and/or CoC activities and planning processes? **(4 Points)** ☐ The applicant/project sponsor did not participate in subcommittees and/or CoC activities and planning processes. (Minus 10 Points)	
Capacity of Applicant – Readiness to Proceed ☐ Has the applicant/project sponsor secured a site to implement the proposed project? Are all resources necessary to implement the proposed project secured, or will be secured with the receipt of the requested funding? Has the applicant/project sponsor developed program guidelines and identified key personnel who will manage and implement the proposed project? **(5 Points)** ☐ Has the applicant/project sponsor secured most of the resources necessary to implement the proposed project? Do resources include an operation site, an outline of program guidelines, and identification of key staff members who will manage and implement the proposed project? **(3 Points)** ☐ The applicant project sponsor has not secured a site in which to operate the proposed project and the resources necessary to implement the proposed project. The applicant has not developed program guidelines or identified key staff that will manage the proposed project. **(0 Points)**	

2. Project Organization and Staffing	**10 Points**
Does the applicant/project sponsor proposed staffing patterns, client to staff ratios and proposed caseload capacity appropriate for the viability of the services to be provided? **(3 Points)**	
Does the applicant/project sponsor meet the minimum qualifications for staff assigned to the program? This includes the knowledge and experience of the proposed project director and/or staff. Has the applicant/project sponsor demonstrated that services will be provided by persons with training and/or expertise appropriate to the type of service offered? **(3 Points)**	
Does the applicant/project sponsor demonstrate the ability to supervise, train and provide administrative direction relative to the delivery of the proposed services? **(2 Points)**	
Does the applicant/program sponsor's organization charts identify staff positions and lines of responsibility/supervision? **(2 Points)**	

3. Service Delivery	60 Points
Does the applicant/project sponsor demonstrate a thorough understanding of the purpose and scope of the proposed project's service activities? **(5 Points)**	
Does the applicant/project sponsor demonstrate a logical approach (including timelines) and a step-by-step process that explains in detail the planning and delivery of tasks and activities to the targeted client base? **(5 Points)**	
Do 100% of the budgeted activities for the new project proposal fall within the guidelines as stated in the emphasis on housing activities in Section 1 of this RFI? **(15 Points)**	
Does the applicant's/project sponsor's project exclusively serve the chronically homeless according to HUD's definition of chronically homeless? ☐ 100% of the persons to be served by the proposed project will be chronically homeless. **(15 Points)** ☐ 75% - 99% of the persons to be served by the proposed project will be chronically homeless. **(5 Points)** ☐ Less than 75% of the persons to be served by the proposed project will be chronically homeless. **(0 Points)**	
Does the project demonstrate prioritization of program applicants based on vulnerability and need? (source: project application narrative) ☐ Yes **(10 Points)** ☐ No **(0 Points)**	
Does the applicant/project sponsor demonstrate effective and feasible outputs/outcomes, including the number of unduplicated persons and families to be served? **(5 Points)**	
Does the applicant/project sponsor discuss in sufficient detail how the outputs/outcomes will be tracked and documented? **(5 Points)**	

4. Financial	20 Points
Does the applicant/project sponsor have an adequate accounting system? **(5 Points)** ☐ Yes **(5 Points)** ☐ No **(0 Points)**	
Does the applicant/project sponsor have no major findings in their most recent independent financial audit? **(5 Points)**	

☐ Yes – Has no major findings **(5 Points)** ☐ No – Has major findings **(0 Points)**	
Does the match (may include in-kind or cash) proposed by the applicant/project sponsor equal to at least 25% of the requested funding amount (minus request for leasing funds)? ☐ Yes **(5 Points)** ☐ No **(0 Points)**	
Project Leveraging Does the applicant/project sponsor demonstrate the ability to leverage requested HUD funding with other funding resources for the proposed project? ☐ Is the applicant's/project sponsor's leveraging ratio 150% or more. **(5 Points)** ☐ Is the applicant's/project sponsor's leveraging ratio 100% to 149%. **(3 Points)** ☐ Is the applicant's/project sponsor's leveraging ratio 50% to 99%. **(1 Points)** ☐ Is the applicant's/project sponsor's leveraging ratio 0% to 49%. **(0 Points)** Total Funding Request: $ Leveraging Provided: $ Leveraging Ratio (Leveraging/Funding Requested): %	

C. Recommendation for Award

Each notice of award shall contain a statement of findings and decision for the award or non-award of the contract to each applicant.

Section 5

Attachments/Exhibits

A. Proposal Application Checklist (2 pages)
B. Sample Table of Contents (1 page)
C. Project Summary for New Programs/Projects (5 pages)
D. AG General Conditions (14 pages)
E. Dept. of Housing and Urban Development Notice of Funding Availability (NOFA) for the Continuum of Care Programs FY2016 (53 pages)
F. CoC Programs Interim Rule: 24 CFR 578 (47 pages)

ATTACHMENT A

Proposal Application Checklist

Applicant: _____ RFI No.: _____

The applicant's proposal must contain the following components in the order shown below. This checklist must be signed, dated and returned to the purchasing agency as part of the Proposal Application. In some cases the applicant and the project sponsor are the same.

General Requirements				
Item	**Requirement or Example of Document**	**Required by Applicants**	**Required by Project Sponsors**	**Submitted in Proposal**
Proposal Application Identification Form (SPOH-200)	www4.hawaii.gov/StateForms/ShowForm.cfm?&ShowAll=Yes	X	X	
Proposal Application Table of Contents - Attachment B	Section 5, Attachment B	X	X	
Project Information				
New or Renewal Project Summary - Attachment C or D	Section 5, Attachment C or D	X	X	
Proposal Application (SPOH-200A)	www4.hawaii.gov/StateForms/ShowForm.cfm?&ShowAll=Yes	X	X	
E-snaps Project Application Hardcopy and copies of all required attachments within.	www.hud.gov/e-snaps	X	X	
Organizational Chart	Section 3. III.B	X	X	
Annual Progress Report export to pdf for most recently completed operating year.	Section 3. IV.D	X	X	
Monitoring Documents (if applicable)	Section 3. IV.E	X	X	
Leveraging letters and/or letters of intent from the funding source or your executive director	Section 3 .V.A.1	X	X	
Administrative Requirements				
Tax Clearance Application Certification	Section 1. XIII	X	X	

Most Recent Independent Financial Audit	Section 3.V.B	X	X	
501 (c)(3) Certification	Section 1.XII.2	X	X	
Applicant Code of Conduct	Section 3.VI.B	X	X	
Disclosure of Lobbying Activities (SF-LLL):	http://www.whitehouse.gov/sites/default/files/omb/grants/sflllin.pdf	X	X	
Drug-Free Workplace (HUD form 50070)	http://portal.hud.gov/hudportal/documents/huddoc?id=50070.pdf	X	X	
Recipient Disclosure/Update Report (HUD form 2880):	http://portal.hud.gov/hudportal/documents/huddoc?id=2880.pdf	X	X	

ATTACHMENT B

Proposal Application
Table of Contents

1. **Proposal Application Identification Form** 1
2. **Proposal Application Table of Contents** 2
3. **New or Renewal Project Summary** 3
4. **Proposal Application** 4
   - I. Program Overview 5
   - II. Experience and Capability 6
     - A. Necessary Skills 7
     - B. Experience 8
     - C. Quality Assurance and Evaluation 9
     - D. Coordination of Services 9
     - E. Facilities 10
   - III. Project Organization and Staffing 11
     - A. Staffing 12
     - B. Proposed Staffing 13
     - C. Staffing Qualifications 14
     - D. Project Organization 15
       1. Supervision and Training 16
       2. Organizational Chart 17
   - IV. Service Delivery 18
   - V. Financial 19
     - A. Pricing Structure (Budget and Justification) 20
     - B. Other Financial Related Materials 20
   - VI. Other 20
5. **E-Snaps Exhibit 2 Project** 21
6. **Annual Progress Report** 23
7. **Leveraging Letters** 24
8. **Administrative Requirements** 25

Sample

ATTACHMENT C

Project Summary for NEW Projects
2016 CoC Application

Complete one form per project. Please reply to all of the questions. Put 'N/A' if not applicable. Keep responses short and succinct. This form will be provided to the evaluation committee for review.

Project Information:
Project Applicant (Agency Name, City, or DHS): _____
Project Sponsor (Agency Name): _____
Project Name: _____

Please Summarize the Amounts Requested for Your Project Budget:

Acquisition	$_____
Tenant-Based Rental Assistance:	$_____
Rehabilitation	$_____
Sponsor-Based Rental Assistance:	$_____
New Construction	$_____
Project-Based Rental Assistance:	$_____
Property Leasing:	$_____
SRO-Based Rental Assistance:	$_____
Housing Operations:	$_____
TOTAL:	**$_____**
HMIS	$_____
Administration:	$_____
TOTAL:	**$_____**

Permanent Housing Bonus Project (All costs must apply to Permanent Housing Activities)

Tenant-Based Rental Assistance:	$_____

Sponsor-Based Rental Assistance: $_____

Project-Based Rental Assistance: $_____

Property Leasing: $_____

Housing Operations: $_____

Administration: $_____

TOTAL: $_____

Project Overview:

Description of population to be served:

Number of singles and/or families proposed to be served:

If applicable, number of beds to be created under this project: _____

If applicable, number of units to be created under this project: _____

Number of beds designated exclusively for chronically homeless individuals: _____

Number of units designated exclusively for chronically homeless individuals: _____

Please describe the services that project participants will receive:

Please describe how participants will be assisted to gain employment and/or increase income:

Please describe how participants will obtain and/or maintain permanent housing:

1. **Participation in the CoC Process. This will be verified with your CoC.**

   General Meeting Attendance: Enter the total number of general meetings attended from January 2015 to December 2015: _____

   Subcommittee Participation: Check off all that apply and indicate the number of meetings attended from January 2015 – December 2015.

   ☐ *Executive*

☐ Chair
☐ Member
Number of meetings attended: _____

☐ *Awareness*
☐ Chair
☐ Member
Number of meetings attended: _____

☐ *Advocacy*
☐ Chair
☐ Member
Number of meetings attended: _____

☐ *Org. Dev.*
☐ Chair
☐ Member
Number of meetings attended: _____

☐ *Planning*
☐ Chair
☐ Member
Number of meetings attended: _____

☐ *IT*
☐ Chair
☐ Member
Number of meetings attended: _____

Please List Other CoC Activities and Planning Participation (e.g.: Con Plan, 10yr Plan, leg. testimony, etc.):

2. **Emphasis on Housing Activities**

This is a calculation based on housing related expenses to the total grant amount requested. Housing-related expenses include all housing related activities. HMIS and Administrative costs should not be included in these amounts. This year the Housing Emphasis score will be based solely on new project proposals. Case Management services cannot be more than 20% of the overall program budget per the CoC NOFA. Program's exceeding this amount will be asked to revise their budget.

Housing Related Expenses Requested: $_____
Total Funding Requested: $_____
Housing Expense Ratio (Housing Related Expenses/Total Funding Requested: _____%

3. **Project Leveraging**
This calculation is based on the total funds requested to the monetary value of other resources contributed to and /or secured by the project's applicant.

Total Funding Requested: $_____
Leveraging Provided:
$_____
Leveraging Ratio (Leveraging Provided/Total Funding Requested): _____%

4. **Capacity of Applicant – Consistency with Agencies Mission and Purpose**
State your agency's mission and purpose as stated in the by-laws and charter:

Briefly explain how your proposed CoC project is in line with your agency's mission and purpose:

5. **Project Quality – Experience and Capacity**
Provide a brief overview of your agency's previous experience with CoC grants and/or with similar projects/programs that serve the same client group as your current CoC proposal:

Briefly explain how your agency has the adequate management, direction, and/or financial staff to implement the proposed project:

6. **Capacity of Applicant – Readiness to Proceed**

☐ Check if your agency has secured a site for the proposed project
Provide a brief overview/explanation:

☐ Check if all resources necessary to implement the proposed project have been secured or will be secured with the receipt of the requested funding.
Provide a brief overview/explanation:

☐ Check if guidelines/regulations have been established for the proposed project.
Provide a brief overview/explanation:

☐ Check if key staff members have been identified to manage and implement the proposed project.
Provide a brief overview/explanation:

7. **Project Design and Anticipated Outcomes**
Briefly describe the need, problem, or conditions to be addressed by the proposed project:

Briefly describe how the project's design/creation will address the identified needs, problems or conditions, and lead to outcomes that will meet or exceed project goals:

8. Project Quality –Anticipated Achievement of HUD Objectives

2016 HUD/CoC Objectives: Describe how your proposed project will achieve the following HUD/CoC objectives:

Create new permanent housing (PH) beds for chronically homeless persons.
☐ Check if this is an objective of your 2016 CoC proposal

Increase percentage of homeless persons staying in PH over 6 months to at least 77%.
☐ Check if this is an objective of your 2016 CoC proposal

Increase percentage of homeless persons exiting from this PSH project to PH to at least 65%
☐ Check if this is an objective of your 2016 CoC proposal

Increase percentage of homeless persons employed at exit to at least 20%.
☐ Check if this is an objective of your 2016 CoC proposal

Improve HMIS data quality for your program to less than 10% for all categories.
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CONTRACT NO. _____

GENERAL CONDITIONS FOR HEALTH & HUMAN SERVICES CONTRACTS
TABLE OF CONTENTS

Page(s)

1. Representations and Conditions Precedent 1

1.1 Contract Subject to the Availability of State and Federal Funds 1

1.1.1 State Funds 1

1.1.2 Federal Funds 1

1.2 Representations of the PROVIDER 1

1.2.1 Compliance with Laws 1

1.2.2 Licensing and Accreditation 1

1.3 Compliance with Laws 1

1.3.1 Smoking Policy 1

1.3.2 Drug Free Workplace 1

1.3.3 Persons with Disabilities 2

1.3.4 Nondiscrimination 2

1.4 Insurance Requirements 2

1.5 Notice to Clients 2

1.6 Reporting Requirements 3

1.7 Conflicts of Interest 3

2. Documents and Files 3

2.1 Confidentiality of Material 3

2.1.1 Proprietary or Confidential Information 3

2.1.2 Uniform Information Practices Act 3

2.2 Ownership Rights and Copyright 3

2.3 Records Retention 3

3. Relationship between Parties 4

3.1 Coordination of Services by the STATE 4

3.2 Subcontracts and Assignments 4

3.3 Change of Name 4

3.4 Independent Contractor Status and Responsibilities, Including Tax Responsibilities 4

3.4.1 Independent Contractor 4

3.4.2 Contracts with other individuals and entities 4
3.4.3 PROVIDER's employees and agents 5
3.4.4 PROVIDER's Responsibilites 5
3.5 Personnel Requirements 6
3.5.1 Personnel 6
3.5.2 Requirements 6
4. Modification and Termination of Contract 6
4.1 Modifications of Contract 6
4.1.1 In writing 6
4.1.2 No oral modification 6
4.1.3 Tax clearance 6
4.2 Termination in General 6
4.3 Termination for Necessity or Convenience 7
4.4 Termination by PROVIDER 7
4.5 STATE's Right of Offset 7
5. Indemnification 7
5.1 Indemnification and Defense 7
5.2 Cost of Litigation 7
6. Publicity 8
6.1 Acknowledgment of State Support 8
6.2 PROVIDER's publicity not related to contract 8
7. Miscellaneous Provisions 8
7.1 Nondiscrimination 8
7.2 Paragraph Headings 8
7.3 Antitrust Claims 8
7.4 Governing Law 8
7.5 Conflict between General Conditions and Procurement Rules 8
7.6 Entire Contract 8
7.7 Severability 9
7.8 Waiver 9

7.9 Execution in Counterparts 9

8. Confidentiality of Personal Information 9

8.1 Definitions 9

8.1.1 Personal Information 9

8.1.2 Technological Safeguards 9

8.2 Confidentiality of Material 10

8.2.1 Safeguarding of Material 10

8.2.2 Retention, Use, or Disclosure 10

8.2.3 Implementation of Technological Safeguards 10

8.2.4 Reporting of Security Breaches 10

8.2.5 Mitigation of Harmful Effect 10

8.2.6 Log of Disclosures 10

8.3 Security Awareness Training and Confidentiality Agreements 10

8.3.1 Certification of Completed Training 10

8.3.2 Certification of Confidentiality Agreements 10

8.4 Termination for Cause 11

8.5 Records Retention 11

8.5.1 Destruction of Personal Information 11

8.5.2 Maintenance of Files, Books, Records 11

GENERAL CONDITIONS FOR HEALTH & HUMAN SERVICES CONTRACTS

1. Representations and Conditions Precedent

1.1 Contract Subject to the Availability of State and Federal Funds.

1.1.1 State Funds. This Contract is, at all times, subject to the appropriation and allotment of state funds, and may be terminated without liability to either the PROVIDER or the STATE in the event that state funds are not appropriated or available.

1.1.2 Federal Funds. To the extent that this Contract is funded partly or wholly by federal funds, this Contract is subject to the availability of such federal funds. The portion of this Contract that is to be funded federally shall be deemed severable, and such federally funded portion may be terminated without liability to either the PROVIDER or the STATE in the event that federal funds are not available. In any case, this Contract shall not be construed to obligate the STATE to expend state funds to cover any shortfall created by the unavailability of anticipated federal funds.

1.2 Representations of the PROVIDER. As a necessary condition to the formation of this Contract, the PROVIDER makes the representations contained in this paragraph, and the STATE relies upon such representations as a material inducement to entering into this Contract.

1.2.1 Compliance with Laws. As of the date of this Contract, the PROVIDER complies with all federal, state, and county laws, ordinances, codes, rules, and regulations, as the same may be amended from time to time, that in any way affect the PROVIDER's performance of this Contract.

1.2.2 Licensing and Accreditation. As of the date of this Contract, the PROVIDER holds all licenses and accreditations required under applicable federal, state, and county laws, ordinances, codes, rules, and regulations to provide the Required Services under this Contract.

1.3 Compliance with Laws. The PROVIDER shall comply with all federal, state, and county laws, ordinances, codes, rules, and regulations, as the same may be amended from time to time, that in any way affect the PROVIDER's performance of this Contract, including but not limited to the laws specifically enumerated in this paragraph:

1.3.1 Smoking Policy. The PROVIDER shall implement and maintain a written smoking policy as required by Chapter 328K, Hawaii Revised Statutes (HRS), or its successor provision.

1.3.2 Drug Free Workplace. The PROVIDER shall implement and maintain a drug free workplace as required by the Drug Free Workplace Act of 1988.

1.3.3 Persons with Disabilities. The PROVIDER shall implement and maintain all practices, policies, and procedures required by federal, state, or county law, including but not limited to the Americans with Disabilities Act (42 U.S.C. §12101, et seq.), and the Rehabilitation Act (29 U.S.C.§701, et seq.).

1.3.4 Nondiscrimination. No person performing work under this Contract, including any subcontractor, employee, or agent of the PROVIDER, shall engage in any discrimination that is prohibited by any applicable federal, state, or county law.

1.4 Insurance Requirements. The PROVIDER shall obtain from a company authorized by law to issue such insurance in the State of Hawai'i commercial general liability insurance ("liability insurance") in an amount of at least TWO MILLION AND NO/100 DOLLARS ($2,000,000.00) coverage for bodily injury and property damage resulting from the PROVIDER's performance under this Contract. The PROVIDER shall maintain in effect this liability insurance until the STATE certifies that the PROVIDER's work under the Contract has been completed satisfactorily.

The liability insurance shall be primary and shall cover the insured for all work to be performed under the Contract, including changes, and all work performed incidental thereto or directly or indirectly connected therewith.

A certificate of the liability insurance shall be given to the STATE by the PROVIDER. The certificate shall provide that the STATE and its officers and employees are Additional Insureds. The certificate shall provide that the coverages being certified will not be cancelled or materially changed without giving the STATE at least 30 days prior written notice by registered mail.

Should the "liability insurance" coverages be cancelled before the PROVIDER's work under the Contract is certified by the STATE to have been completed satisfactorily, the PROVIDER shall immediately procure replacement insurance that complies in all respects with the requirements of this section.

Nothing in the insurance requirements of this Contract shall be construed as limiting the extent of PROVIDER's responsibility for payment of damages resulting from its operations under this Contract, including the PROVIDER's separate and independent duty to defend, indemnify, and hold the STATE and its officers and employees harmless pursuant to other provisions of this Contract.

1.5 Notice to Clients. Provided that the term of this Contract is at least one year in duration, within 180 days after the effective date of this Contract, the PROVIDER shall create written procedures for the orderly termination of services to any clients receiving the Required Services under this Contract, and for the transition to services supplied by another provider upon termination of this Contract, regardless of the circumstances of such termination. These procedures shall include, at

the minimum, timely notice to such clients of the termination of this Contract, and appropriate counseling.

1.6 Reporting Requirements. The PROVIDER shall submit a Final Project Report to the STATE containing the information specified in this Contract if applicable, or otherwise satisfactory to the STATE, documenting the PROVIDER's overall efforts toward meeting the requirements of this Contract, and listing expenditures actually incurred in the performance of this Contract. The PROVIDER shall return any unexpended funds to the STATE.

1.7 Conflicts of Interest. In addition to the Certification provided in the Standards of Conduct Declaration to this Contract, the PROVIDER represents that neither the PROVIDER nor any employee or agent of the PROVIDER, presently has any interest, and promises that no such interest, direct or indirect, shall be acquired, that would or might conflict in any manner or degree with the PROVIDER's performance under this Contract.

2. Documents and Files

2.1 Confidentiality of Material.

2.1.1 Proprietary or Confidential Information. All material given to or made available to the PROVIDER by virtue of this Contract that is identified as proprietary or confidential information shall be safeguarded by the PROVIDER and shall not be disclosed to any individual or organization without the prior written approval of the STATE.

2.1.2 Uniform Information Practices Act. All information, data, or other material provided by the PROVIDER to the STATE shall be subject to the Uniform Information Practices Act, chapter 92F, HRS, and any other applicable law concerning information practices or confidentiality.

2.2 Ownership Rights and Copyright. The STATE shall have complete ownership of all material, both finished and unfinished that is developed, prepared, assembled, or conceived by the PROVIDER pursuant to this Contract, and all such material shall be considered "works made for hire." All such material shall be delivered to the STATE upon expiration or termination of this Contract. The STATE, in its sole discretion, shall have the exclusive right to copyright any product, concept, or material developed, prepared, assembled, or conceived by the PROVIDER pursuant to this Contract.

2.3 Records Retention. The PROVIDER and any subcontractors shall maintain the books and records that relate to the Contract, and any cost or pricing data for three (3) years from the date of final payment under the Contract. In the event that any litigation, claim, investigation, audit, or other action involving the records retained under this provision arises, then such records shall be retained for three (3) years from the date of final payment, or the date of the resolution of the action, whichever occurs later. During the period that records are retained under this section, the

PROVIDER and any subcontractors shall allow the STATE free and unrestricted access to such records.

3. Relationship between Parties

3.1 Coordination of Services by the STATE. The STATE shall coordinate the services to be provided by the PROVIDER in order to complete the performance required in the Contract. The PROVIDER shall maintain communications with the STATE at all stages of the PROVIDER's work, and submit to the STATE for resolution any questions which may arise as to the performance of this Contract.

3.2 Subcontracts and Assignments. The PROVIDER may assign or subcontract any of the PROVIDER's duties, obligations, or interests under this Contract, but only if (i) the PROVIDER obtains the prior written consent of the STATE and (ii) the PROVIDER's assignee or subcontractor submits to the STATE a tax clearance certificate from the Director of Taxation, State of Hawai'i, and the Internal Revenue Service showing that all delinquent taxes, if any, levied or accrued under state law against the PROVIDER's assignee or subcontractor have been paid. Additionally, no assignment by the PROVIDER of the PROVIDER's right to compensation under this Contract shall be effective unless and until the assignment is approved by the Comptroller of the State of Hawai'i, as provided in section 40-58, HRS.

3.3 Change of Name. When the PROVIDER asks to change the name in which it holds this Contract, the STATE, shall, upon receipt of a document acceptable or satisfactory to the STATE indicating such change of name such as an amendment to the PROVIDER's articles of incorporation, enter into an amendment to this Contract with the PROVIDER to effect the change of name. Such amendment to this Contract changing the PROVIDER's name shall specifically indicate that no other terms and conditions of this Contract are thereby changed, unless the change of name amendment is incorporated with a modification or amendment to the Contract under paragraph 4.1 of these General Conditions.

3.4 Independent Contractor Status and Responsibilities, Including Tax Responsibilities.

3.4.1 Independent Contractor. In the performance of services required under this Contract, the PROVIDER is an "independent contractor," with the authority and responsibility to control and direct the performance and details of the work and services required under this Contract; however, the STATE shall have a general right to inspect work in progress to determine whether, in the STATE's opinion, the services are being performed by the PROVIDER in compliance with this Contract.

3.4.2 Contracts with Other Individuals and Entities. Unless otherwise provided by special condition, the STATE shall be free to contract with other individuals and entities to provide services similar to those performed by the Provider under this Contract, and the

PROVIDER shall be free to contract to provide services to other individuals or entities while under contract with the STATE.

3.4.3 PROVIDER's Employees and Agents. The PROVIDER and the PROVIDER's employees and agents are not by reason of this Contract, agents or employees of the State for any purpose. The PROVIDER and the PROVIDER's employees and agents shall not be entitled to claim or receive from the STATE any vacation, sick leave, retirement, workers' compensation, unemployment insurance, or other benefits provided to state employees. Unless specifically authorized in writing by the STATE, the PROVIDER and the PROVIDER's employees and agents are not authorized to speak on behalf and no statement or admission made by the PROVIDER or the PROVIDER's employees or agents shall be attributed to the STATE, unless specifically adopted by the STATE in writing.

3.4.4 PROVIDER's Responsibilities. The PROVIDER shall be responsible for the accuracy, completeness, and adequacy of the PROVIDER's performance under this Contract.

Furthermore, the PROVIDER intentionally, voluntarily, and knowingly assumes the sole and entire liability to the PROVIDER's employees and agents, and to any individual not a party to this Contract, for all loss, damage, or injury caused by the PROVIDER, or the PROVIDER's employees or agents in the course of their employment.

The PROVIDER shall be responsible for payment of all applicable federal, state, and county taxes and fees which may become due and owing by the PROVIDER by reason of this Contract, including but not limited to (i) income taxes, (ii) employment related fees, assessments, and taxes, and (iii) general excise taxes. The PROVIDER also is responsible for obtaining all licenses, permits, and certificates that may be required in order to perform this Contract.

The PROVIDER shall obtain a general excise tax license from the Department of Taxation, State of Hawai'i, in accordance with section 237-9, HRS, and shall comply with all requirements thereof. The PROVIDER shall obtain a tax clearance certificate from the Director of Taxation, State of Hawai'i, and the Internal Revenue Service showing that all delinquent taxes, if any, levied or accrued under state law against the PROVIDER have been paid and submit the same to the STATE prior to commencing any performance under this Contract. The PROVIDER shall also be solely responsible for meeting all requirements necessary to obtain the tax clearance certificate required for final payment under section 103-53, HRS, and these General Conditions.

The PROVIDER is responsible for securing all employee-related insurance coverage for the PROVIDER and the PROVIDER's employees and agents that is or may be required by law, and for payment of all premiums, costs, and other liabilities associated with securing the insurance coverage.

3.5 Personnel Requirements.

3.5.1 Personnel. The PROVIDER shall secure, at the PROVIDER's own expense, all personnel required to perform this Contract, unless otherwise provided in this Contract.

3.5.2 Requirements. The PROVIDER shall ensure that the PROVIDER's employees or agents are experienced and fully qualified to engage in the activities and perform the services required under this Contract, and that all applicable licensing and operating requirements imposed or required under federal, state, or county law, and all applicable accreditation and other standards of quality generally accepted in the field of the activities of such employees and agents are complied with and satisfied.

4. Modification and Termination of Contract

4.1 Modification of Contract.

4.1.1 In Writing. Any modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract permitted by this Contract shall be made by written amendment to this Contract, signed by the PROVIDER and the STATE.

4.1.2 No Oral Modification. No oral modification, alteration, amendment, change, or extension of any term, provision or condition of this Contract shall be permitted.

4.1.3 Tax Clearance. The STATE may, at its discretion, require the PROVIDER to submit to the STATE, prior to the STATE's approval of any modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract, a tax clearance from the Director of Taxation, State of Hawai'i, and the Internal Revenue Service showing that all delinquent taxes, if any, levied or accrued under state and federal law against the PROVIDER have been paid.

4.2 Termination in General. This Contract may be terminated in whole or in part because of a reduction of funds available to pay the PROVIDER, or when, in its sole discretion, the STATE determines (i) that there has been a change in the conditions upon which the need for the Required Services was based, or (ii) that the PROVIDER has failed to provide the Required Services adequately or satisfactorily, or (iii) that other good cause for the whole or partial termination of this Contract exists. Termination under this section shall be made by a written notice sent to the PROVIDER ten (10) working days prior to the termination date that includes a brief statement of the reason for the termination. If the Contract is terminated under this paragraph, the PROVIDER shall cooperate with the STATE to effect an orderly transition of services to clients.

4.3 Termination for Necessity or Convenience. If the STATE determines, in its sole discretion, that it is necessary or convenient, this Contract may be terminated in whole or in part at the option of the STATE upon ten (10) working days' written notice to the PROVIDER. If the STATE elects to terminate under this paragraph, the PROVIDER shall be entitled to reasonable payment as determined by the STATE for satisfactory services rendered under this Contract up to the time of termination. If the STATE elects to terminate under this section, the PROVIDER shall cooperate with the STATE to effect an orderly transition of services to clients.

4.4 Termination by PROVIDER. The PROVIDER may withdraw from this Contract after obtaining the written consent of the STATE. The STATE, upon the PROVIDER's withdrawal, shall determine whether payment is due to the PROVIDER, and the amount that is due. If the STATE consents to a termination under this paragraph, the PROVIDER shall cooperate with the STATE to effect an orderly transition of services to clients.

4.5 STATE's Right of Offset. The STATE may offset against any monies or other obligations that STATE owes to the PROVIDER under this Contract, any amounts owed to the State of Hawai'i by the PROVIDER under this Contract, or any other contract, or pursuant to any law or other obligation owed to the State of Hawai'i by the PROVIDER, including but not limited to the payment of any taxes or levies of any kind or nature. The STATE shall notify the PROVIDER in writing of any exercise of its right of offset and the nature and amount of such offset. For purposes of this paragraph, amounts owed to the State of Hawai'i shall not include debts or obligations which have been liquidated by contract with the PROVIDER, and that are covered by an installment payment or other settlement plan approved by the State of Hawai'i, provided, however, that the PROVIDER shall be entitled to such exclusion only to the extent that the PROVIDER is current, and in compliance with, and not delinquent on, any payments, obligations, or duties owed to the State of Hawai'i under such payment or other settlement plan.

5. Indemnification

5.1 Indemnification and Defense. The PROVIDER shall defend, indemnify, and hold harmless the State of Hawai'i, the contracting agency, and their officers, employees, and agents from and against any and all liability, loss, damage, cost, expense, including all attorneys' fees, claims, suits, and demands arising out of or in connection with the acts or omissions of the PROVIDER or the PROVIDER's employees, officers, agents, or subcontractors under this Contract. The provisions of this paragraph shall remain in full force and effect notwithstanding the expiration or early termination of this Contract.

5.2 Cost of Litigation. In case the STATE shall, without any fault on its part, be made a party to any litigation commenced by or against the PROVIDER in connection with this Contract, the PROVIDER shall pay any cost and expense incurred by or imposed on the STATE, including attorneys' fees.

6. Publicity

6.1 Acknowledgment of State Support. The PROVIDER shall, in all news releases, public statements, announcements, broadcasts, posters, programs, computer postings, and other printed, published, or electronically disseminated materials relating to the PROVIDER's performance under this Contract, acknowledge the support by the State of Hawai'i and the purchasing agency.

6.2 PROVIDER's Publicity Not Related to Contract. The PROVIDER shall not refer to the STATE, or any office, agency, or officer thereof, or any state employee, or to the services or goods, or both provided under this Contract, in any of the PROVIDER's publicity not related to the PROVIDER's performance under this Contract, including but not limited to commercial advertisements, recruiting materials, and solicitations for charitable donations.

7. Miscellaneous Provisions

7.1 Nondiscrimination. No person performing work under this Contract, including any subcontractor, employee, or agent of the PROVIDER, shall engage in any discrimination that is prohibited by any applicable federal, state, or county law.

7.2 Paragraph Headings. The paragraph headings appearing in this Contract have been inserted for the purpose of convenience and ready reference. They shall not be used to define, limit, or extend the scope or intent of the sections to which they pertain.

7.3 Antitrust Claims. The STATE and the PROVIDER recognize that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by the purchaser. Therefore, the PROVIDER hereby assigns to the STATE any and all claims for overcharges as to goods and materials purchased in connection with this Contract, except as to overcharges which result from violations commencing after the price is established under this Contract and which are not passed on to the STATE under an escalation clause.

7.4 Governing Law. The validity of this Contract and any of its terms or provisions, as well as the rights and duties of the parties to this Contract, shall be governed by the laws of the State of Hawai'i. Any action at law or in equity to enforce or interpret the provisions of this Contract shall be brought in a state court of competent jurisdiction in Honolulu, Hawai'i.

7.5 Conflict between General Conditions and Procurement Rules. In the event of a conflict between the General Conditions and the Procurement Rules or a Procurement Directive, the Procurement Rules or any Procurement Directive in effect on the date this Contract became effective shall control and are hereby incorporated by reference.

7.6 Entire Contract. This Contract sets forth all of the contracts, conditions, understandings, promises, warranties, and representations between the STATE and the PROVIDER relative to this Contract. This Contract supersedes all prior agreements, conditions, understandings,

promises, warranties, and representations, which shall have no further force or effect. There are no contracts, conditions, understandings, promises, warranties, or representations, oral or written, express or implied, between the STATE and the PROVIDER other than as set forth or as referred to herein.

7.7 Severability. In the event that any provision of this Contract is declared invalid or unenforceable by a court, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining terms of this Contract.

7.8 Waiver. The failure of the STATE to insist upon the strict compliance with any term, provision, or condition of this Contract shall not constitute or be deemed to constitute a waiver or relinquishment of the STATE's right to enforce the same in accordance with this Contract. The fact that the STATE specifically refers to one provision of the Procurement Rules or one section of the Hawai'i Revised Statutes, and does not include other provisions or statutory sections in this Contract shall not constitute a waiver or relinquishment of the STATE's rights or the PROVIDER's obligations under the Procurement Rules or statutes.

7.9 Execution in Counterparts. This Contract may be executed in several counterparts, each of which shall be regarded as an original and all of which shall constitute one instrument.

8. Confidentiality of Personal Information

8.1 Definitions.

8.1.1 Personal Information. "Personal Information" means an individual's first name or first initial and last name in combination with any one or more of the following data elements, when either name or data elements are not encrypted:

1) Social Security number;

2) Driver's license number or Hawaii identification card number; or

3) Account number, credit or debit card number, access code, or password that would permit access to an individual's financial information.

Personal information does not include publicly available information that is lawfully made available to the general public from federal, state, or local government records.

8.1.2 Technological Safeguards. "Technological safeguards" means the technology and the policy and procedures for use of the technology to protect and control access to personal information.

8.2 Confidentiality of Material.

8.2.1 Safeguarding of Material. All material given to or made available to the PROVIDER by the STATE by virtue of this Contract which is identified as personal information, shall be safeguarded by the PROVIDER and shall not be disclosed without the prior written approval of the STATE.

8.2.2 Retention, Use, or Disclosure. PROVIDER agrees not to retain, use, or disclose personal information for any purpose other than as permitted or required by this Contract.

8.2.3 Implementation of Technological Safeguards. PROVIDER agrees to implement appropriate "technological safeguards" that are acceptable to the STATE to reduce the risk of unauthorized access to personal information.

8.2.4 Reporting of Security Breaches. PROVIDER shall report to the STATE in a prompt and complete manner any security breaches involving personal information.

8.2.5 Mitigation of Harmful Effect. PROVIDER agrees to mitigate, to the extent practicable, any harmful effect that is known to PROVIDER because of a use or disclosure of personal information by PROVIDER in violation of the requirements of this paragraph.

8.2.6 Log of Disclosures. PROVIDER shall complete and retain a log of all disclosures made of personal information received from the STATE, or personal information created or received by PROVIDER on behalf of the STATE.

8.3 Security Awareness Training and Confidentiality Agreements.

8.3.1 Certification of Completed Training. PROVIDER certifies that all of its employees who will have access to the personal information have completed training on security awareness topics related to protecting personal information.

8.3.2 Certification of Confidentiality Agreements. PROVIDER certifies that confidentiality agreements have been signed by all of its employees who will have access to the personal information acknowledging that:

1) The personal information collected, used, or maintained by the PROVIDER will be treated as confidential;

2) Access to the personal information will be allowed only as necessary to perform the Contract; and

3) Use of the personal information will be restricted to uses consistent with the services subject to this Contract.

8.4 Termination for Cause. In addition to any other remedies provided for by this Contract, if the STATE learns of a material breach by PROVIDER of this paragraph by PROVIDER, the STATE may at its sole discretion:

1) Provide an opportunity for the PROVIDER to cure the breach or end the violation; or

2) Immediately terminate this Contract.

In either instance, the PROVIDER and the STATE shall follow chapter 487N, HRS, with respect to notification of a security breach of personal information.

8.5 Records Retention.

8.5.1 Destruction of Personal Information. Upon any termination of this Contract, PROVIDER shall, pursuant to chapter 487R, HRS, destroy all copies (paper or electronic form) of personal information received from the STATE.

8.5.2 Maintenance of Files, Books, Records. The PROVIDER and any subcontractors shall maintain the files, books, and records, that relate to the Contract, including any personal information created or received by the PROVIDER on behalf of the STATE, and any cost or pricing data, for three (3) years after the date of final payment under the Contract. The personal information shall continue to be confidential and shall not be disclosed without the prior written approval of the STATE. After the three (3) year retention period has ended, the files, books, and records that contain personal information shall be destroyed pursuant to chapter 487R, HRS.

U.S. Department of Housing and Urban Development

Community Planning and Development

Notice of Funding Availability (NOFA) for the Fiscal Year (FY) 2016 Continuum of Care Program Competition

FR-6000-N-25

Application Due Date: 09/14/2016

Exhibit E

Notice of Funding Availability (NOFA) for the Fiscal Year (FY) 2016 Continuum of Care Program Competition

FR-6000-N-25

TABLE OF CONTENTS

I. Funding Opportunity Description
II. HUD's Homeless Policy and Program Priorities
III. Continuum of Care Program Requirements
IV. Award Information
V. Eligibility Information
VI. Application and Submission Information
VII. Application Review Information
VIII. Project Review and Selection Process
IX. Award Administration Information
X. Appeals
XI. Agency Contacts
XII. Other Information

U.S. Department of Housing and Urban Development

Program Office:	Community Planning and Development
Funding Opportunity Title:	Notice of Funding Availability (NOFA) for the Fiscal Year (FY) 2016 Continuum of Care Program Competition
Announcement Type:	Initial
Funding Opportunity Number:	FR-6000-N-25
Primary CFDA Number:	14.267
Due Date for Applications:	**09/14/2016**

A. Deadline: The deadline for submitting applications to HUD for the FY 2016 Continuum of Care (CoC) Program Competition (CoC Program Competition) is **7:59:59 p.m. eastern time, September 14, 2016.** Applicants will be required to complete and submit their applications in *e-snaps* at www.hud.gov/esnaps. See Section VI. of this NOFA for application submission and timely receipt requirements.

B. For Further Information: HUD staff will be available to provide general clarification on the content of this NOFA. HUD staff is prohibited from assisting any applicant in preparing the application(s) in *e-snaps*.

1. Local HUD CPD Field Office. Questions regarding specific program requirements should be directed to the local HUD CPD Field Office, a directory of which can be found at www.hudexchange.info/manage-a-program/cpd-field-office-directory/.

2. Training and Resources. Collaborative Applicants and project applicants that need assistance completing the applications in *e-snaps* or understanding the program requirements under the CoC Program may access the CoC Program interim rule (24 CFR part 578 published July 31, 2012 at 77 CFR 45422), training materials, and program resources via the HUD Exchange at www.hudexchange.info/homelessness-assistance/.

3. The HUD Exchange Ask A Question (AAQ). CoCs, Collaborative Applicants, and project applicants that require information and technical support concerning this NOFA and the applications in *e-snaps* may submit an electronic inquiry via the HUD Exchange *e-snaps* AAQ at www.hudexchange.info/get-assistance/. The AAQ is accessible 24 hours each day. Starting 2 days prior to the application deadline for FY 2016 funds, the AAQ will respond only to emergency technical support questions up to the deadline of 7:59:59 p.m. eastern time. Applicants that are experiencing technical difficulty should contact the *e-snaps* AAQ immediately for assistance and document their attempts to obtain assistance.

4. HUD Homeless Assistance Listserv. HUD may provide Collaborative Applicants and Project Applicants with additional information through HUD websites located at www.hud.gov and www.hudexchange.info, and via the CoC Program email-based listserv. Visit the following website to join the listserv: www.hudexchange.info/mailinglist. This additional information will not change the selection criteria or selection process included in this NOFA, but may include items such as updates on the status of *e-snaps* and reminders of impending deadlines.

C. General Section Questions. The Notice of FY 2016 Policy Requirements and General Section to HUD's FY 2016 NOFAs for Discretionary Programs (General Section) is applicable to the FY 2016 funding made available under this NOFA. The General Section can be found at https://www.hudexchange.info/e-snaps/fy-2016-coc-program-nofa-coc-program-competition/.

Questions regarding the General Section should be directed to the Office of Strategic Planning and Management, Grants Management and Oversight Division at (202) 708-0667 (this is not a toll-free number). Persons with hearing or speech impairments can access these numbers via TTY by calling the Federal

Information Relay Service at (800) 877-8339.

D. Available Funds. Approximately $1.9 billion is available in this FY 2016 CoC Program Competition NOFA. HUD may add to this amount any available funds that have been carried over or recaptured from previous fiscal years. All of the requirements in the FY 2016 application process, including requirements for the entire CoC Consolidated Application and the total amount of funding available are contained in this NOFA. The available amount of funding may not be sufficient to fund anticipated eligible renewal projects in FY 2016, HUD will continue to require Collaborative Applicants to rank all projects, except CoC planning and UFA Costs, in two tiers. Tier 1 is equal to 93 percent of the CoC's FY 2015 Annual Renewal Demand (ARD) approved by HUD on the final HUD-approved Grant Inventory Worksheet (GIW). Tier 2 is the difference between Tier 1 and the CoC's ARD plus any amount available for the permanent housing bonus as described in Section II.B.4. of this NOFA.

E. Eligible Applicants.

1. Collaborative Applicant. CoCs were required to designate a Collaborative Applicant to submit the CoC Consolidated Application on behalf of the CoC as part of the FY 2016 CoC Program Registration process. Collaborative Applicants will not be able to access the CoC Consolidated Application in *e-snaps* if the CoC does not have an approved FY 2016 CoC Program Registration. The Collaborative Applicant approved by HUD during the FY 2016 CoC Program Registration Process must be the same entity that submits the FY 2016 CoC Consolidated Application–which includes the CoC Application, CoC Priority Listing that lists all project applications accepted and ranked or rejected in the CoC local competition, and the Project Application(s)–during the CoC Program Competition. CoCs should not attempt to change Collaborative Applicants during the FY 2016 CoC Program Competition unless HUD replaces the CoC's designated Collaborative Applicant under the authority of section 402(c) of the McKinney-Vento Homeless Assistance Act without HUD's prior approval. HUD will approve Collaborative Applicant changes after the FY 2016 CoC Program Registration process under circumstances that include:

a. an error made by the Collaborative Applicant when entering the Collaborative Applicant's name in the CoC Applicant Profile;

b. the Collaborative Applicant chosen by the CoC is no longer in business;

c. the Collaborative Applicant withdrew;

d. the CoC selected a new Collaborative Applicant; or,

e. a new Collaborative Applicant was selected by HUD through remedial action.

In cases where the CoC needs to change the Collaborative Applicant approved during the FY 2016 CoC Program Registration process, the CoC must notify the local HUD CPD Field Office in writing stating the reason for the Collaborative Applicant change. The notice to HUD must provide documentation of the CoC's approval of the change (e.g., a copy of the meeting minutes, to include the date and attendees).

2. Project Applicants. Eligible project applicants for the CoC Program are identified in Section V.A.

F. Amendments to FY 2016 CoC Program Registration. If a geographic area that includes projects eligible to apply for renewal funding during the CoC Program Competition was not claimed by a CoC with an approved FY 2016 CoC Program Registration, a contiguous CoC, or the Balance of State CoC may contact HUD in writing to request that its Registration and final HUD-approved FY 2016 Grant Inventory Worksheet (GIW) be amended to include the unclaimed geographic area and the renewal projects.

G. Eligible Costs. Provisions at 24 CFR 578.37 through 578.63 identify the eligible costs for which funding may be requested under the CoC Program. HUD will reject any requests for ineligible costs.

H. Match. 24 CFR 578.73 describes match requirements. As authorized by the FY 2016 HUD

Appropriations Act, program income may now be used as a source of match and must be properly documented in the project application.

I. Requirements. The following requirements apply to funding available under this NOFA.

1. DUNS number and SAM. Project applicants are required to register with Dun and Bradstreet to obtain a DATA Universal Numbering System (DUNS) number, if they have not already done so, and complete or renew their registration in the System for Award Management (SAM) per Section V.A.1. of the FY 2016 General Section. HUD will not enter into a grant agreement with an organization that does not have a DUNS Number or an active SAM registration.

2. Major natural disaster areas. HUD will award at least 30 points out of 60 points for questions under Section VII.A.6. of this NOFA in the FY 2016 CoC Application for CoCs where at least one project was directly impacted by a major disaster, as declared by President Obama under Title IV of the Robert T. Stafford Act, that occurred in the 12 months prior to the application deadline for the CoC Consolidated Application for FY 2016 funds.

J. Local Competition Deadlines. Provisions at 24 CFR 578.9 require CoCs to design, operate, and follow a collaborative process for the development of an application in response to a NOFA issued by HUD. As part of this collaborative process, CoCs should implement internal competition deadlines to ensure transparency and fairness at the local level. The implementation of deadlines that meet the standards outlined below for FY 2016 Project Applications will be considered as part of scoring criteria as detailed in Section VII.A.2.c. of this NOFA.

1. Project Applications. All project applications were required to be submitted to the CoC no later than 30 days before the application deadline of September 14, 2016.

2. CoC Notification to Project Applicants. The CoC notified all project applicants no later than 15 days before the FY 2016 application deadline regarding whether their project applications would be included as part of the CoC Consolidated Application submission.

Any project applicant that submits a project that was rejected by the CoC in the local competition must have been notified in writing by the CoC, outside of *e-snaps*, with an explanation for the decision to reject the project(s). Project applicants whose project was rejected may appeal the local CoC competition decision to HUD if the project applicant believes it was denied the opportunity to participate in the local CoC planning process in a reasonable manner by submitting a Solo Application in *e-snaps* directly to HUD prior to the application deadline of **7:59:59 p.m. eastern time on September 14, 2016**. The CoC's notification of rejection of the project in the local competition must be attached to the Solo Application. If the CoC fails to provide written notification outside of *e-snaps*, the Solo Applicant must attach evidence that it attempted to participate in the local CoC planning process and submitted a project application that met the local deadlines, along with a statement that the CoC did not provide the Solo Applicant written notification of the CoC rejecting the project in the local CoC competition. CoCs that fail to provide rejection notification to a project applicant that submitted its project application within the local deadline will not receive the maximum number of points available in Section VII.A.2.c. of this NOFA.

K. CoC Transparency. In order to receive the maximum number of points available in Section VII.A.2.c., each CoC must have in place a process to make all parts of the CoC Consolidated Application (which are the CoC Application and CoC Priority Listing with all project applications accepted and ranked, or rejected) available on its website to its community for inspection and to notify community members and key stakeholders that the CoC Consolidated Application is available. If the CoC does not have a website, the CoC should post this information to a partner website within the CoC (e.g., county/city website). The process must be conducted in a manner that is accessible for persons with disabilities and persons with limited English proficiency.

L. CoC Review of Project Applications. HUD expects each CoC to implement a thorough review and oversight process at the local level for both new and renewal project applications submitted to HUD in the

FY 2016 CoC Program Competition. It has been HUD's experience that many project applications contain information that results in conditions on the grant; or for more serious infractions, a project being rejected. Deficient project applications prolong the review process for HUD, which results in delayed funding announcements, lost funding for CoCs due to rejected projects, and delays in funds to house and assist homeless individuals and families, whom we serve. CoCs are expected to closely review information provided in each project application in order to ensure that:

a. all proposed program participants will be eligible for the program component type selected;

b. the proposed activities are eligible under 24 CFR part 578;

c. each project narrative is fully responsive to the question being asked and that it meets all of the criteria for that question as required by this NOFA and included in the detailed instructions provided in *e-snaps*;

d. the data provided in various parts of the project application are consistent; and,

e. all required attachments correspond to the attachments list in *e-snaps* and the attachments contain accurate and complete information, and are dated between May 1, 2016 and September 14, 2016.

For Further Information Contact: Please direct questions regarding the specific program requirements of this Program Notice of Funding Availability (NOFA) to the agency contact identified in Section VII. Please direct general questions regarding the FY [year] NOFAs to the Office of Strategic Planning and Management, Grants Management Division, at AskGMO@hud.gov. Persons with hearing or speech impairments may access these numbers via TTY by calling the Federal Relay Service at 1-800-877-8339.

Additional Information

1. Incorporation of the General Section. HUD publishes a General Section each fiscal year that contains mandatory requirements for all applicants to HUD's various competitive grant programs, including this NOFA. Applications must meet all of the requirements of the General Section in addition to the requirements of this NOFA to be considered and potentially receive funding. The full title of the General Section is the General Section to the Fiscal Year 2015 NOFAs for Discretionary Programs. Copies are available at Grants.gov or HUD's Funds Available page.

2. Participative Planning and Implementation. HUD encourages all applicants to HUD's competitive programs to ensure, where applicable, public decision making and meaningful participation throughout the visioning, development, and implementation of funded projects, by residents of affected areas and especially communities traditionally marginalized from planning processes. In seeking public participation, applicants and grantees must ensure that all communications are provided in a manner that is effective for persons with hearing, visual, and other communications-related disabilities consistent with Section 504 of the Rehabilitation Act of 1973 and, as applicable, the Americans with Disabilities Act. In addition Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000(d) and Executive Order 13166 require that grantees take responsible steps to ensure meaningful access to services, programs, and activities by persons with Limited English Proficiency (LEP persons).

I. Funding Opportunity Description

A. Program Description. The CoC Program (24 CFR part 578) is designed to promote a community-wide commitment to the goal of ending homelessness; to provide funding for efforts by nonprofit providers, States, and local governments to quickly re-house homeless individuals, families, persons fleeing domestic violence, and youth while minimizing the trauma and dislocation caused by homelessness; to promote access to and effective utilization of mainstream programs by homeless; and to optimize self-sufficiency among those experiencing homelessness.

B. Authority. The CoC Program is authorized by subtitle C of title IV of the McKinney-Vento Homeless

Assistance Act, (42 U.S.C. 11381–11389) (the Act), and the CoC Program regulations are found in 24 CFR part 578 (the CoC Program interim rule). The FY 2016 funds for the CoC Program were authorized by the Consolidated and Further Continuing Appropriations Act, 2016 (Public Law 114-113, approved December 18, 2015,) (the "FY 2016 HUD Appropriations Act").

C. Summary of the Application Process. The FY 2016 CoC Program Competition is administered under the FY 2016 CoC Program Competition NOFA and 24 CFR part 578. Applicants should review and follow the steps as outlined below to ensure applications are complete and submitted on time. Documents referenced in this section can be found on the HUD Exchange at www.hudexchange.info/homelessness-assistance/.

1. Collaborative Applicants must have completed and successfully submitted the FY 2016 CoC Program Registration in accordance with the *Notice of Fiscal Year (FY) 2016 Opportunity to Register and Other Important Information for Electronic Application Submission for Continuum of Care Competition* (FY 2016 CoC Program Registration Notice) posted April 22, 2016. Documents referenced in this section can be found on the FY 2016 CoC Program Competition Funding Available page on the HUD Exchange.

2. Project applications submitted to the CoC for inclusion on the FY 2016 CoC Priority Listing as part of the CoC Consolidated Application must be reviewed and either accepted and ranked or rejected by the CoC. All projects approved by the CoC must be listed on the CoC Priority Listing in rank order, with the exception of project applications for CoC planning and UFA Costs which will not be ranked, to establish the projects located within Tier 1 and the projects located within Tier 2, as described in Section II.B.16. of this NOFA. The purpose of this two-tiered approach is for CoCs to clearly indicate to HUD which projects are prioritized for funding.

3. The Collaborative Applicant, including any Collaborative Applicant designated by HUD as a Unified Funding Agency (UFA), is responsible for submitting the CoC Consolidated Application in *e-snaps* on behalf of the CoC. The CoC Consolidated Application is made up of the following three parts:

a. FY 2016 CoC Application. The Collaborative Applicant must provide information about the CoC planning body, governance structure, overall performance, and the strategic planning process. This part of the application is scored and will determine the order in which CoCs are funded

b. FY 2016 Project Application. Project applications must be completed by project applicants for CoC planning, UFA Costs, new, and renewal project requests. New project applicants applying for funds through reallocation or the permanent housing bonus and renewal projects must provide a description of the proposed project including the population/sub-population it will serve, the type of housing and services that will be provided, and the budget activities that are being requested. Project applicants applying for CoC planning must provide a description of the activities that will be carried out with grant funds for CoC planning and UFA Costs. Project applicants must provide a description for the budget line items that are being requested with grant funds. For more information on project applications, see Section V. of this NOFA.

c. FY 2016 CoC Priority Listing. The Priority Listing includes:

(1) the reallocation forms for CoCs to indicate which projects, if any, will be reallocated;

(2) four separate project listing forms - New Project Listing, Renewal Project Listing, UFA Costs Project Listing, and CoC Planning Project Listing; and

(3) an attachment form for required attachments for the final HUD-approved FY 2016 GIW; and

(4) form HUD-2991, Certification of Consistency with the Consolidated Plan dated between May 1, 2016 and September 14, 2016.

The Project Listings rank projects in order of priority and identify any project applications rejected by the CoC. HUD is not requiring Collaborative Applicants to rank CoC planning or UFA Costs

projects; however, Collaborative Applicants must ensure that only one project application for CoC planning, and if designated, UFA Costs is submitted by the CoC. The Collaborative Applicant cannot accurately complete the project listing forms of the CoC Priority Listing until all project applications have been submitted to the CoC. Further, the Collaborative Applicant will be required to certify that there is a demonstrated need for all ranked permanent housing renewal projects on the Renewal Project Listing. For more information on the CoC Priority Listing, see Section VI.C.3. of this NOFA.

D. FY 2016 CoC Program Competition NOFA. CoCs and applicants should read the FY 2016 CoC Program Competition NOFA in its entirety in conjunction with the CoC Program interim rule (24 CFR part 578) in order to ensure a comprehensive understanding of and compliance with all CoC Program requirements. This NOFA frequently makes reference to citations from 24 CFR part 578. Applicants should review the FY 2016 General Section of the NOFA, published on September 24, 2015 as well as any additional Notices and HUD guidance provided in relation to the CoC Program.

1. CoCs should consider the policy priorities established in this NOFA in conjunction with local priorities to determine the ranking of new and renewal projects requests. See Section II. of this NOFA for more information on HUD's homeless policy priorities.

2. HUD will conduct a threshold review of ranked projects for all CoCs that submit the CoC Consolidated Application by the application deadline.

3. HUD may issue up to two conditional funding announcements with the criteria set forth in Section VII. of this NOFA.

4. HUD will score FY 2016 CoC Applications in accordance with the criteria set forth in Section VII. of this NOFA.

5. HUD will select new and renewal project applications in Tier 1 in accordance with the criteria set forth in Section II.B.16. of this NOFA.

6. The CoC Application score and the project application score(s) will determine which projects in Tier 2 will be conditionally selected for award.

a. Eligibility Requirements – Eligibility requirements are those requirements that must be met for an application to be eligible for funding. Deficiencies in meeting an eligibility requirement may be categorized as either curable or non-curable.
b. Threshold Requirement – Threshold requirements are a category of eligibility requirements. A threshold requirement is a requirement that must be met in order for an application to be reviewed. Threshold requirements are not curable.
Threshold requirements are listed in Section V.G.2 of this Program NOFA.
Applicants must ensure their application package addresses all threshold requirements. Please check your application carefully!
c. Deficiency – Deficiencies are not the same as errors. Errors are never curable except as permitted under Section IV.C.2. Deficiencies are items of missing or omitted information within a submitted application. Deficiencies typically involve missing documents, information on a form, or some other type of unsatisfied information requirement (e.g., an unsigned form, unchecked box, etc.). Depending on specific criteria, deficiencies may be either curable or non-curable.
d. Curable Deficiency – A curable deficiency is a specific type of deficiency that applicants may correct with timely action. To be curable the deficiency must:
- Not be a threshold requirement;
- Not influence how an applicant is ranked or scored versus other applicants; and
- Be remedied within the time frame specified in the notice of deficiency.

e. Non-Curable Deficiency – An applicant cannot correct a non-curable deficiency after the submission deadline. Non-curable deficiencies are deficiencies that if corrected would change an applicant's score or

rank versus other applicants. Non-curable deficiencies may result in an application being marked ineligible, or otherwise adversely affect an application's score and final determination.

II. HUD's Homeless Policy and Program Priorities

A. Policy Priorities. This NOFA focuses on the Administration goals articulated in *Opening Doors: Federal Strategic Plan to Prevent and End Homelessness*. The goals of *Opening Doors* are consistent with the Department's homeless goals as stated in HUD's Strategic Plan. This section explains HUD's Policy Priorities for this CoC Program Competition NOFA and provides Collaborative Applicants and Project Applicants with additional context about the selection criteria and selection process. The actual selection criteria and selection process are described in Section VII, Application Review Information.

1. Create a systemic response to homelessness. In addition to having the right programs to end homelessness, CoCs should be developing the systemic supports that ensure homeless assistance is well coordinated, well managed, inclusive, transparent, and achieves positive outcomes.

a. Measure System Performance. HUD has developed system performance measures to assess the overall impact of a CoC's homeless assistance efforts. These measures track the average length of homeless episodes, rates of return to homelessness, and other factors that determine whether a CoC is effectively serving people experiencing homelessness. CoCs should be using these measures and analyzing how they can improve their system to achieve better performance.

b. Create an effective Coordinated Entry process. Coordinated entry is a key step in assessing the needs of homeless individuals and families and prioritizing them for assistance. In addition to engaging people who are seeking assistance, Coordinated Entry processes should be integrated with communities' outreach work to ensure that people living in unsheltered locations are prioritized for help. Coordinated Entry should achieve several goals:

i. make it easier for persons experiencing homelessness or a housing crisis to access the appropriate housing and service interventions;

ii. prioritize persons with the longest histories of homelessness and the most extensive needs;

iii. lower barriers to entering programs or receiving assistance; and,

iv. ensure that persons receive assistance and are housed as quickly as possible.

c. Promote participant choice. CoCs should do everything they can to support the choices made by persons experiencing homelessness. For example, some persons may prefer programs where residents are focused on obtaining support to recover from substance use disorders. While these projects often include many housing first features, they may also be alcohol and drug free to support the continued sobriety of their participants. Another example is the choice of where to live. Most persons experiencing homelessness struggle to balance the cost and quality of their available housing options. Whenever possible, programs should support participant's choices.

d. Plan as a system. CoCs should be coordinating homeless assistance and mainstream housing and service providers to ensure that people experiencing homelessness receive assistance as quickly as possible and that the assistance is focused on helping them obtain and retain housing. CoCs should be monitoring each provider's performance, eligibility criteria, target populations, and cultural competence. They should also ensure that providers work together when a participant is moving from one program to another or when more than one program is serving the same person.

e. Make the delivery of homeless assistance more open, inclusive, and transparent. CoCs should ensure that the needs of all individuals and families experiencing homelessness are represented within the CoC structure by including persons who have experienced homelessness throughout the planning process and in leadership and oversight roles. CoCs should also include organizations representing persons fleeing domestic violence, the Lesbian, Gay, Bisexual, Transgender, and Questioning (LGBTQ) community, victims of human trafficking, unaccompanied youth,

individuals with disabilities and different types of disabilities, and other relevant populations in their planning body. These steps ensure that service delivery is client-centered and culturally competent.

2. *Strategically allocate resources.* Using cost, performance, and outcome data, CoCs should improve how resources are utilized to end homelessness, including CoC and ESG Program funds, state and local funds, public and assisted housing units, mainstream service resources such as Medicaid, Child Care and Development Fund (CCDF), Head Start, Maternal, Infant and Early Childhood Home Visiting (MIECHV), and philanthropic efforts. CoCs should manage the performance of all projects in the community and reallocate resources whenever doing so will better help them end homelessness. Steps to consider:

a. Comprehensively review project quality, performance, and cost effectiveness. CoCs should use objective, performance based scoring criteria and selection priorities that are approved by the CoC to determine the extent to which each project addresses HUD's policy priorities. CoCs should reallocate funds to new projects whenever reallocation would improve outcomes and reduce homelessness. CoCs should consider how much each project spends to serve and house an individual or family as compared to other projects serving similar populations.

b. Maximize the use of mainstream and other community-based resources. CoCs should educate all stakeholders in the community about mainstream resources and funding opportunities, particularly new opportunities made available under the Affordable Care Act. Additionally, CoCs and homeless assistance providers should partner with other stakeholders within the community, such as Public Housing Agencies (PHAs), philanthropic organizations, and other agencies and organizations that have resources that could serve persons experiencing homelessness.

c. Review transitional housing projects. Recent research shows that transitional housing is generally more expensive and achieves similar or worse outcomes than other housing models serving similar populations. HUD recognizes that transitional housing may be an effective tool for addressing certain needs–such as housing for underage homeless youth experiencing homelessness, safety for persons fleeing domestic violence, and assisting with recovery from addiction. HUD strongly encourages CoCs and recipients to carefully review the transitional housing projects within the CoC's geographic area for cost-effectiveness, performance, and for the number and type of eligibility criteria to determine whether it should be reallocated to rapid rehousing or another model.

d. Integration. Recipients must administer their programs and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities. Recipients operating projects serving chronically homeless individuals and families must ensure individuals with disabilities can interact with individuals without disabilities to the fullest extent possible.

3. ***End chronic homelessness.*** To end chronic homelessness by 2017, HUD encourages three areas of focus:

a. Target persons with the highest needs and longest histories of homelessness for existing and new permanent supportive housing. CoCs should prioritize chronically homeless individuals, youth, and families who have the longest histories of homelessness and the highest needs for new and turnover units by implementing Notice CPD 14-012: Prioritizing Persons Experiencing Chronic Homelessness in Permanent Supportive Housing and Recordkeeping Requirements for Documentin g Chronic Homeless Status.

b. Increase units. CoCs should create new permanent supportive housing units that are dedicated to individuals, youth, and families experiencing chronic homelessness; and, if CoCs have not already done so, dedicate existing permanent supportive housing units to those experiencing chronic homelessness. There are numerous ways a community can increase permanent supportive housing units, including applying for CoC Program funds, partnering with PHAs for rental assistance, and

strengthening connections to Medicaid to pay for services in permanent supportive housing.

c. Improve Outreach. To decrease the number of persons experiencing chronic homelessness in a community, the community must identify and continually engage all persons who are currently experiencing sheltered or unsheltered chronic homelessness and those who are in jeopardy of experiencing chronic homelessness. This includes ensuring effective communication with individuals with disabilities and taking reasonable steps to ensure meaningful access to services, programs, and activities by persons with Limited English Proficiency (LEP persons).

4. *End family homelessness.* Most families experiencing homelessness can be housed quickly and stably using rapid rehousing. Some will need the long-term support provided by a permanent housing subsidy or permanent supportive housing. CoCs should ensure that families can easily access housing assistance tailored to their strengths and needs and, through partnerships, increase access to mainstream affordable housing. For most CoCs this will require expanding rapid rehousing programs. HUD encourages CoCs to use reallocation to create new rapid rehousing projects and to use ESG and other funding sources to expand rapid rehousing assistance.

5. *End youth homelessness.* CoCs should understand the varied and unique needs of youth experiencing homelessness, and reach out to youth-serving systems and providers to encourage their active participation in the CoC. CoCs and youth serving organizations should work together to develop resources and programs that better end youth homelessness and meet the needs of homeless youth, including LGBTQ youth. HUD recipients must comply with HUD's final rule, Equal Access to Housing in HUD Programs Regardless of Sexual Orientation or Gender Identity, which requires that HUD-assisted and HUD-insured housing programs are made available to all otherwise eligible individuals and families regardless of actual or perceived sexual orientation, gender identity, or marital status. Please see also Notice CPD-15-02: Appropriate Placement for Transgender Persons in Single-Sex Emergency Shelters and Other Facilities.

When evaluating the performance of youth programs, CoCs should take into account the specific challenges faced by youth experiencing homelessness. When CoCs identify lower performing youth serving projects, they should seek to reallocate funds from those projects to projects that will achieve better outcomes for youth. In coordination with mainstream programs, CoCs should also consider how they can best serve young people who are fleeing domestic violence, human trafficking, or who are exchanging sex for housing.

6. *End veteran homelessness.* Ending veteran homelessness is within reach for many communities, and CoCs should take specific steps to reach this goal including prioritizing veterans and their families for assistance when they cannot be effectively assisted with VA services, and coordinating closely with veteran serving organizations and VA-funded housing and services. Communities that have effectively ended veteran homelessness should continuously assess the performance of the homeless assistance system to ensure the continued achievement by periodically reviewing the criteria and benchmarks established by HUD, VA, and USICH.

7. *Use a Housing First Approach.* *Housing First* is an approach to homeless assistance that prioritizes rapid placement and stabilization in permanent housing and does not have service participation requirements or preconditions such as sobriety or a minimum income threshold. Projects using a Housing First approach often have supportive services; however, participation in these services is based on the needs and desires of program participants. Following are specific steps to support a Housing First approach:

a. *Use Data to quickly and stably house homeless persons.* Programs that use a Housing First approach should be moving individuals and families quickly into permanent housing. CoCs should measure the length of time it takes for programs to move households into permanent housing and help providers improve performance.

b. *Engage landlords and property owners*. Identify and recruit landlords of units in the geographic

area so that when an individual or family needs housing, potential units that those individuals or families may choose from have already been identified, speeding up the housing process. Landlord engagement can be undertaken by each homeless assistance provider or consolidated so that one or a few organizations engage landlords on behalf of many providers.

c. *Remove barriers to entry.* CoCs should review project-level eligibility criteria for all programs and remove any barriers to accessing housing and services. Persons experiencing homelessness should not be screened out of or discouraged from participating in programs because they have poor credit history, or lack income or employment. People with addictions to alcohol or substances should not be required to cease active use before accessing housing and services.

d. *Adopt client-centered service methods.* All projects should ensure housing and service options are tailored to meet the unique needs of each individual or family presenting for services and that program participants have access to the services that they reasonably believe will help them achieve their goals. However, program participants should not be required to participate in services and cannot be required to participate in disability-related services.

B. CoC Program Implementation. The following list highlights important information that applicants should consider as they are preparing the FY 2016 CoC Application and Project Applications(s). This is not an exhaustive list of considerations or requirements-all applicants and CoC stakeholders should carefully review 24 CFR part 578 for comprehensive information.

1. In the FY 2016 CoC Program Competition, in addition to requests for renewal projects and CoC planning and UFA Costs project requests, CoCs may submit requests for new projects through the process of reallocation or the permanent housing bonus.

2. The FY 2016 Appropriations Act establishes certain requirements for the Competition:

a. CoCs cannot receive grants for new projects, other than through reallocation, unless the CoC competitively ranks projects based on how they improve system performance;

b. HUD must base an increasing share of the CoC score on performance criteria; and,

c. HUD must prioritize funding for CoCs that have demonstrated the ability to reallocate resources to higher performing projects.

3. In addition to grants for CoC planning and UFA Costs, CoCs may create new projects by using amounts available through the permanent housing bonus or by making funds available through reallocation. The following types of projects may only be created using funds that the CoC has made available through reallocation. Through the reallocation process CoCs may create the following types of new projects.

a. CoCs may create new permanent supportive housing projects where all beds will be dedicated for use by chronically homeless individuals and families, as defined in 24 CFR 578.3.

b. CoCs may create new rapid rehousing projects that will serve homeless individuals and families coming directly from the streets or emergency shelters, and include persons fleeing domestic violence situations and other persons meeting the criteria of paragraph (4) of the definition of homelessness.

c. CoCs may create a new Supportive Services Only project specifically for a centralized or coordinated assessment system.

d. CoCs may create a new dedicated Homeless Management Information System (HMIS) project for the costs at 24 CFR 578.37(a)(2) that can only be carried out by the HMIS Lead, which is the recipient or subrecipient of an HMIS grant, and that is listed on the HMIS Lead form in the CoC Applicant Profile in *e-snaps.*

4. CoCs may create new projects through the permanent housing bonus up to 5 percent of the CoC's

FPRN for the following types of new projects:

a. CoCs may create new permanent supportive housing projects that will serve 100 percent chronically homeless individuals and families, and

b. CoCs may create new rapid rehousing projects that will serve homeless individuals and families coming directly from the streets or emergency shelters, and include persons fleeing domestic violence situations and other persons meeting the criteria of paragraph (4) of the definition of homelessness.

Because new permanent housing projects-permanent supportive housing and rapid rehousing-may be created through either reallocation or the permanent housing bonus, HUD may reclassify new permanent housing projects that a CoC has classified as reallocation or permanent housing bonus if the project would be ineligible for funding because the CoC exceeded either its reallocation or permanent housing bonus amount. New permanent housing projects will be evaluated using the same criteria regardless of whether the CoC has identified them as bonus or reallocation projects.

5. Any changes to the FY 2016 GIW after the final HUD approval process must be submitted for approval by the local HUD CPD Field Office, in consultation with HUD Headquarters. The due date for final HUD approval for changes to the FY 2016 GIW is July 22, 2016 by 5:00 p.m. local time. Collaborative Applicants will be required to attach the final HUD-approved FY 2016 GIW that contains the final HUD-approved FY 2016 ARD to the CoC Priority Listing. HUD will not consider any changes that would increase a CoC's ARD to the FY 2016 GIW after July 22, 2016. If an ineligible project is included on the CoC's GIW, HUD will remove the ineligible project from the GIW, which will result in the CoC's ARD being reduced by the amount of the ineligible project application. It is crucial that CoCs ensure that the final FY 2016 GIW is accurate and that it only lists those renewal projects that are eligible for renewal in FY 2016. In order to be eligible for renewal in FY 2016, a project must have an executed grant agreement by December 31, 2016 and have an expiration date in Calendar Year (CY) 2017 (between January 1, 2017 and December 31, 2017).

6. Eligible renewal projects requesting rental assistance are permitted to request a per-unit amount less than the Fair Market Rent (FMR), based on the actual rent costs per unit. This will help to reduce the number of projects receiving rental assistance that have large balances of unspent funds remaining at the end of the operating year. Renewal project applicants must ensure that the amount requested will be sufficient to cover all eligible costs as HUD cannot provide funds beyond what is awarded through the competition. Project applications for rental assistance cannot request more than 100 percent of the published FMR. New project applications must adhere to 24 CFR 578.51(f) and must request the full FMR amount per unit. See Section VIII.B. of this NOFA for additional information regarding FMR adjustments for projects receiving funds for rental assistance.

7. CoCs will be evaluated on the extent to which they provide housing for chronically homeless individuals and families in all CoC Program-funded permanent supportive housing–not just those units that are dedicated to this population. CoCs should ensure chronically homeless individuals and families are placed in permanent housing as units become available through turnover.

8. CoCs were required to submit the FY 2016 Housing Inventory Count (HIC) and Point-in-Time (PIT) count data directly to the HUD Homelessness Data Exchange (HDX) website by the submission deadline of May 2, 2016. CoCs that did not meet the established deadline for HIC and PIT count data submission and did not receive an extension from HUD will not be eligible to receive the maximum number of points available as described in Sections VII.A.3. and VII.A.4. of this NOFA.

9. In order to receive the maximum number of points available as described in Section VII.A.2. of this NOFA must:

a. establish an internal CoC deadline for project applications to be submitted to the CoC that is no later than 30 days before the application deadline; and,

b. notify, in writing and outside of e-snaps, all project applicants who submitted their project applications to the CoC by the CoC-established deadline whether their project application(s) will be accepted (and ranked on the CoC Priority Listing), rejected, or reduced by the CoC within 15 days of the application deadline. Where a project application is being rejected or reduced, the CoC must indicate the reason(s) for the rejection or reduction.

Per 24 CFR 578.35(c), project applicants that believe they were denied the opportunity to participate in the local CoC planning process in a reasonable manner and were rejected or reallocated by the CoC may appeal the rejection directly to HUD by submitting as a Solo Applicant prior to the application deadline of September 14, 2016 by 7:59:59 p.m. eastern time.

10. Only one CoC planning project application may be submitted per CoC per funding year. Similarly, only one project application for UFA Costs may be submitted for HUD-designated UFAs per funding year. The project applications for CoC planning and UFA Costs must be submitted by the Collaborative Applicant and must match the organization listed as the Collaborative Applicant in the CoC Applicant Profile in e-snaps. HUD is not ranking CoC planning and UFA Costs projects in the FY 2016 CoC Program Competition so they will not affect a CoC's available amount for funding for new and renewal project applications.

11. CoCs must consult with Emergency Solutions Grants (ESG) recipients within the geographic area on the plan for allocating ESG funds and reporting on and evaluating the performance of ESG recipients and subrecipients. Each CoC will be required to describe how it is coordinating, or if coordination is not already occurring, how coordination with ESG recipients will occur and what processes are required to be in place at the CoC level to ensure this requirement is met. See Section VII.A.1.b for more information about scoring criteria related to coordinating with ESG recipients.

12. As directed by Congress, HUD must provide an annual estimate of all individuals and families experiencing homelessness nationwide and within the territories. Therefore, all CoCs must have an HMIS that has the capacity to collect unduplicated counts of individuals and families experiencing homelessness and provide information to project subrecipients and applicants for needs analysis and funding priorities. Additionally, CoC and ESG recipients must participate in the local HMIS; unless a recipient is a domestic violence provider or legal service provider, in which case it must use a comparable database and provide de-identified information to the CoC. For many communities, the inclusion of ESG recipients and subrecipients and other HUD Federal partners (e.g., the Department of Health and Human Services and VA) that require their programs to use the CoC's HMIS, will mean an increase in users that the HMIS must be able to accommodate. HUD expects communities to be able to use the HMIS information to review performance for the entire CoC geographic area, not just at the project level. The HMIS Lead should continue to consider any unique needs that the HMIS might be required to address in order to accommodate emergency shelter, street outreach, homelessness prevention, and other Federal programs.

13. CoCs may request, in the FY 2016 CoC Application, that up to 10 percent of funding for each fiscal year awarded under this NOFA be approved to serve homeless households with children and youth defined as homeless under other Federal statutes who are unstably housed (paragraph 3 of the definition of homeless found at 24 CFR 578.3). Approved CoCs are limited to using only up to 10 percent of the total amount awarded for each fiscal year appropriation to the CoC to serve this population, and must determine which project(s) will be permitted to use some or all of their funding for this purpose. The only project types that will be funded in this Competition to serve this population are Transitional Housing and Supportive Services Only.

In order to be approved to serve this population, CoCs making this request must be able to demonstrate that serving this population is of equal or greater priority, which means that it is equally or more cost effective in meeting the overall goals and objectives of the plan submitted under Section 427(b)(1)(B) of the Act, especially with respect to children and unaccompanied youth, than serving the homeless as

defined under paragraphs (1), (2), and (4) of the definition of homeless in 24 CFR 578.3. CoCs must thoroughly describe how the requirements described in Section 427(b)(1)(F) of the Act will be met. CoCs will be required to identify the specific project(s) that will use funding for this purpose (up to 10 percent of the CoC total award) by submitting an attachment to the CoC Application in e-snaps that states the following:

a. Project name(s) as listed on the CoC Priority Listing; and,

b. Amount of funding in the project or per project that will be used for this purpose.

Where HUD does not approve a CoC's request, any awards for the project(s) proposed in FY 2016 to be used for this purpose will be conditioned upon award that no funds may be used to serve this population. See 24 CFR 578.54 and 24 CFR 578.89 for more information about this limitation.

14. HUD will allow new reallocated projects to request funding for 1 year to facilitate implementation of CoC strategies to reduce gaps in permanent housing. Any new reallocated projects requesting capital costs (i.e., new construction, acquisition, or rehabilitation) are not eligible for 1-year requests and HUD will increase the grant term to 3-years if they are submitted for 1-year terms.

15. CoCs will be required to rank all projects, except CoC planning and UFA Costs, submitted by project applicants in *e-snaps*: renewal, and new projects created through reallocation and permanent housing bonus. HUD will not review any project that is rejected by the CoC. CoCs may only submit one application for CoC planning costs and if designated as a UFA, one application for UFA Costs. The applicant for CoC planning and UFA Costs must be the Collaborative Applicant that is listed on the CoC Applicant Profile in *e-snaps*.

16. HUD will continue the Tier 1 and Tier 2 funding process and CoCs and applicants should ensure there is thorough understanding of the information provided in this NOFA. HUD will establish each CoC's Tier 1 and Tier 2 amounts based on the final HUD-approved GIW. A report that lists each CoC's ARD Tier 1 amount, CoC planning, and permanent housing bonus amount available will be posted to the HUD Exchange website no earlier than August 5, 2016. Section VIII. of this NOFA provides additional information regarding project selection.

a. Tier 1 is equal to 93 percent of the CoC's ARD amount approved on the final HUD-approved GIW and projects in this tier will be conditionally selected from the highest scoring CoC to the lowest scoring CoC, provided the project applications pass both eligibility and threshold review. Any type of new or renewal project application can be placed in Tier 1. However, in the event HUD is required to drastically reduce the total amount of funds available under this NOFA, the Tier 1 amount per CoC will be reduced proportionately among all CoCs which could result in some Tier 1 projects falling into Tier 2. Therefore, CoCs should carefully determine the priority and ranking for all project applications in Tier 1 as well as Tier 2, which is described below.

b. Tier 2 is the difference between Tier 1 and the CoC's ARD plus any amount available for the permanent housing bonus (before adjustments are made to permanent housing leasing, operating, and rental assistance line items based on changes to FMR) as described in Section II.B.4. of this NOFA. This does not include the amounts available for CoC planning and UFA Costs. Project applications that are in Tier 2 will be selected for FY 2016 CoC Program funding using the process described in Section II.B.17. of this NOFA. Projects placed in Tier 2 will be assessed for eligibility and threshold requirements, and funding will be determined using the CoC Application score as well as the factors listed in Section II.B.17. of this NOFA.

c. If a project application straddles the Tier 1 and Tier 2 funding line, HUD will conditionally select the project up to the amount of funding that falls within Tier 1 as stated above; and then, using the CoC score and other factors described in Section II.B.17. of this NOFA, HUD may fund the Tier 2 portion of the project. If HUD does not fund the Tier 2 portion of the project, HUD may award project funds at the reduced amount, provided the project is still feasible with the reduced funding

(e.g., is able to continue serving homeless program participants effectively).

d. As previously stated, CoC planning and UFA Costs are not ranked and; therefore, will not be included in Tier 1 or Tier 2. CoC planning and UFA Costs projects that pass eligibility and review threshold will be conditionally selected using CoC scores from the highest scoring CoC to the lowest scoring CoC.

While the CoC will determine the order in which projects are ranked, HUD will calculate the tiers based on all project applications that pass eligibility and threshold review.

17. HUD will award a point value to each new and renewal project application that is in Tier 2 using a 100-point scale:

a. *CoC Score.* Up to 50 points in direct proportion to the score received on the CoC Application rounded to the nearest whole point. CoCs must receive at least 198 points out of the 200 CoC Application points available to receive the full 50 points for the CoC Application score. For example, if a CoC received 100 out of 200 points on the CoC application, the project application would receive 25 out of 50 points for this criterion.

b. *CoC Project Ranking.* Up to 35 points for the CoC's ranking of the project application(s). In order to more evenly distribute funding across CoCs and take into account the CoCs ranking of projects, point values will be assigned directly related to the CoCs ranking of projects. The calculation of point values will be 35 times the quantity (1-x) where x is the ratio of the cumulative funding requests for all projects or portions of projects ranked higher by the CoC in Tier 2 plus one half of the funding of the project of interest to the total amount of funding available in Tier 2. For example, if a CoC is eligible to apply for projects totaling $500,000 in Tier 2 and applies for 5 projects ranked in Tier 2 of $100,000 each: the highest ranked project would receive 31.5 points and then the subsequently ranked projects would receive 24.5, 17.5, 10.5, and 3.5 points.

c. *Project Type.* Up to 5 points will be based on the type of project application submitted and the population that will be served with the following points available for the following project types:

(1) 5 points for renewal and new permanent housing-permanent supportive housing and rapid rehousing, renewal safe haven, HMIS, SSO for centralized or coordinated assessment system, or transitional housing that exclusively serves homeless youth projects;

(2) 3 points for renewal transitional housing, except those transitional housing projects that exclusively serve homeless youth which will be scored as discussed in paragraph (1); and

(3) 1 point for renewal SSO project applications other than those for a centralized or coordinated assessment system.

d. *Commitment to Policy Priorities.* Up to 10 points for how the permanent housing project application commits to applying the Housing First model. Transitional housing projects, safe haven, and SSO projects that are not for centralized or coordinated assessment can receive up to 10 points for how the project demonstrates that it is low-barrier, prioritizes rapid placement and stabilization in permanent housing and does not have service participation requirements or preconditions to entry (such as sobriety or a minimum income threshold). HMIS projects and SSO projects for a centralized or coordinated assessment system will automatically receive 10 points.

III. Continuum of Care Program Requirements

The CoC Program interim rule at 24 CFR part 578 details the requirements with which grants awarded under this Competition must comply. Regulatory citations are provided below so that applicants can refer to specific areas of the 24 CFR part 578.

A. Definitions and Concepts. The definitions and concepts contained in this section include terms that are important for all applicants to understand in order to complete all parts of the FY 2016 CoC Consolidated Applications in *e-snaps* on behalf of the CoC.

1. Definitions from 24 CFR 578.3. The following terms are defined in 24 CFR 578.3. Applicants must refer to the CoC Program interim rule for the definitions contained in this section.

a. *Annual Renewal Amount (ARA)*

b. *Applicant*

c. Centralized or Coordinated Assessment System

d. Chronically Homeless

e. Collaborative Applicant

f. Continuum of Care

g. Consolidated Plan

h. Final Pro Rata Need

i. High Performing Community

j. Homeless

k. Permanent Housing

l. Permanent Supportive Housing

m. Private Nonprofit Organization

n. Program Participant

o. Project

p. Recipient

q. Subrecipient

r. Transitional Housing

s. Unified Funding Agency

2. CoC Program NOFA Definitions. The following terms are not found in 24 CFR part 578, but are used in this NOFA to define concepts that pertain specifically to the FY 2016 CoC Consolidated Application.

a. *Consolidated Plan Certification.* The statutory form in which a State or local official certifies that the proposed activities or projects are consistent with the jurisdiction's Consolidated Plan and, if the applicant is a State or unit of local government, that the jurisdiction is following its Consolidated Plan.

b. *Housing Inventory County (HIC).* A complete listing of the community's HUD and non-HUD funded beds dedicated to homeless individuals and families.

c. *Rapid Rehousing.* A type of permanent housing meeting the requirements of 24 CFR 578.37(a)(1)(ii).

3. Concepts. The concepts contained in this section are important for all applicants to understand in order to complete all parts of the FY 2016 CoC Consolidated Application. These concepts are used

throughout this NOFA:

a. *Annual Renewal Demand (ARD) (24 CFR 578.17(b)(2)).* The total amount of all the CoC's projects that will be eligible for renewal in the FY 2016 CoC Program Competition, before any required adjustments to funding for leasing, rental assistance, and operating budget line items based on FMR changes.

b. *Beds Dedicated to Chronically Homeless Individuals and Families.* A permanent supportive housing bed that is dedicated specifically for use by chronically homeless individuals and families within a CoC's geographic area, as reported in the CoC's Housing Inventory Count (HIC) and the FY 2015 permanent housing project applications. When a program participant exits the project, the bed must be filled by another chronically homeless participant unless there are no chronically homeless persons located within the CoC's geographic area. This concept only applies to permanent supportive housing projects.

c. *Definition of Homelessness and Human Trafficking.* HUD wishes to clarify that persons who are fleeing or attempting to flee human trafficking may qualify as homeless under paragraph 4 of the "homeless" definition at 24 CFR 578.3; and, therefore may be eligible for certain forms of homeless assistance under the CoC Program, subject to other restrictions that may apply. HUD considers human trafficking, including sex trafficking, to be "other dangerous or life threatening conditions that relate to violence against the individual or family member" under paragraph 4 of the definition of "homeless" at 24 CFR 578.3. Where an individual or family is fleeing, or is attempting to flee human trafficking, that has either taken place within the individuals or family's primary night-time residence or has made the individual or family afraid to return to their primary night-time residence; and the individual or family has no other residence; and the individual or family lacks the resources or support networks to obtain other permanent housing; HUD would consider that individual or family to qualify as "homeless" under paragraph 4 of the definition.

d. *Housing First.* A model of housing assistance that prioritizes rapid placement and stabilization in permanent housing that does not have service participation requirements or preconditions (such as sobriety or a minimum income threshold). Transitional housing and supportive service only projects can be considered to be using a Housing First model for the purposes of this NOFA if they operate with low-barriers, work to quickly move people into permanent housing, do not require participation in supportive services, and, for transitional housing projects, do not require any preconditions for moving into the transitional housing (e.g., sobriety or minimum income threshold). Additional information regarding Housing First is in Section II.A.7. of this NOFA.

e. *Non-Dedicated Permanent Supportive Housing Beds.* Permanent supportive housing beds within a CoC's geographic area that are not currently dedicated specifically for use by chronically homeless individuals and families.

f. *Permanent Housing Bonus.* The Permanent Housing Bonus is available to all CoCs to apply for funding to create new permanent supportive housing projects that will exclusively serve chronically homeless individuals and families or rapid rehousing projects that will serve individuals, including unaccompanied youth, and families coming directly from the streets or emergency shelters or persons fleeing domestic violence or other persons who qualify under paragraph (4) of the definition of homeless; however, these program participants must meet all other criteria for this type of housing (i.e., individuals and households with children who enter directly from the streets or emergency shelter). A CoC is eligible to apply for up to 5 percent of its FPRN and may apply for more than one permanent housing bonus project. New projects created through a permanent housing bonus must meet the project eligibility and threshold requirements established by HUD in Sections V.G.2.b and V.G.2.c of this NOFA.

g. *Preliminary Pro Rata Need (PPRN).* The amount of funds a CoC could receive based upon the geographic areas claimed by the CoC and reviewed by HUD during the CoC Program Registration

process. To determine the amount of funding available for each geographic area, HUD will use the formula set forth at 24 CFR 578.17(a). Each year, HUD publishes the PPRN for each jurisdiction on the HUD Exchange. A CoC's PPRN is determined by adding the published PPRN of each metropolitan city, urban county, and other county located within the HUD-approved CoC geographic area.

h. *Reallocation.* Reallocation is when a CoC shifts funds in whole or part from existing eligible renewal projects to create one or more new projects without decreasing the CoC's ARD. New projects created through reallocation must meet the requirements set forth in Section II.B.3. of this NOFA and the project eligibility and project quality thresholds established by HUD in Sections V.G.2.b. and V.G.2.c.of this NOFA. In the FY 2016 CoC Program Competition, CoCs may use reallocation to create new permanent supportive housing that will serve chronically homeless individuals and families, including unaccompanied youth and rapid rehousing to serve homeless individuals and families, including unaccompanied youth, coming directly from the streets or emergency shelters or fleeing domestic violence situations or other persons who meet the criteria of paragraph (4) of the definition of homelessness, dedicated HMIS, and SSO for a centralized or coordinated assessment system. The FY 2016 HUD Appropriations Act requires that, in order for a CoC to receive funding for a new project, other than through reallocation, the CoC must demonstrate that all project applications are evaluated and ranked based on the degree to which they improve the CoC's system performance. Further, FY 2016 CoC Program funding must prioritize those CoCs that have demonstrated a capacity to reallocate funding from lower performing projects to higher performing projects as demonstrated through the CoC's local selection process.

B. Establishing and Operating the CoC. Provisions at 24 CFR 578.5 and 24 CFR 578.7 detail the requirements for the establishment of a CoC and its operations.

C. CoC Geographic Area. Provisions at 24 CFR 578.5 require representatives from relevant organizations within a geographic area to establish a CoC to carry out the duties within the geographic area. The boundaries of identified CoC geographic areas cannot overlap, and any overlapping geographies are considered Competing CoCs. HUD will follow the process at 24 CFR 578.35(d) to determine which CoC HUD will fund in the case of CoC geographic areas that overlap in whole or in part. See Section III.H. of this NOFA for more information about how HUD will award funding to projects in Competing CoCs.

D. Planning Duties of the CoC. Planning duties for CoCs are detailed in 24 CFR 578.7.

E. Centralized or Coordinated Assessment System. The definition of Centralized or Coordinated Assessment can be found at 24 CFR 578.3. Provisions at 24 CFR 578.7(a)(8) detail the responsibilities of the CoC with regard to establishing and operating such a system. In addition to the definition, HUD also posted on the HUD Exchange the Coordinated Entry Policy Brief in February 2015 that helps inform local efforts to further develop CoCs' coordinated entry processes. CoCs may use planning costs to design and plan for the implementation of a centralized or coordinated assessment system. These systems help communities assess the needs of program participants and effectively match the homeless with the most appropriate resources available to address their particular needs.

F. CoC Program Components. Provisions at 24 CFR 578.37 state that CoC funds may be used for projects under five program components: permanent housing (including rapid rehousing and permanent supportive housing); transitional housing; Supportive Services Only; HMIS; and in some cases, homelessness prevention. Homelessness prevention is a component through the implementation of High Performing Communities (HPC), since only designated HPCs may carry out homelessness prevention activities through the CoC program. Although CoCs were able to apply for HPC designation during the FY 2016 CoC Program Registration process, HUD did not receive any requests for HPC designation; therefore, no CoCs may request funds for homelessness prevention. The only components that will be funded in the FY 2016 CoC Program Competition are:

1. Permanent Housing;

2. Transitional Housing;

3. Supportive Services Only; and

4. HMIS.

G. Collaborative Applicant. HUD will only review CoC Consolidated Applications submitted from the Collaborative Applicant that has been designated by the CoC. As set forth at 24 CFR 578.9(a)(3), the Collaborative Applicant will compile all parts of the CoC Consolidated Application, including the FY 2016 CoC Application, the FY 2016 CoC Priority Listing, and all Project Applications for FY 2016 funds the CoC has ranked for funding within the geographic area. Additionally, as set forth at 24 CFR 578.3, the Collaborative Applicant is the only entity that may apply to HUD for CoC planning costs and for UFA Costs, if the Collaborative Applicant is designated to apply as an UFA applicant.

H. Competing CoCs. For the FY 2016 CoC Program Competition there are no Competing CoCs.

I. CoC Maximum Award. The process for determining a CoC's maximum award amount is detailed in 24 CFR 578.17(b). HUD is required to adjust awards for leasing, operating, and rental assistance budget line items based on changes to the Fair Market Rents (FMR). All adjustments for each fiscal year appropriation will be made prior to award announcement. HUD will make these adjustments as follows:

1. Funds awarded for rental assistance will be adjusted in one of two ways:

   a. Funds awarded for rental assistance in all new projects and all renewal projects requesting the FMR will be adjusted by applying the FMR in effect at the time of application submission to HUD, including in the cases where the FMR for a specific area has decreased from the previous year. Because the application is due prior to the beginning of FY 2017, the FMRs that will be used are those for FY 2016.

   b. Funds awarded for rental assistance for renewal projects that request less than FMR, that is, a per-unit amount based on the actual rent costs per unit, will be increased based on the average increase in FMR amounts within the CoC's geographic area, weighted for population density. In the event that the FMR for a specific area decreased from the previous year, project applicants will not receive an award that exceeds the FMR after adjustment. If the FMR for the project applicant's area decreased from the previous year, the project will be awarded the lesser amount of the per-unit amount requested by the project applicant, based on the actual rent costs per unit, or the FMR after adjustment.

2. Funds awarded for operating and leasing in permanent housing projects will be increased based on the average increase in FMR amounts within the CoC's geographic area, weighted for population density. Because leasing and operating costs do not decrease relative to rent amounts for specific units (e.g., operating costs for 10 units that have rents of $500 are likely the same as for 10 units that have rents that are $450) adjustments to leasing and operating budget line items will not include decreases if FMRs decrease in the geographic area. The operating and/or leasing budget line items in these projects will remain the same as in the most recent grant agreement or grant agreement amendment.

IV. Award Information

A. Amount Allocated. Approximately $1.9 billion of FY 2016 funds is available for funding. Carried over or recaptured funds from previous fiscal years, if available, may be added to this amount. Although the available amount of funding is expected to be sufficient to fund anticipated eligible renewal projects in the FY 2016 funding process, HUD will continue to require Collaborative Applicants to rank all projects in two tiers. Tier 1 is equal to 93 percent of the CoC's final HUD-approved ARD for the FY 2016 process. Tier 2 is the difference between Tier 1 and the CoC's ARD plus any amount available for the permanent housing

bonus as described in Section II.B.4. of this NOFA.

B. Distribution of Funds. The distribution of funds will depend largely on CoC-locally determined priorities and HUD selection priorities, overall demand, and renewal eligibility.

1. *Renewals.* Awards made under the CoC Program, Supportive Housing Program (SHP), and Shelter Plus Care (S+C) are eligible for renewal for FY 2016 funds if they have an executed grant agreement by December 31, 2016 and have an expiration date the occurs in Calendar Year (CY) 2017 (the period between January 1, 2017 and December 31, 2017). These projects are renewable under the CoC Program Competition as set forth in 24 CFR 578.33 to continue ongoing leasing, operating, supportive services, rental assistance, HMIS, and project administration costs. Grant agreements for FY 2015 funds must be executed by December 31, 2016 in order to be eligible for renewal. If a project application is submitted for FY 2016 funds where the grant agreement for FY 2015 funds is not executed by December 31, 2016, HUD will withdraw any funds conditionally awarded for FY 2016.

Applicants that were eligible under the SHP and S+C programs but are no longer eligible under the CoC Program, will continue to be eligible for renewal of leasing, operating, supportive service, rental assistance, HMIS, and project administration costs under 24 CFR 578.33(d)(1), so long as their project continues to serve the same population and the same number of program participants or units in the same type of housing as identified in their most recently amended grant agreement signed before August 30, 2012. No new Safe Haven projects will be funded; however, existing Safe Haven projects may be renewed to continue to carry out activities that are eligible costs under Subpart D. of the CoC Program interim rule.

2. *New Project Grant Terms.* The initial grant term for new project applications may be 1-year, 2-years, 3-years, 4-years, 5-years, or 15-years. However, the following exceptions apply:

a. Any new project that requests tenant-based rental assistance may request a 1-year, 2-year, 3-year, 4-year, or 5-year grant term.

b. Any new project that requests leasing–either leasing costs only or leasing costs plus other costs (e.g., supportive services, HMIS.)–may only request up to a 3-year grant term.

c. Any new project that requests project-based rental assistance or sponsor-based rental assistance, or operating costs may request up to a 15-year grant term; however, the project applicants may only request up to 5 years of funds. Funding for the remainder of the term is subject to availability. Applicants must apply for additional funds as a renewal project application prior to the anniversary of the first expenditure of grant funds by which date the grant funds should have been expended, or if the date upon which funds must be extended has been extended by HUD, the date upon which the extension ends. CoC Program funds are not guaranteed past the initial 5-year grant term, if conditionally awarded.

d. Any new project that requests operating costs, Supportive Services Only, HMIS, and project administration may request 1-year, 2-year, 3-year, 4-year, or 5-year grant terms with funding for the same number of years.

e. Any new project that requests new construction, acquisition, or rehabilitation must request a minimum of a 3-year grant term and may request up to a 5-year grant term.

f. If an applicant requests funds for new construction, acquisition, or rehabilitation in addition to requesting funds for operating, supportive services, or HMIS, the funding will be for the 3 years requested, and the grant term will be 3 years plus the time necessary to acquire the property, complete construction, and begin operating the project. HUD will require recordation of a HUD-approved use and repayment covenant (a form can be obtained from the local HUD CPD Field Office) for all grants of funds for new constructions, acquisition, and rehabilitation. (24 CFR 578.81)

g. All new CoC planning or UFA Costs applications are limited to 1-year grant terms and 1-year of funding.

(1) The maximum amount available for CoC planning project applications is 3 percent of FPRN or $1,250,000; whichever is less.

(2) The maximum amount available for UFA Costs, for UFA designated Collaborative Applicants, is 1.5 percent of FPRN or $500,000; whichever is less.

3. *Renewal Project Grant Terms.*

a. All renewal project applications, including rental assistance, are limited to 1-year grant terms and 1-year of funding.

b. Any renewal permanent housing project that receives project-based rental assistance or operating costs may request up to a 15-year grant term; however, the project applicants may only request 1 year of funding. Applicants must apply for the additional funds as a renewal project application prior to the anniversary of the first expenditure of grant funds by which date the grant funds should have been expended or, if the date upon which funds must be expended has been extended by HUD, the date upon which the extension ends. CoC Program funds are not guaranteed past the 1-year of renewal funding if conditionally awarded.

V. Eligibility Information

A. Eligible Applicants

HUD does not award grants to individuals. HUD will also not evaluate applications from ineligible applicants.

As required in the Code of Federal Regulations (CFR) at 2 CFR 25.200 and 24 CFR Part 5 Subpart K, all applicants for financial assistance must have an active Data Universal Numbering System (DUNS) number (http://fedgov.dnb.com/webform) and have an active registration in the System for Award Management (SAM) (www.sam.gov) before submitting an application. Getting a DUNS number and completing SAM registration can take up to four weeks; therefore, applicants should start this process or check their status early.

B. Eligible Project Applicants (24 CFR 578.15, 24 CFR 5.100). Eligible project applicants for the CoC Program Competition are, under 24 CFR 578.15, nonprofit organizations, States, local governments, and instrumentalities of State and local governments. Public housing agencies, as such term is defined in 24 CFR 5.100, are eligible without limitation or exclusion. For-profit entities are not eligible to apply for grants or to be subrecipients of grant funds.

C. Renewal Projects. Awards made under the CoC Program, SHP, and S+C programs are eligible for renewal for FY 2016 funds if they are currently in operation and have an executed grant agreement that is dated no later than December 31, 2016 and expires in Calendar Year (CY) 2017 (the period from January 1, 2017 through December 31, 2017).

1. HUD will not select renewal projects for an award for FY 2016 funds in the FY 2016 CoC Program Competition unless the project meets one of the following additional eligibility requirements:

a. Any CoC Program, SHP, or S+C grants awarded in a preceding Competition that expire in CY 2017.

b. Any S+C grant awarded prior to FY 2002 for which funding is expected to run out in CY 2017, and which has never applied for renewal funding.

c. Any SHP or S+C grant originally awarded in the FY 2010 Homeless Assistance Programs Competition and, notwithstanding the expiration date, that has funds expiring in CY 2017 or later and has not been renewed in a previous competition. Funds for these grants will no longer be available after September 30, 2017. The electronic Line of Credit Control System (eLOCCS) requires that all draws for the grants awarded in the FY 2010 Homeless Assistance Programs Competition be made no later than September 22, 2017. Funds from these expiring grants will be recaptured and will no longer be available for expenditure, even if the end date established in the grant agreement is beyond September 30, 2017. Recipients are prohibited from accelerating their spending rate to spend down funds by September 22, 2017. Local HUD CPD Field Offices will monitor draws for affected grants to ensure that funds will be drawn only to reimburse the affected recipients for actual costs incurred in accordance with the project budget on, or before, the LOCCS availability of funds deadline. Grants awarded in the FY 2010 Homeless Assistance Competition are not eligible for renewal in the CoC Program Competition if they expired, or are expiring, in CY 2016 (time period from January 1, 2016, through December 31, 2016), were not renewed in a previous competition, or were not approved for extension into CY 2017. Grants awarded in the FY 2010 Homeless Assistance Programs Competition that have an expiration date beyond CY 2017 must apply for renewal in the FY 2016 funding process. The only exception is for any grant awarded as S+C grant that included rehabilitation that has a 10-year grant term, which will expire in FY 2019.

2. The total request for each renewing project may not exceed the ARA approved by HUD for that project. Because funds for acquisition, new construction, and rehabilitation may not be renewed, grants being renewed whose original expiring award included those funds may only renew leasing, supportive services, rental assistance, operating, and HMIS costs and may not exceed 10 percent in administrative costs. For information on Annual Renewal Amount, see Section III.A.1.a. of this NOFA.

3. HUD will recapture grant funds remaining unspent at the end of the previous grant period when it renews a grant.

4. HUD encourages the consolidation of appropriate renewal grants when the grants are with the same recipient, have the same component and expire in the same year. However, projects that have not yet been consolidated must submit separate project applications for individual renewal grants. Where a recipient intends to consolidate renewal grants, this action can be accomplished by the local HUD CPD Field Office at the point of renewal grant agreement execution. Projects that have outstanding audit findings or that are poor performers cannot be consolidated. Further, any grant that applied to move from SHP leasing to rental assistance in the CoC Program Competition cannot be consolidated in the first year after the change from leasing to rental assistance occurs. This paragraph does not apply to CoCs that are designated by HUD as a UFA, since UFAs will enter into a single renewal grant agreement with HUD for the CoC's entire geographic area.

5. Shelter Plus Care projects renewing for the first time under this NOFA are allowed to indicate a higher number of units than approved in the original application on the GIW during the FY 2016 CoC Program Registration process. However, in order for HUD to approve this increase, the applicant must have provided its local HUD CPD Field Office with copies of all executed leases to support the higher number of units. This must have been completed prior to the FY 2016 CoC Program Registration process as the increase in units affected the project's ARA. HUD will consider the number of documented units under lease at the time of GIW submission the maximum number of units eligible for renewal in the FY 2016 CoC Program Competition. The number and configuration of units eligible for renewal must match the number and configuration of units recorded on the Rental Assistance Worksheet that was part of the final HUD-approved GIW.

D. New Projects.

1. CoCs may submit new projects created through reallocation, permanent housing bonus, CoC

planning, and UFA Costs (if applicable).

2. In order to expend funds within statutorily required deadlines, applicants funded for sponsor-based and project-based rental assistance must execute the grant agreement and begin providing rental assistance within 2 years. However, HUD strongly encourages all rental assistance to begin within 12 months of award. Applicants that are unable to begin rental assistance within the 12-month period should consult with the local HUD CPD Field Office.

3. All applicants must meet statutory deadlines regarding the obligation of grant funds by September 30, 2018, as stated in the FY 2016 HUD Appropriations Act. All subrecipients must meet applicant eligibility standards as described in Section V.A. of this NOFA. HUD will review project subrecipient eligibility as part of the threshold review process. Project applicants are required to submit documentation of subrecipients' eligibility with the application.

E. Matching. 24 CFR 578.73 provides the information regarding match requirements. As authorized by the FY 2016 HUD Appropriations Act, program income may now be used as a source of match and must be properly documented in the project application.

F. Indirect Costs. Indirect costs, (defined at 2 CFR 200.56) are those costs incurred incurred for a common or joint purpose benefiting more than one cost objective, and not readily assignable to the cost objectives specifically benefited, without effort disproportionate to the results achieved. To facilitate equitable distribution of indirect expenses to the cost objectives served, it may be necessary to establish a number of pools of indirect (F&A) costs. Indirect (F&A) cost pools should be distributed to benefited cost objectives on bases that will produce an equitable result in consideration of relative benefits derived. Refer to 200.413 and 200.414 for additional information on determining if costs charged ot he award are direct or indirect.

Applicants selected for funding pursuant to this NOFA may charge indirect costs to the award. Applicants with an approved federally negotiated indirect cost rate must submit with their application a copy of their approved Indirect Cost Rate Proposal to substantiate their request.

Applicants that never had an approved federally negotiated indirect cost rate may charge a maximum rate of 10 percent of modified total direct costs. 2 CFR 200.414(f) states that nonfederal entities that have never received a negotiated indirect cost rate, except those non-Federal entities described in Appendix VII to Part 200—States and Local Government and Indian Tribe Indirect Costs Proposals, paragraph D.1.b. may elect to charge a de minimis rate of 10 percent of modified total direct costs, which may be used indefinitely. If chosen, this methodology must be used consistently for all federal awards until the entity chooses to submit an indirect cost rate proposal and negotiate for a rate.

If an applicant chooses to negotiate for an indirect cost rate, the applicant must contact the designated cognizant agency for indirect costs. The cognizant agency for indirect cost rates is defined at 2 CFR 200.19. For assignments of cognizant agencies see the following:

1. For Institutions of Higher Education: Appendix III to 2 CFR part 200—Indirect (F&A) Costs Identification and Assignment, and Rate Determination for Institutions of Higher Education (IHEs), paragraph C.11.

2. For nonprofit organizations: Appendix IV to 2 CFR part 200—Indirect (F&A) Costs Identification and Assignment, and Rate Determination for Nonprofit Organizations, paragraph C.12.

3. For State and local governments: Appendix V to 2 CFR part 200—State/Local Government-wide Central Service Cost Allocation Plans, paragraph F.1.

If HUD is the applicant's cognizant agency for indirect costs, the applicant shall submit its Indirect Cost Rate Proposal to the following person and address of the U.S. Department of Housing and Urban Development: Lisa Abell, Director, Budget Director, Office of Community Planning and Development, 451 7th Street SW, Room 7236, Washington, DC, 20410. Approval of the proposal may take several weeks.

G. Other Project Eligibility Requirements.

1. **Statutory and Regulatory Requirements.** To be eligible for funding under this NOFA, project applicants must meet all statutory and regulatory requirements in the Act and 24 CFR part 578. Project applicants can obtain a copy of the Act and 24 CFR part 578 on the HUD Exchange or by contacting the NOFA Information Center at 1-800-HUD-8929 (1-800-483-8929).

2. Threshold Requirements:

a. Ineligible Applicants. HUD will not consider an application from an ineligible project applicant, including an application submitted for CoC planning funds or UFA Costs from an applicant other than the Collaborative Applicant.

b. Project Eligibility Threshold. HUD will review all projects to determine if they meet the following eligibility threshold requirements on a pass/fail standard. If HUD determines that the applicable standards are not met for a project, the project will be rejected from the competition. Any project requesting renewal funding will be considered as having met these requirements through its previously approved grant application unless information to the contrary is received (e.g., monitoring findings, results from investigations by the Office of Inspector General, the recipient routinely does not draw down funds from LOCCS at least once per quarter, consistently late APRs). Approval of new and renewal projects is not a determination by HUD that a recipient is in compliance with applicable fair housing and civil requirements.

(1) Project applicants and potential subrecipients must meet the eligibility requirements of the CoC Program as described in 24 CFR part 578 and provide evidence of eligibility required in the application (e.g., nonprofit documentation).

(2) Project applicants and subrecipients must demonstrate the financial and management capacity and experience to carry out the project as detailed in the project application and to administer Federal funds. Demonstrating capacity may include a description of the applicant/subrecipient experience with similar projects and with successful administration of SHP, S+C, or CoC Program funds for renewing projects or other Federal funds.

(3) Project applicants must submit the required certifications as specified in this NOFA.

(4) The population to be served must meet program eligibility requirements as described in the Act, and the project application must clearly establish eligibility of project applicants. This includes the following additional eligibility criteria for certain types of projects:

(a) The only persons who may be served by any non-dedicated permanent supportive housing beds are those who come from the streets, emergency shelters, safe havens, institutions, or transitional housing.

i. Homeless individuals and families coming from transitional housing must have originally come from the streets or emergency shelters.

ii. Homeless individuals and families with a qualifying disability who were fleeing or attempting to flee domestic violence, dating violence, sexual assault, stalking, or other dangerous or life threatening conditions and are living in transitional housing are eligible for permanent supportive housing even if they did not live on the streets, emergency shelters, or safe havens prior to entry in the transitional housing.

iii. Persons exiting institutions where they resided for 90 days or less and came from the streets, emergency shelter, or safe havens immediately prior to entering the institution are also eligible for permanent supportive housing.

(b) The only persons who may be served by dedicated or prioritized permanent supportive housing beds are persons experiencing chronic homelessness as defined in 24 CFR 578.3, including individuals, families, and unaccompanied youth.

(c) Rapid rehousing projects originally funded to serve individuals and families, including unaccompanied youth, coming from the streets or emergency shelters or fleeing domestic violence situations and other persons meeting the criteria of paragraph (4) of the definition of homeless, must continue to do so.

(d) New Rapid Rehousing projects created through reallocation may serve individuals and families, including unaccompanied youth, coming directly from the streets or emergency shelters or fleeing domestic violence situations or other persons who qualify under paragraph (4) of the definition of homelessness.

(e) The projects originally funded as part of the FY 2008 Rapid Rehousing for Families Demonstration may transition in this CoC Program Competition to permanent housing-rapid rehousing. Therefore, any of these projects that want to change from transitional housing with leasing, may change the current budget line items from leasing to tenant-based rental assistance (may request actual rent or FMR) and move any operating costs to an eligible supportive services activity, an HMIS budget line item, or may be used to add additional units. If the project wants to remain as transitional housing, it must continue operating in accordance with the FY 2008 CoC Homelessness Assistance Grants Programs NOFA. Any of these projects that intend to change to permanent housing-rapid rehousing were required to make this change on the FY 2016 GIW and complete the Rental Assistance Worksheet associated with the GIW during the GIW process.

(f) Renewal projects originally funded under the Samaritan Housing Initiative must continue to exclusively serve chronically homeless individuals and families, unless there are no chronically homeless individuals and families within the CoC geographic area that can be served by the project. CoCs should not hold units vacant, but instead should prioritize other vulnerable and eligible households as outlined in Notice CPD-14-012.

(g) Renewal projects originally funded under the Permanent Supportive Housing Bonus in previous years must continue to serve the homeless population in accordance with the respective NOFA under which it was originally awarded.

(h) Renewal projects that indicated they would prioritize chronically homeless persons in beds that become available through turnover in non-dedicated permanent supportive housing projects must continue to do so.

(5) The project must be cost-effective, including costs of construction, operations, and supportive services with such costs not deviating substantially from the norm in that locale for the type of structure or kind of activity.

(6) Project applicants, except Collaborative Applicants that only receive awards for CoC planning costs and, if applicable, UFA Costs, must agree to participate in a local HMIS system. However, in accordance with Section 407 of the Act, any victim service provider that is a recipient or subrecipient must not disclose, for purposes of HMIS, any personally identifying information about any client. Victim service providers must use a comparable database that meets the needs of the local HMIS.

c. Project Quality Threshold. HUD will review all new project applications to determine if they meet the following project quality threshold requirements with clear and convincing evidence. Any project requesting renewal funding will be considered as having met these requirements through its previously approved grant application unless information to the contrary is received (e.g., monitoring findings, results from investigations by the Office of Inspector General, the recipient routinely does not draw down funds from LOCCS at least once per quarter, consistently late APRs) and if the renewal project has compliance issues which results in the project not operating in accordance with 24 CFR part 578. These projects are required to meet the requirements outlined in

this section of this NOFA. The housing and services proposed must be appropriate to the needs of the program participants and the community. A determination that a project meets the project quality threshold is not a determination by HUD that a recipient is in compliance with applicable fair housing and civil rights requirements.

(1) To be considered as meeting project quality threshold, new permanent housing–permanent supportive housing and rapid rehousing–project applications must receive at least 3 out of the 5 points available for the criteria below. New permanent housing project applications that do not receive at least 3 points will be rejected.

(a) Whether the type of housing and number and configuration of units will fit the needs of the program participants (e.g., 2 or more bedrooms for families) (1 point);

(b) Whether the type of the supportive services that will be offered to program participants will ensure successful retention or help to obtain permanent housing–this includes all supportive services, regardless of funding source (e.g., child care for families with children, case management, life skills, drug counseling) (1 point);

(c) Whether the specific plan for ensuring that program participants will be individually assisted to obtain the benefits of the mainstream health, social, and employment programs for which they are eligible to apply meets the needs of the program participants (e.g., Medicare, Medicaid, SSI, Food Stamps, local Workforce office, early childhood education) (1 point);

(d) Whether program participants are assisted to obtain and remain in permanent housing in a manner that fits their needs (e.g., allows the participant the mobility to access needed services, case management follow-up, additional assistance to ensure retention of permanent housing)(1 point); and

(e) Whether at least 75 percent of the proposed program participants come from the street or other locations not meant for human habitation, emergency shelters, safe havens, or fleeing domestic violence (1 point).

(2) To be considered as meeting project quality threshold, new SSO projects for centralized or coordinated assessment systems must receive at least 2 out of the 4 points available for the criteria below. SSO projects for centralized or coordinated assessment systems that do not receive at least 2 points will be rejected.

(a) Whether the centralized or coordinated assessment system is easily accessible for all persons within the CoC's geographic area who are seeking information regarding homelessness assistance (1 point);

(b) Whether there is a strategy for advertising the program that is designed specifically to reach homeless persons with the highest barriers within the CoC's geographic area (1 point);

(c) Whether there is a standardized assessment process (1 point); and,

(d) Whether the program ensures that program participants are directed to appropriate housing and services that fit their needs (1 point).

(3) To be considered as meeting project quality threshold, new HMIS project applications must receive at least 3 out of the 4 points available for the criteria below. New HMIS projects that do not receive at least 3 points will be rejected.

(a) How the HMIS funds will be expended in a way that is consistent with the CoC's funding strategy for the HMIS and furthers the CoC's HMIS implementation (1 point);

(b) Whether the HMIS collects all Universal Data Elements as set forth in the HMIS Data

Standards (1 point);

(c) Whether the HMIS un-duplicates client records (1 point); and,

(d) Whether the HMIS produces all HUD-required reports and provide data as needed for HUD reporting (e.g., APR, quarterly reports, data for CAPER/ESG reporting) (1 point).

(4) To be considered as meeting project quality threshold, the Collaborative Applicant's application for new CoC planning funds must receive at least 6 out of 10 points using the criteria below. Applications that do not receive at least 6 points will be rejected. Applications for UFA Costs are not subject to a threshold review, as UFA status was determined as part of Registration.

(a) Governance and Operations. Whether the CoC conducts meetings of the entire CoC membership that are inclusive and open to members and whether the CoC is able to demonstrate that is has a written governance charter in place that contains CoC policies (2 points).

(b) CoC Committees. Whether the CoC has CoC-wide planning committees, subcommittees, or workgroups to the address homeless needs in the CoC's geographic area that recommend and set policy priorities for the CoC (2 points).

(c) The proposed planning activities that will be carried out by the CoC with grant funds are compliant with the provisions of 24 CFR 578.7 (4 points); and,

(d) The funds requested will improve the CoC's ability to evaluate the outcome of both CoC Program-funded and ESG-funded projects (2 points).

(5) Additionally, HUD will assess all new projects for the following minimum project eligibility, capacity, timeliness, and performance standards. To be considered as meeting project quality threshold, all new projects must meet all of the following criteria:

(a) Project applicants and potential subrecipients must have satisfactory capacity, drawdowns, and performance for existing grant(s) that are funded under the SHP, S+C, or CoC Program, as evidenced by timely reimbursement of subrecipients, regular drawdowns, and timely resolution of any monitoring findings;

(b) For expansion projects, project applicants must clearly articulate the part of the project that is being expanded. Additionally, the project applicants must clearly demonstrate that they are not replacing other funding sources; and,

(c) Project applicants must demonstrate they will be able to meet all timeliness standards per 24 CFR 578.85. Project applicants with existing projects must demonstrate that they have met all project renewal threshold requirements of this NOFA. HUD reserves the right to deny the funding request for a new project, if the request is made by an existing recipient that HUD finds to have significant issues related to capacity, performance, unresolved audit or monitoring finding related to one or more existing grants, or does not routinely draw down funds from *e*LOCCS at least once per quarter. Additionally, HUD reserves the right to withdraw funds if no APR is submitted on the prior grant.

d. *Project Renewal Threshold.* A CoC must consider the need to continue funding for projects expiring in CY 2017. Renewal projects must meet minimum project eligibility, capacity, timeliness, and performance standards identified in this NOFA or they will be rejected from consideration for funding.

(1) When considering renewal projects for award, HUD will review information in *e*LOCCS; Annual Performance Reports (APRs); and information provided from the local HUD CPD Field Office, including monitoring reports and A-133 audit reports as applicable, and

performance standards on prior grants, and will assess projects using the following criteria on a pass/fail basis:

(a) Whether the project applicant's performance met the plans and goals established in the initial application, as amended;

(b) Whether the project applicant demonstrated all timeliness standards for grants being renewed, including those standards for the expenditure of grant funds that have been met;

(c) The project applicant's performance in assisting program participants to achieve and maintain independent living and records of success, except HMIS-dedicated projects that are not required to meet this standard; and,

(d) Whether there is evidence that a project applicant has been unwilling to accept technical assistance, has a history of inadequate financial accounting practices, has indications of project mismanagement, has a drastic reduction in the population served, has made program changes without prior HUD approval, or has lost a project site.

(2) HUD reserves the right to reduce or reject a funding request from the project applicant for the following reasons:

(a) Outstanding obligation to HUD that is in arrears or for which a payment schedule has not been agreed upon;

(b) Audit finding(s) for which a response is overdue or unsatisfactory;

(c) History of inadequate financial management accounting practices;

(d) Evidence of untimely expenditures on prior award;

(e) History of other major capacity issues that have significantly affected the operation of the project and its performance;

(f) History of not reimbursing subrecipients for eligible costs in a timely manner, or at least quarterly; and

(g) History of serving ineligible program participants, expending funds on ineligible costs, or failing to expend funds within statutorily established timeframes.

e. *Certification of Consistency with the Consolidated Plan.* Each project applicant must submit a certification by the jurisdiction in which the proposed project(s) will be located that the applicant's application for funding is consistent with the jurisdiction's HUD-approved consolidated plan. The certification must be made in accordance with the provisions of the consolidated plan regulations at 24 CFR part 91, subpart F. Form HUD-2991 must be completed.

f. *Environmental Requirements.* Notwithstanding provisions at 24 CFR 578.31 and 24 CFR 578.99(a) of the CoC Program interim rule, and in accordance with Section 100261(3) of MAP-21 (Pub. L. 112-141, 126 Stat. 405), activities under this NOFA are subject to environmental review by a responsible entity under HUD regulations at 24 CFR part 58.

(1) HUD made two important changes for projects categorized as exempt or Categorically Excluded from review under the National Environmental Policy Act and not subject to 58.5 (CENST) from the environmental review:

(a) All scattered site projects where participants choose their own unit and are not restricted to units within a pre-determined specific project site or sites are categorized in 24 CFR 58.35(b)(1) as CENST. This now includes both tenant-based rental assistance and tenant-based leasing projects where participants choose their own unit. Previous guidance included only Tenant Based Rental Assistance as eligible CENST projects.

(b) The Exempt/CENST form is only required for each project, not every unit. Previous

guidance instructed recipients to complete an Exempt/CENST form for each unit.

(2) For activities under a grant to a recipient other than a State or unit of general local government that generally would be subject to review under part 58, HUD may make a finding in accordance with 24 CFR 58.11(d) and may itself perform the environmental review under the provisions of 24 CFR part 50 if the recipient objects in writing to the responsible entity's performing the review under part 24 CFR part 58.

(3) Irrespective of whether the responsible entity in accordance with 24 CFR part 58 (or HUD in accordance with 24 CFR part 50) performs the environmental review, the recipient must supply all available, relevant information necessary for the responsible entity (or HUD, if applicable) to perform for each property any required environmental review. The recipient also must carry out mitigating measures required by the responsible entity (or HUD, if applicable) or select alternative property.

(4) The recipient, its project partners, and their contractors may not acquire, rehabilitate, convert, lease, repair, dispose of, demolish, or construct property for a project under this NOFA, or commit or expend HUD or local funds for such eligible activities under this NOFA, until the responsible entity (as defined by 24 CFR 58.2(a)(7)) has completed the environmental review procedures required by 24 CFR part 58 and the environmental certification and Request for Release of Funds (RROF) have been approved or HUD has performed an environmental review under 24 CFR part 50 and the recipient has received HUD approval of the property. HUD will not release grant funds if the recipient or any other party commits grant funds (i.e., incurs any costs or expenditures to be paid or reimbursed with such funds) before the recipient submits and HUD approves its RROF (where such submission is required).

All applicants must also refer to Section V. Rules and Regulations Applicable to HUD NOFAs, subsections A, B, and C. the 2016 General Section, for information on HUD-wide rules affecting applications for HUD funding. These requirements may determine whether your application is reviewed or make your application ineligible for funding.

VI. Application and Submission Information

Authoritative Versions of HUD NOFAs. The General Section and Program NOFAs posted on Grant s.gov are the official documents HUD uses to solicit applications. Applicants are advised to compare their application submission with the requirements in the General Section and Program NOFA. If there is a discrepancy between the General Section or Program NOFA posted on Grant s.gov and other information provided in any other copy or version or supporting documentation, the General Section and Program NOFA located on Grant s.gov prevail. If discrepancies are found, please notify HUD immediately by calling or emailing the program contact listed in the Program NOFA. Individuals with hearing, or speech impairments, may use the Federal Relay Service's teletype service at 1-800-877-8339. HUD will post any corrections or changes to a Program NOFA or to this General Section on Grant s.gov. Applicants must enroll an email address at the application download page to receive e-mail alerts from Grant s.gov when funding opportunities are changed.

A. Application Package. The submission summary in *e-snaps* provides the list of elements required to complete each type of project application. A Collaborative Applicant will not be able to submit an application to HUD until all required parts are completed, including the project-level review and either accepting and ranking or rejecting the project applications. Once available, the CoC Consolidated Application, Project Application, and CoC Priority Listing can be accessed at www.hud.gov/esnaps.

B. Content and Form of Application Submission. The CoC Consolidated Application for funds under this NOFA includes the FY 2016 CoC Application, which describes the CoC's plan for ending homelessness, its system-level performance, and addresses the selection criteria specified in Section VII of this NOFA. The CoC Priority Listing includes the reallocation forms, all Project Applications submitted to the CoC for funding consideration that are either approved and ranked or rejected, the final HUD-approved GIW attachment, and the form HUD-2991–Certification of Consistency with the Consolidated Plan.

C. CoC Consolidated Application. An entire CoC Consolidated Application must be submitted by the Collaborative Applicant on behalf of the CoC. The application will include the parts listed below, all of which will be submitted electronically either through *e-snaps* or as an uploaded attachment (for more information see the Training on *e-snaps* at www.hudexchange.info/e-snaps/guides/coc-program-competition-resources/).

1. The FY 2016 CoC Application, including:

    a. The CoC plan with all charts and narratives completed as applicable;

    b. All required attachments, including:

        (1) CoC Review, Score, and Ranking Procedures. The CoC's written procedures that are publicly posted for all interested stakeholders and applicants that clearly describe the project-level review and ranking process that is used by the CoC to determine how CoC Program project applications submitted to the CoC are reviewed, scored, and ranked;

        (2) CoC's Process for Reallocating. The CoC's written and publicly-posted process for how the CoC determines if a project(s) should be reduced and/or cut in order to create new projects through reallocation in the local CoC competition process;

        (3) Public Posting of FY 2016 Project Selections, Ranking, and CoC Application. A screen shot of the CoC webpage(s) (or partner's webpage if the CoC does not have a website) that was made publicly available to all project applicants before the application deadline and that clearly displays the website address;

        (4) Governance Charter (HMIS Governance). The section of the governance charter containing the policies and procedures used by the CoC to comply with the HMIS requirements prescribed by HUD. Alternatively, if the CoC has created a separate document (e.g., an HMIS Governance Agreement) to outline the policies and procedures related to HMIS governance and incorporated this document into the governance charter by reference, the CoC may attach that document;

        (5) PHA Administrative Plan. If the CoC is seeking points under Section VII.A.1.d. of this NOFA, the relevant excerpt from a written plan, if any was developed between the CoC and the PHA(s) located within the CoC's geographic area that clearly describes the PHA(s) homeless preference for housing. Instead of a relevant excerpt from the written plan, a letter from the PHA(s) may be attached that clearly describes the PHA(s) homeless preference for housing;

        (6) Projects to Serve Persons Defined as Homeless under paragraph 3. If the CoC is seeking to serve persons defined as homeless under paragraph 3 of the homeless definition, a list of projects that will serve persons defined as homeless under paragraph 3 of the homeless definition; and,

(7) HDX Report. The report that shows all of the system performance measures that were submitted to HUD.

2. FY 2016 Project Application(s), including for each project application:

a. Project application, charts, narratives, and attachments;

b. SF-424 Application for Federal Assistance;

c. SF-424 Supplement, Survey on Ensuring Equal Opportunities for Application required for nonprofit applicants only where completion and submission of this survey is voluntary;

d. Documentation of Applicant and Subrecipient Eligibility. All project applicants must attach documentation of eligibility and the subrecipient must also be attached to the project application;

e. Applicant Certifications;

f. Form HUD-2880, Applicant/Recipient Disclosure/Update Report. Must be attached for each project and must include the correct amount of HUD assistance requested and must be dated between May 1, 2016 and September 14, 2016.

g. SF-LLL, Disclosure of Lobbying Activities (if applicable);

h. Applicant Code of Conduct. The Code of Conduct must be attached in *e-snaps* or on file with HUD at http://portal.hug.dov/hudportal/HUD?src=/program_offices/administration/grants/conduct; and,

i. Form HUD-50070, Certification for Drug-Free Workplace dated between May, 1, 2016 and September 14, 2016.

3. The FY 2016 CoC Priority Listing, including:

a. Project reallocation forms (if applicable) that indicates the eligible renewal projects that are being reallocated in whole or part to create new project applications for:

(1) new permanent supportive housing project(s) that serve chronically homeless individuals and families, including unaccompanied youth, as defined in 24 CFR 578.3;

(2) rapid rehousing project(s) for homeless individuals and families, including unaccompanied youth, coming directly from the streets or emergency shelters, or fleeing domestic violence situations or other persons who meet the criteria of paragraph (4) of the definition of homelessness;

(3) dedicated HMIS projects; and

(4) SSO projects for centralized or coordinated assessment.

b. New Project Listing;

c. Renewal Project Listing;

d. UFA Costs Project Listing;

e. CoC Planning Project Listing; and

f. Required Attachments:

(1) Final HUD-approved FY 2016 GIW; and

(2) Form HUD-2991, Certification of Consistency with the Consolidated Plan. The Collaborative Applicant must submit a certification by the jurisdiction in which the proposed project(s) will be located that the applicant's application(s) for funding is consistent with the jurisdiction's HUD-approved consolidated plan dated between May 1, 2016 and September 14, 2016.

4. Solo Applicants. Eligible project applicants that attempted to participate in the CoC planning process in the geographic area in which they operate, that believe they were denied the right to participate in a reasonable manner may submit an application to HUD and may be awarded a grant from HUD by following the procedure found in 24 CFR 578.35. Solo applicants must submit their project application to HUD by **7:59:59 p.m. eastern time, September 14, 2016,** which must include the CoC's notification of rejection of the project in the local competition as an attachment to the Solo Applicant's project application. If the CoC fails to provide written notification, outside of *e-snaps*, the Solo Applicant must attach a statement that the CoC did not provide the Solo Applicant written notification of the CoC rejecting the project in the local CoC competition. See Section X.C. of this NOFA for additional information regarding the Solo Applicant appeal process.

5. The General Section of HUD's FY 2016 NOFA contains certifications that the applicant will comply with fair housing and civil rights requirements, program regulations, and other Federal requirements, and (where applicable) that the proposed activities are consistent with the HUD-approved Consolidated Plan of the applicable State or unit of general local government.

D. Submission Dates and Times.

1. Application Deadline Date

a. Completed applications must be submitted to HUD on or before 7:59:59 p.m. eastern time on September 14, 2016.

b. Provisions at 24 CFR 578.9 require CoCs to design, operate, and follow a collaborative process for the development of an application in response to a NOFA issued by HUD. As part of this collaborative process, CoCs must implement internal competition deadlines to ensure transparency and fairness at the local level. The implementation of deadlines that meet the standards outlined below for FY 2016 Project Applications will be considered as part of scoring criteria as detailed in Section VII.A.2. of this NOFA.

(1) *Project Application.* All project applications are required to be submitted to the CoC no later than 30 days before the application deadline.

(2) *CoC Notification to Project Applicants.* The CoC is required to notify all project applicants no later than 15 days before the application deadline regarding whether their project applications will be submitted as part of the CoC Consolidated Application. Any project applicants that are rejected by the CoC must be notified in writing outside of *e-snaps*, with an explanation for the decision to reject the project application. CoCs that fail to provide such notice will not receive the maximum number of points available in Section VII.A.2.c. of this NOFA.

c. All applicants may access the HUD Exchange Ask A Question (AAQ) any time prior to 7:59:59 p.m. eastern time, on the application submission deadline date for FY 2016 funds. Applicants that are experiencing technical difficulty should contact the AAQ immediately for assistance and document their attempts to obtain assistance. HUD strongly encourages CoCs to allow ample time to resolve any technical difficulties that might be encountered during the submission of the application to HUD. Applicants should not wait until the final minutes before the application submission deadline to submit CoC Priority Listing.

d. In order for the CoC Consolidated Application to be considered complete and properly submitted for review by HUD in the FY 2016 CoC Program Competition, the Collaborative Applicant must submit the entire CoC Consolidated Application by the submission deadline which includes: CoC Application, the CoC Priority Listing, and the project applications on behalf of the CoC. Note that the "**Submit**" button will not be available on the Submission Summary of the CoC Application and CoC Priority Listing until all required sections of the application and all parts of the listings, including accepting and ranking with a unique rank number or rejecting project applications have

been completed. Collaborative Applicants should review the Submission Summary form carefully to ensure that no sections state "Please Complete." **The CoC Application and the CoC Priority Listing are separate submissions in *e-snaps*; therefore, Collaborative Applicants must ensure that both the CoC Application and the CoC Priority Listing, with all project applications either approved and ranked or rejected, are submitted in *e-snaps* prior to the application submission deadline.**

e. Collaborative Applicants must print a copy of the Submission Summary form from the CoC Application and the CoC Priority Listing before closing their internet browser after the CoC Consolidated Application has been submitted to HUD. This is the Collaborative Applicant's receipt of submission and proof of compliance with the application deadline. HUD will not give funding consideration to any Collaborative Applicant whose CoC Application or CoC Priority Listing are determined to be late and that are unable to provide HUD with a record of submission that verifies the FY 2016 CoC Consolidated Application was submitted prior to the application deadline date and time.

f. HUD strongly suggests that applicants use the "Export to PDF" functionality of *e-snaps* to print a hard copy of all submission documents for their records. This can be completed prior to or after submission.

g. As stated in Section VI of this NOFA, it is imperative that all Collaborative Applicants meet the submission deadline of September 14, 3016 at 7:59:59 p.m. eastern time. Applications that are not received on time will not be funded. Also, failure to submit a complete CoC Consolidated Application may also result in HUD finding that the Continuum of Care does not meet the requirements of the Act or its implementing regulations under 24 CFR 578.13. If the Secretary makes that finding, HUD may take remedial action to ensure fair distribution of grant amounts to eligible entities within the CoC's geographic area, which includes the possibility that HUD will designate another eligible applicant to be the Collaborative Applicant for the CoC. In addition to the remedial actions listed in 24 CFR 578.13(a), HUD may also decide to impose another remedial action, such as requiring the CoC to create new policies and procedures to ensure that the Collaborative Applicant performs its duties.

h. If after notice and reasonable opportunity to be heard, HUD finds pursuant to 24 CFR 578.13, that one or more Continuums have failed to comply with the requirements of the Act and CoC program regulation, HUD may, solely at its discretion and only if sufficient funds become available by recapture, publish a new NOFA for eligible applicants in Continuums that HUD has determined do not meet the requirements of the Act and program regulations.

E. Intergovernmental Review. Not Applicable.

F. Funding Restrictions. Not Applicable.

G. Other Submission Requirements

1. Waiver of Electronic Submission Requirements. The regulatory framework of HUD's electronic submission requirement is the final rule established in 24 CFR 5.1005. CoCs seeking a waiver of the electronic submission requirement must request a waiver in accordance with 24 CFR 5.1005. HUD regulations allow for a waiver of the electronic submission requirement for good cause. For the Continuum of Care Program Competition, HUD is defining good cause as follows:

a. there are no computers that could be used by applicants or the Collaborative Applicant that are newer than 5 years old anywhere within the CoC's geographic area; or

b. there are no computers that could be used by applicants or the Collaborative Applicant anywhere within the CoC's geographic area; or

c. there is not internet access that could be used by applicants or the Collaborative Applicant

anywhere within the CoC's geographic area.

HUD will grant waivers only at the CoC level and not at the individual project applicant level, and only to CoCs that were approved by HUD during the required CoC Registration process.

If the waiver is granted, the Office of Special Needs Assistance Programs' response will include instructions on how many copies of the paper application must be submitted, as well as where to submit them. CoCs that are granted a waiver of the electronic submission requirement will not be afforded additional time to submit their applications. Therefore, Collaborative Applicants seeking a waiver of the electronic submission requirement on behalf of the CoC should submit their waiver request with sufficient time to allow HUD to process and respond to the request. Collaborative Applicants should also allow themselves sufficient time to submit the application on behalf of the CoC so that HUD receives the application by the established deadline date. For this reason, HUD strongly recommends that if a Collaborative Applicant finds it cannot submit its application electronically and must seek a waiver of the electronic grant submission requirement, it should submit the waiver request to the Office of Special Needs Assistance Programs no later than 30 days after the publication date of this NOFA. To expedite the receipt and review of each request, Collaborative Applicants may fax their written requests to Norm Suchar, at (202) 401-0053. If HUD does not have sufficient time to process the waiver request, a waiver will not be granted. Paper applications received without a prior approved waiver and/or after the established deadline will not be considered.

VII. Application Review Information

Bonus Points.

In support of certain inter-agency initiatives, HUD awards bonus points to projects where the preponderance of work will occur in a designated zone, community or region. These points will be awarded only if the application otherwise meets or exceeds the Program's minimum fundable score based on the rating factors of this NOFA.

The bonus points from the FY 2016 General Section NOFA do not apply to the FY 2016 CoC Program Competition.

A. Criteria. CoC Consolidated Applications will be assessed on a 200 point scale. No Collaborative Applicants have exercised the authority under 422(j) of the Act; therefore, no selection criteria based on section 427(b)(1)(A)(viii) is included in this NOFA. Additionally, for purposes of the requirements of section 427 (b)(1)(B)(iv)(II) of the Act. HUD considers "all relevant subpopulations" to mean families, youth, veterans, persons fleeing domestic violence, persons who are unsheltered, and chronically homeless individuals and families.

1. CoC Coordination and Engagement. HUD will award up to 43 points to CoCs that demonstrate coordination with other systems of care that serve homeless individuals and families, including sources of funding other than the CoC Program; an inclusive and outcome-oriented community process, including an organization structure(s) and decision-making process for developing and implementing a CoC strategy that is inclusive of representatives from both the private and public sectors, has a fair and impartial project review and selection process; and has created, maintained, and built upon a community-wide inventory of housing for homeless individuals and families. HUD will award up to:

a. *Inclusive Structure and Participation.* Up to 5 points to CoCs that clearly demonstrate that the CoC solicits and considers opinions from individuals and organizations with knowledge of homelessness in the geographic area or an interest in preventing or ending homelessness in the geographic area. Maximum points will be awarded to CoCs that clearly demonstrate the CoC membership includes and has an open invitation process for individuals and organizations located within its geographic area that serve homeless persons, particularly victim service providers and homeless youth providers; and shows that the CoC accepts and considers proposals from

organizations that have not previously received CoC Program funding.

b. *Coordination with the Consolidated Plan, Emergency Solutions Grants (ESG), and Other Organizations.* Up to 4 points to CoCs that identify and coordinate with other organizations and each Consolidated Plan jurisdiction located within its CoC geographic area that serves homeless individuals, families, unaccompanied youth, and persons fleeing domestic violence. To receive maximum points, CoCs must demonstrate coordination with organizations funded by Housing Opportunities for Persons With AIDS (HOPWA), Temporary Assistance for Needy Families (TANF), Runaway and Homeless Youth (RHY), Head Start programs, Child Care (Child Care and Development Fund), home visiting (Maternal, Infant, and Early Childhood Home Visiting, or MIECHV), Healthy Start, and other housing and service programs funded through Federal, State, local, and private processes and CoCs must participate and provide information to help the Consolidated Plan jurisdiction(s) complete their plan(s) which includes how the CoC consults with each Consolidated Plan jurisdiction(s), whether PIT count data is provided for the development or update to the Consolidated Plan, and whether the CoC provides consultation to the ESG recipient(s) to determine the ESG allocation and performance plans, including how to evaluate and improve performance of ESG project activities.

c. *Addressing the Needs of Victims of Domestic Violence.* Up to 3 points to CoCs that demonstrate efforts to address the needs of persons fleeing domestic violence, including their families. Maximum points will be awarded to CoCs that clearly demonstrate how the CoC ensures that persons fleeing domestic violence are offered available safe housing and services available. CoCs will receive full points if the CoC addresses how housing and services are made available to persons fleeing domestic violence from the following programs: the CoC Program, ESG Program, programs funded by the Department of Justice and the Department of Health and Human Services.

d. *Public Housing Agencies.* Up to 3 points to CoCs that demonstrate coordination with the PHAs located in the CoC's geographic area resulting in PHAs that have admission preferences for households experiencing homelessness or can demonstrate that new PHA admissions are households that were experiencing homelessness. Maximum points will be awarded to CoCs that demonstrate coordination with the PHA(s) located in the CoC's geographic area and includes documentation from the PHA (e.g., excerpt from the PHA(s) plan that specifically addresses homeless preferences or a letter from the PHA(s) that addresses homeless preferences) that must be attached to the CoC Application.

e. *Discharge Planning.* 2 points to CoCs that affirm coordination with and assistance in State or local discharge planning efforts to ensure that those discharged are not released directly to the streets, emergency shelters, or other McKinney-Vento Homeless Assistance programs. No points will be awarded if the CoC does not coordinate with or assist in State or local discharge planning efforts.

f. *Centralized or Coordinated Assessment System.* Up to 3 points to CoCs that demonstrate the existence of a centralized or coordinated assessment system and describe how the CoC ensures the following: 1) that its entire geographic area is covered by the system; 2) that the system is accessible to those least likely to access it; 3) that the system prioritized assistance in a standardized non-discriminatory manner to ensure that people who are most in need of assistance receive it in a timely manner. Maximum points will be awarded to CoCs that demonstrate the existence of a centralized or coordinated assessment system that covers the entire CoC geographic area, has a strategy for advertising the program to all eligible persons regardless of race, color, national origin, religion, sex, age, familial status, disability, actual or perceived sexual orientation, gender identity, or marital status who are least likely to apply in the absence of special outreach, and includes a standardized assessment process to prioritize assistance to ensure persons who are most in need of assistance receive it in a timely manner. The CoC must also identify the types of organizations (e.g., local government, law enforcement, CDBG/HOME/ESG entitlement jurisdictions, affordable

housing developers, early childhood programs, education authorities, mental health organizations.) that participate in the phases or activities of the centralized or coordinated assessment system.

g. *Housing First and Reducing Barriers.* Up to 12 points to CoCs that demonstrate at least 75 percent of all housing project applications (i.e., permanent housing, transitional housing, and safe haven) submitted under this NOFA are using the Housing First approach by providing low barrier projects that do not have service participation requirements or preconditions to entry and prioritize rapid placement and stabilization in permanent housing. This means the projects allow entry to program participants regardless of their income, current or past substance use, criminal records–with the exceptions of restrictions imposed by federal, state or local law or ordinance (e.g., restrictions on serving people who are listed on sex offender registries), and history of domestic violence. Maximum points will be awarded to CoCs where both the CoC Application and project application(s) clearly demonstrate that at least 75 percent of the housing project application(s) clearly demonstrate the use of the Housing First approach and commit to operating as low barrier. Any housing project application(s) that indicates a Housing First approach and low barrier and is reviewed, approved, and ranked by the CoC and is awarded FY 2016 CoC Program funds will be required to operate as a Housing First and low barrier project.

h. *Outreach.* Up to 3 points to CoCs that demonstrate recipients have implemented specific strategies that affirmatively further fair housing as detailed in 24 CFR 578.93(c), and ensure that outreach is conducted to homeless individuals and families who are least likely to request housing or services in the absence of special outreach. Maximum points will be awarded to CoCs that provide information that demonstrates that 100 percent of the geographic area is covered by the strategies and that describes the specific outreach procedures in place that are used by the homeless service organizations to identify and engage unsheltered homeless individuals and families, including their efforts to provide effective communication with persons with disabilities and ensure meaningful access to persons with limited English proficiency. Applicants must describe the procedures they will use to market their housing and supportive services to eligible persons regardless of race, color, national origin, religion, sex, age, familial status, or disability who are least likely to apply in the absence of special outreach.

i. *Criminalization.* Up to 2 points to CoCs that implemented specific strategies to prevent criminalization of homelessness within the CoC's geographic area. Maximum points will be awarded to CoCs that indicate specific strategies to ensure homelessness in not criminalized such as engaging or educating local policy makers, engaging or educating law enforcement, implementing community plans, or engaging or educating businesses.

j. *Rapid Rehousing.* Up to 4 points to CoCs that demonstrate an increase, if needed, in the number of rapid rehousing units available as recorded on the 2016 HIC data submitted to HUD. Maximum points will be awarded to CoCs that demonstrate an increase in the number of rapid rehousing units in the CoC geographic area as reported in HDX from 2014, as reported in the FY 2015 CoC Application, to 2016, or that can clearly demonstrate the number of rapid rehousing units in the CoC's geographic area sufficiently meets the needs for this type of housing. If a CoC has sufficient rapid rehousing units to accommodate the need for rapid rehousing in its geographic area, it may receive maximum points by stating it has sufficient rapid rehousing units which will be verified against the information provided through the 2015 Annual Homeless Assessment Report (AHAR).

k. *Mainstream Benefits and Other Assistance.* Up to 2 points to CoCs that demonstrate CoC Program funded projects supplement CoC Program funds with resources from other public and private sources, including mainstream programs that assist homeless program participants in applying for and receiving mainstream benefits. Maximum points will be awarded to CoCs that demonstrate systematically keeping program staff up-to-date regarding mainstream resources available for homeless program participants (e.g., Food Stamps, SSI, TANF, substance abuse programs), collaboration with healthcare organizations to assist homeless program participants with

enrolling in health insurance, and that 75 percent of projects provide assistance with the effective utilization of Medicaid and other benefits. Additionally, the CoC will need to demonstrate that it works with CoC Program-funded projects to assist them in obtaining other types of public and private funding for use in the projects.

2. Project Ranking, Review, and Capacity. HUD will award up to 30 points to CoCs that clearly demonstrate the existence of a coordinated, inclusive, and outcome-oriented community process for the solicitation, objective review, ranking, and selection of CoC Program project applications that includes a GIW that does not require revisions that would have increased the CoC's ARD after HUD issues the final approved GIW to accurately reflect those projects eligible for renewal, and a process by which renewal projects are reviewed for performance and compliance with 24 CFR part 578. HUD will award up to:

a. *Objective Criteria and Past Performance.* Up to 18 points to CoCs for the extent to which they demonstrate the use of established objective criteria used to review project applications requesting CoC Program funding. Out of the available 18 points, up to 10 points will be awarded to CoCs that attach written documentation that clearly demonstrates the CoC uses objective criteria (e.g., project performance, monitoring results) in the review, ranking, and selection process for the FY 2016 CoC Program Competition. Up to 4 points are for demonstrating the consideration of past performance with CoC Program funds (or if a first-time renewal SHP or SPC funds) as evidenced by the review of renewal project APRs or other performance data (e.g., custom-generated HMIS reports). Up to 4 points will be for the extent to which CoCs consider the severity of needs and vulnerabilities experienced by program participants which includes, but is not limited to: low or no income, current or past substance abuse, criminal record–with the exception of restrictions imposed by federal, state, or local law or ordinance–and chronic homelessness in the CoC Program-funded projects as these barriers relate to determining project review, selection, priority, and ranking.

b. *Reallocating Projects.* Up to 4 points to CoCs that demonstrate the ability to reallocate lower performing projects to create new higher performing projects. To receive maximum points, the CoC will need to:

i. demonstrate the CoC actively encourages new and existing providers to apply for new projects through reallocation; or

ii. demonstrate the CoC has cumulatively reallocated at least 20 percent of the CoC's ARD in the FY 2013, FY 2014, and FY 2015 CoC Program Competitions.

To receive maximum points, CoCs may demonstrate in the CoC Process for Reallocation attachment how the reallocation process is communicated throughout the CoC's geographic area and encourage new and existing providers to apply for new projects using the reallocation process. If the CoC chooses to use this second option, reallocating 20 percent of the CoC's ARD in FY 2013, FY 2014, and FY 2015 CoC Program Competitions, HUD will confirm this information by reviewing each year's ARD and the percentage of the ARD submitted under the reallocation process.

c. *Ranking and Selection Process.* Up to 3 points to CoCs that demonstrate the use of a ranking and selection process for project applications that is publicly announced by the CoC, including published written policies and procedures that include maintaining dated meeting minutes for all meetings that pertain to the CoC's local competition process. The CoC will be required to submit written documentation of a rating and ranking/review process for all projects (new and renewal). This may be published written policies and procedures for this CoC Program Competition in the CoC governance charter or a standalone document. Evidence of the rating and ranking/review process decision must be presented via dated meeting minutes, and evidence that the meeting minutes were made available to the CoC's full membership. Additionally, to receive maximum points, the CoC must post on its website all parts of the CoC Consolidated Application, including

the Priority Listing with all project applications accepted and ranked or rejected and all attachments that will be submitted to HUD, a minimum of 2 days before the application submission deadline and notify community members and key stakeholders that the application and priority listings are available. CoCs that do not have a website must post this information to a partner website within the CoC (e.g., county/city website). In the event that HUD is notified and confirms that a CoC did not notify project applicants who submitted their project applications to the CoC by the required deadline whether their project application(s) were accepted or rejected in writing, outside of *e-snaps* and including the reasons for the rejection–no later than 15 days before the application deadline, the CoC will automatically receive 0 points for this selection criteria. If a project applicant appeals the decision by the CoC to reject its project application(s) because it believes it was denied the right to participate in the local CoC planning process in a reasonable manner, HUD will follow the process outlined in 24 CFR 578.35(b) and Section X of this NOFA. This could result in HUD electing to fund the appealed project by de-funding or cutting other project(s), including renewal projects, within the CoC.

d. *Recipient Performance Monitoring.* Up to 4 points to CoCs that demonstrate they monitor the project performance of grants and capacity of recipients whose renewal grants are included on the Project Listing in the CoC's FY 2016 CoC Application. To receive maximum points, the CoC must have monitored the renewing project applicants and projects for utilization rates, increasing housing stability, participant eligibility, length of time homeless, destination upon program exit, increasing participant income, and connecting program participants to mainstream benefits. The CoC must describe the criteria and processes it uses for monitoring recipients, including how the CoC assesses project capacity to implement CoC Program requirements (e.g., timely submission of APRs, timely draws from LOCCS.) in order to successfully carry out the requirements of the Act, 24 CFR part 578, and local CoC priorities.

3. Homeless Management Information System. HUD will award up to 18 points to CoCs that clearly demonstrate the existence of a functioning HMIS that facilitates the collection of information on homelessness using residential and other homeless services and stores that data in an electronic format. HUD will award:

a. *HMIS Governance.* Up to 2 points to CoCs that have in place a governance charter that addresses the policies and procedures necessary to meet the HMIS requirements established by HUD. These policies may be incorporated directly into the governance charter or prepared in a separate document and incorporated by reference into the governance charter. To receive maximum points, the CoC and the HMIS Lead must also have a formal written agreement, a memorandum of understanding or a memorandum of agreement that clearly defines the roles and responsibilities of the CoC and HMIS Lead. A copy of the sections of the governance charter addressing the HMIS policies and procedures (or the document incorporated by reference) and the agreement or memorandum must be attached to the CoC Application in *e-snaps.*

b. *HMIS Policy and Procedures.* 3 points to CoCs that adopt and follow an HMIS Policy and Procedures Manual that includes signed agreements that specify the roles and responsibilities of the HMIS Lead and the Contributing HMIS Organizations (CHOs). A copy of the HMIS Policy and Procedures must be attached to the CoC Application in *e-snaps.*

c. *Housing Inventory Count (HIC).* 1 point to CoCs that submitted the 2016 HIC data in the HDX by the May 2, 2016 submission deadline. If a CoC did not submit the 2016 HIC by May 2, 2016, the CoC will receive 0 points.

d. *Bed Coverage.* Up to 4 4 points to CoCs that recorded 86 percent or higher for the bed coverage rate in the CoC's geographic area. CoCs will be assessed on the bed coverage rate for each housing type within the CoC that includes: emergency shelter, safe haven, transitional housing, rapid rehousing, permanent supportive housing, and other permanent housing beds that are dedicated to

serving homeless persons (e.g., Veterans Affairs programs, HOPWA). The bed coverage rate is the number of HMIS participating beds divided by the number of year-round beds dedicated to homeless persons in the geographic area covered by the CoC. Beds funded by victim service providers must not be included in this calculation. Further, if the bed coverage rate is 0-85 percent, the CoC must provide clear steps on how it intends to increase this percentage over the next 12 months to receive partial credit.

e. *Data Quality.* Up to 4 points to CoCs that report the number of unduplicated client records with null or missing values for the Universal Data Elements on a single day, as selected by the CoC, within the last 10 days of January 2016. Maximum points will be awarded to CoCs that have below 10 percent null or missing values and below10 percent of refused or unknown values for the Universal Data Elements as recorded in the HMIS based on the number of unduplicated client records based on a single day, selected by the CoC, within the last 10 days of January 2016; demonstrate that HMIS data is reviewed at least quarterly, and provides standardized HMIS data quality reports for the CoC and CHOs.

f. *Required HMIS Reports.* Up to 4 points to CoCs that demonstrates it is able to generate HUD required reports (e.g., CoC Annual Performance Report, ESG Consolidated Annual Performance and Evaluation Report (CAPER)) as well as the HIC and Annual Performance Assessment Report (AHAR). HUD will award 2 of the 4 points to CoCs that demonstrate all tables submitted to HUD were accepted and used in the last AHAR.

4. **Point-in-Time Count.** HUD will award up to 9 points to CoCs related to the collection, use, and submission of data from the last PIT count (2016 or 2015). The last required PIT count year was 2015; however, many CoCs conducted a 2016 PIT count, and the 2016 PIT count data should be used for this requirement. HUD will award:

a. *PIT Count and Data Submission.* Up to 3 points to CoCs that conducted a PIT count and reported the data in HDX. Maximum points will be awarded to CoCs that:

(1) conducted a sheltered and unsheltered PIT count during the last 10 days in January 2016 (or January 2015), or if an exception was requested and provided to HUD during the time period agreed upon by the CoC and HUD; and,

(2) submitted the PIT data for 2016 in HDX by May 2, 2016 or submitted the PIT data for 2015 in HDX by May 15, 2015.

b. *Methodology for Sheltered PIT Count.* Up to 2 points to CoCs for the CoC's ability to collect and report data on sheltered homeless during the 2016 (or 2015) PIT count that includes the methods used to ensure an accurate count of homeless individuals and families, including subpopulation information, and the processes in place to ensure data quality and whether there were any changes to the methodology used from the 2015 sheltered count.

c. *Methodology for Unsheltered PIT Count.* Up to 2 points to CoCs for its ability to collect and report thorough, accurate, and quality data on unsheltered homelessness to ensure data quality, reducing the occurrence of counting unsheltered homeless more than once during a 2016 (or 2015) PIT count, and whether there were any changes from the previous unsheltered count (2014 or 2015).

d. *Conducting an Effective Youth Count in 2016.* Up to 2 points to CoCs that took extra measures to identify youth in their PIT count. To receive maximum points, CoCs must demonstrate that in they undertook specific activities, including meeting with youth experiencing homelessness and organizations that serve youth, to get a better count of unsheltered youth.

5. System Performance. HUD will award up to 40 points based on CoC system-wide performance related to reducing homelessness within the CoC's defined geographic area as reported to HUD via HDX. HUD will award:

a. *Reducing the Number of Homeless Individuals and Families.* Up to 7 points to CoCs that demonstrate an overall reduction in the number of individuals and families who experience homelessness. The information provided for both sheltered and unsheltered homeless based on the criteria below will be verified against the information submitted to the HDX. To receive maximum points:

(1) the CoC will receive up to 2 of the 7 points for demonstrating a decrease in the number of sheltered homeless individuals and families in the 2016 PIT count compared to the 2015 PIT count and for FY 2015 (October 1, 2014 through September 30, 2015) compared to FY 2014 (October 1, 2013 through September 30, 2014) as recorded in HDX; and,

(2) the CoC will up to 5 of the 7 points for demonstrating a decrease in the number of unsheltered homeless individuals and families in the 2016 PIT count (or the 2015 PIT count if one was conducted in 2016) compared to the previous PIT count as recorded in HDX.

b. *Reduction in the Number of First Time Homeless.* Up to 2 points for a CoC that demonstrates how it is working to reduce the number of individuals and families who become homeless for the first time. Maximum points will be awarded to CoCs that identify the process by which risk factors are identified in its community for becoming homeless for the first time and clearly describe the strategies and partnerships in place to address individuals and families at risk of becoming homeless.

c. *Length of Time Homeless.* Up to 7 points to CoCs that provide information to HUD on the length of time individuals and families remain homeless and specifically describe how the length of time individuals and families remain homeless has been reduced in the CoC's geographic area and the ongoing efforts that the CoC will carry out to continue to reduce the length of time individuals and families remain homeless. To receive maximum points, a CoC must provide a narrative that describes specific efforts currently used to track and record the length of time individuals and families have remained homeless and the planning process to reduce the length of time individuals and families remain homeless. The narrative must indicate how data from CoC- and ESG-funded projects are considered, particularly in relation to the identification of and provision of housing for individuals and families with the longest length of time homeless.

d. *Successful Permanent Housing Placement or Retention.* Up to 7 points to CoCs based on the extent to which projects exit program participants into permanent housing (subsidized or non-subsidized) or the retention of program participants in CoC Program-funded permanent supportive housing. To receive maximum points, a CoC must demonstrate that 80 percent of persons who exit transitional housing and rapid re-housing projects exit to a permanent housing destination and that 80 percent of people in CoC program-funded permanent supportive housing remain for at least 12 months.

e. *Returns to Homelessness.* Up to 4 points to CoCs that provide information to HUD on the extent to which individuals and families leaving homelessness experience additional spells of homelessness and specifically describe how the number of individuals and families who return to homelessness will be reduced in the community. In order to receive maximum points, CoCs will be assessed on the strategies that have been implemented to identify individuals and families who return to homelessness and the strategies that will reduce the number of additional returns to homeless. Additionally, CoCs must demonstrate the use of HMIS, or a comparable database, within the CoC to monitor and record returns to homelessness by program participants who exit rapid re-housing, transitional housing, and permanent supportive housing.

f. *Jobs and Income Growth.* Up to 4 points to CoCs that demonstrate specific strategies in place to assist its CoC Program-funded projects that increase program participants' incomes from employment and non-employment sources and whose CoC-funded projects have increased program

participants' income from employment and non-employment sources. To receive maximum points, CoCs must describe the strategies that have been implemented to access employment and mainstream benefits, how CoC Program-funded projects have been assisted to implement the strategies, and the CoC Program-funded projects' success at increasing program participant income from employment and mainstream benefits.

For project applicants that plan to use funding for construction and/or rehabilitation, in order for the CoC to receive the maximum points, the CoC must include information that describes the actions that will be taken by project applicants that receive CoC funding to comply with section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) (Section 3) and HUD's implementing rules at 24 CFR part 135 to provide employment and training opportunities for low- and very low-income persons, as well as contracting and other economic opportunities for businesses that provide economic opportunities to low- and very low-income persons. This does not affect the applicants' existing responsibilities to provide training, employment, and other economic opportunities pursuant to Section 3 that result from their receipt of other HUD funding.

g. *System Performance Measures.* Up to 10 points for CoCs that attach a report generated from HDX that provides information for each of the required system performance measures as found in the System Performance Measures Introductory Guide:

i. length of time persons remain homeless;

ii. extent to which persons who exit homelessness to permanent housing destinations return to homelessness within 6 months and between 6 and 12 months;

iii. extent to which persons who exit homelessness to permanent housing destinations return to homelessness within 2 years;

iv. number of homeless persons;

v. employment and income growth for homeless persons in CoC Program-funded projects;

vi. number of persons who become homeless for the first time;

vii. homelessness prevention and housing placement of persons defined by Category 3 of HUD's homeless definition in CoC Program-funded projects;

viii. preventing returns to homelessness within 6 and 12 months among the subset of families and youth;

ix. preventing returns to homelessness within 24 months among this subset of families and youth;

x. successful housing placement among the subset of families and youth;

xi. successful placement from street outreach measure; and,

xii. successful placement in or retention of permanent housing.

6. **Performance and Strategic Planning.** HUD will award up to 60 points based on the CoC's plan for and progress towards reducing homelessness within its geographic area and decreasing the number of recurrences of homelessness.

As found in section 427(b)(1)(A) of the Act, CoCs will be evaluated on performance related to reducing homelessness, including performance for projects funded through the ESG program in the geographic area. Section 427(b)(1)(B) of the Act outlines required selection criteria regarding the CoC's plan to meet specific goals. HUD will award a minimum of 30 out of the 60 points available in this section to CoCs with projects that have been impacted by a major disaster, as declared under Title IV of the Robert T. Stafford Act that occurred in the 12 months prior to the publication of this NOFA. Those CoCs in impacted areas must notify HUD in writing prior to the close of this FY 2016 CoC Program

Competition. Send written notification to Norm Suchar, Director, Office of Special Needs Assistance Programs, at CoCDisaster@hud.gov.

a. *Ending Chronic Homelessness.* HUD will award up to 15 points to CoCs for demonstrating the extent to which they are ending chronic homelessness by 2017. CoCs will be evaluated based on the extent to which they are making progress to achieve this goal within the specified time frame. HUD will award points for each of the following:

(1) 3 points will be awarded to CoCs that have adopted the order of priority in *Notice CPD 14-012: Prioritizing Persons Experiencing Chronic Homelessness in Permanent Supportive Housing and Recordkeeping Requirements for Documenting Chronic Homeless Status* as evidenced in the CoC's written standards.

(2) Up to 10 points to CoCs that increase the total number of PSH beds (from any funding source) dedicated to ending chronic homelessness. Maximum points will be awarded to CoCs that demonstrate an increase in dedicated permanent supportive housing beds from 2015 to 2016 and where at least 85 percent of the beds included in 2016 permanent housing project applications submitted for FY 2016 funding are dedicated for use by chronically homeless individuals and families. No points will be awarded to a CoC where permanent housing project application(s) reflect a decrease in the number of permanent housing beds dedicated for chronically homeless individuals and families between the FY 2015 project applications awarded funds and the FY 2016 project applications submitted for funding consideration.

(3) Up to 2 points to CoCs for reducing the number of chronically homeless individuals and families in the CoC, as reported by the CoC in the 2016 PIT count compared to the 2015 PIT count (or the 2015 PIT count if an unsheltered count was not conducted in 2016). Maximum points will be awarded to CoCs that are able to demonstrate a decrease in both the total number of chronically homeless individuals and families as well as a decrease in the total unsheltered chronic homeless population. CoCs must explain any increase or no change to the number of chronically homeless individuals and families in the CoC.

b. *Ending Homelessness Among Households with Children.* HUD will award up to 15 points to CoCs based on the extent to which they will end homelessness among households with children by 2020. CoCs will be evaluated based on the extent to which they are making progress to achieve this goal within the specified time frame. HUD will award:

(1) Up to 3 points to CoCs that prioritize households with children based on need, including factors such as: vulnerability to victimization, number of previous homeless episodes, unsheltered homeless, criminal history, bad credit or rental history.

(2) Up to 3 points to CoCs based on the local plan to rapidly re-house households with children within 30 days of those families becoming homeless.

(3) Up to 5 points to CoCs for the implementation of a rapid rehousing model that will reduce the number of homeless households with children and demonstrated an increase in the number of rapid rehousing units available to serve families based on the rapid rehousing units reported in the 2015 HIC when compared to the 2016 HIC.

(4) Up to 2 points to CoCs for ensuring emergency shelters, transitional housing, and permanent housing–permanent supportive housing and rapid rehousing projects within the CoC do not deny admission to or separate family members when they enter shelter or housing.

(5) Up to 2 points to CoCs that demonstrate the total number of homeless households with children and youth, as reported in the 2016 PIT count compared to 2015 has decreased. CoCs must explain any increase or no change to the number of homeless households with children and youth in the CoC.

c. *Ending Youth Homelessness.* HUD will award up to 15 points to CoCs based on the extent to which it is making progress towards ending homelessness among unaccompanied youth by 2020. HUD will award:

(1) Up to 5 points to CoCs for strategies that address the unique needs of unaccompanied homeless youth and the existence of a proven strategy that addresses homeless youth trafficking and other forms of exploitation.

(2) Up to 5 points to CoCs that demonstrate an increase, as recorded in the HMIS data field "residence prior to entry" from October 1, 2014 through September 30, 2015, in the number of unaccompanied homeless youth (up to age 24) served who were residing on the streets or in places not meant for human habitation prior to entering a homeless project.

(3) Up to 3 points to CoCs that demonstrate a proposed plan to increase funding for unaccompanied youth homeless programs in Calendar Year 2017.

(4) Up to 1 point to CoCs that specifically describe how it collaborates with local education authorities and school districts in the geographic area to assist in the identification of individuals and families who become or remain homeless and are informed of the eligibility of services under subtitle B of title VII of the Act (42 U.S.C. 11432, *et seq.*). This includes demonstrating that the CoC has established policies that require homeless providers, funded by both the CoC and ESG programs, to ensure all children are enrolled in early childhood programs or in school and connected to appropriate services in the community.

(5) Up to 1 point to CoCs that demonstrate the extent to which youth service and education representatives and CoC representatives have participated in each other's meetings over the past 12 months. Additionally, the CoC will describe how the CoC collaborates with the McKinney-Vento local education liaisons and State education coordinators.

d. *Ending Veteran Homelessness.* HUD will award up to 15 points to CoCs for the extent to which it is has made progress towards ending veteran homelessness by the end of calendar year 2016. HUD will award:

(1) Up to 8 points to CoCs that demonstrate the total number of homeless veterans in the CoC, as reported in the 2016 PIT count compared to 2015, has decreased. CoCs must explain any increase or no change to the number of homeless veterans in the CoC.

(2) Up to 4 points to CoCs that demonstrate a 75 percent reduction in the total number of homeless veterans and unsheltered homeless veterans, as reported in the 2015 PIT count, compared to 2010 (or 2009 if an unsheltered count was not conducted in 2010).

(3) Up to 3 points to CoCs that demonstrate they identify, assesses, and refers homeless veterans who are eligible for Veterans Affairs services and housing to appropriate resources such as HUD-VASH and SSVF.

7. **CoCs That Have Claimed the Same Geographic Area (Competing CoCs).** There are no CoCs that claimed the same geographic area as determined by the FY 2016 CoC Program Registration process; therefore, there are no competing CoCs.

VIII. Project Review and Selection Process

Award Notices. Following the evaluation process HUD will notify successful applicants of their selection for funding. HUD will also notify all other applicants, whose applications were received by the deadline, that have not been chosen for award. Notifications will be sent by email, delivery receipt requested, to the person designated in item 8F of the SF424 and to the person listed as authorized representative in item 21 of the SF424.

A. Review, Rating, and Ranking. Two types of reviews will be conducted–selection criteria rating for the overall CoC Application and threshold review for project applicants and project applications. For new projects, the review process will consider applicant and sponsor eligibility and capacity, project eligibility, and project quality as part of the threshold review. The renewal project threshold review will consider applicant and sponsor capacity and eligibility. The renewal project threshold reviews are explained in Section V.G.2.d of this NOFA, which covers eligible applicants and projects.

HUD may employ rating panels to review and rate all or part of the CoC Applications according to the rating criteria in Section VII. of this NOFA. See the General Section of HUD's FY 2015 NOFA for more information on rating panels.

1. *Threshold Review.* Applicant and subrecipient eligibility, capacity, and quality. HUD will review project applications to determine whether applicants and subrecipients meet the eligibility and capacity thresholds, and whether the projects meet the eligibility and project quality thresholds detailed in Section V.G.2.b and V.G.2.c of this NOFA. If HUD determines these standards are not met, the project will be rejected from the competition. If a new project receives sufficient points to pass the project quality threshold review described in Sections V.G.2.c.(1),(2), (3) (4), or (5) of this NOFA, as applicable, but does not meet one or more of the criteria within the rating factors, then HUD may place conditions on the grant award and the applicant must demonstrate that the criteria will be met before HUD will execute a grant agreement with the applicant for the project. If an applicant is unable to demonstrate that the project quality threshold criteria are met within the time frame specified by HUD, HUD reserves the right to withdraw the conditionally awarded funds.

2. *Conditional Selection and Adjustments to Funding.* HUD will conditionally select project applications for funding using the following process:

a. HUD will conditionally select a renewal grant that exceeds $10 million that was originally awarded pursuant to the matter under the heading "Department of Housing and Urban Development – Permanent Supportive Housing" in chapter 6 of title III of the Supplemental Appropriations Act, 2008 (Public Law 110-252; 122 Stat. 2351).

b. CoC planning projects. HUD will conditionally select all CoC planning projects that pass eligibility and threshold review.

c. UFA Costs projects. HUD will conditionally select all UFA Costs projects submitted.

d. Projects Fully in Tier 1. HUD will conditionally select projects that are fully within Tier 1 that pass eligibility and threshold, based on CoC score, beginning with the highest scoring CoC to the lowest scoring CoC. As stated in Section II.B.16. of this NOFA, if the available funding under this NOFA is reduced, a reduction will be made to all CoC's Tier 1 amount proportionately which would result in lower ranked Tier 1 projects falling into Tier 2.

e. Projects in Tier 2. HUD will conditionally select projects that pass eligibility and threshold review in Tier 2 using the criteria in Section II.B.17. of this NOFA. HUD will select projects in order of point value until there are no more funds available. In the case of a tie, HUD will fund the projects in the order of CoC application score. In case there is still a tie, HUD will select the project from the CoC that has the highest score on the rating factors described in Section VIII.A.2.e.

B. Adjustments to Funding. HUD may adjust the selection of competitive projects as follows:

1. The FMRs used in calculating award amounts will be those in effect at the time of the application submission deadline. Because the application is due prior to the publication of the final FY 2017 FMRs, the FY 2016 FMRs will be used.

2. *Geographic Diversity.* HUD has determined that geographic diversity is an appropriate consideration in selecting homeless assistance projects in the competition. HUD believes that geographic diversity can be achieved best by awarding grants to as many CoCs as possible. To this end, in instances where any of

the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Northern Mariana Islands, the Virgin Islands, and American Samoa do not have at least one funded CoC, HUD reserves the right to fund eligible project(s) with the highest total score in the CoC.

3. *Funding Diversity.* HUD reserves the right to reduce the amount of a grant, if necessary, to ensure that no more than 10 percent of assistance made available under this NOFA will be awarded for projects located within any one unit of general local government or within the geographic area covered by any one CoC.

4. If HUD exercises a right it has reserved under this NOFA, that right will be exercised uniformly across all applications received in response to this NOFA.

5. *Tie-breaking Rules.* In the case of a tie, HUD will fund the projects in the order of CoC application score. In case there is still a tie, HUD will select the project from the CoC that has the highest score on the rating factors described in Section VIII.A.2.e.

C. **Corrections to Deficient Applications.** HUD will exercise the authority for curing deficiencies as provided in the Section VI.C.2 of HUD's FY 2016 General Section NOFA, if needed, on a consistent and uniform basis for all CoCs and applicants. Correction of technical deficiencies must be received by HUD within 7 calendar days after notification is received by the applicant from HUD via email or fax. The start of the cure period will be the date stamp on the email HUD sends to the authorized representative as noted in the Project Applicant Profile in *e-snaps*; therefore, it is critical that the project applicant's authorized representative's information is accurate. Additionally, HUD reserves the right to respond to unanticipated system defects, ambiguities, and technical difficulties in application submissions in *e-snaps* through a flexible implementation of its authority to cure application deficiencies through written inquires seeking clarification and additional information (also known as callbacks). Upon proper publication in the *Federal Register*, HUD reserves the right to extend the competition deadline for good cause.

IX. Award Administration Information

A. Award Notices

1. Action on Conditionally Selected Application. HUD will notify conditionally selected applicants in writing. HUD may subsequently request conditionally selected applicants to submit additional project information–which may include documentation to show the project is financially feasible; documentation of firm commitments for match; documentation showing site control; information necessary for HUD to perform an environmental review, where HUD determines to do so in accordance with 24 CFR 58.11(d); a copy of the organization's Code of Conduct; and such other documentation as specified by HUD in writing–to the application, that confirms or clarifies information provided in the application. HUD will require the submission of the additional project information no later than 30 days after the date of the letter for such information, except as otherwise provided in 24 CFR 578.21(c). If an applicant is unable to meet any conditions for fund award within the specified time frame, HUD reserves the right not to award funds to the applicant and add those funds to the funds available for the next competition.

2. Applicant Debriefing. See the General Section of HUD's FY 2016 NOFA for applicant debriefing procedures.

3. Appeals Process. Applicants may appeal funding decisions only as provided in 24 CFR 578.35. See Section X of this NOFA regarding the CoC Program specific process for appeals.

B. Administrative and National Policy Requirements.

1. Administrative and Other Program Requirements

Federal agencies are required to measure the performance of their programs. HUD captures this

information not only from monitoring visits and APRs, but also on the data gathered in annual competitions. HUD's homeless assistance programs are being measured in FY 2016 by the objective to "end chronic homelessness and to move the homeless to permanent housing," measures based on system performance, and the ability of CoCs that have the capacity to reallocate funding from lower performing projects to higher performing projects.

2. Timeliness Standards. The FY 2016 HUD Appropriations Act requires HUD to obligate FY 2016 CoC Program funds by September 30, 2018. Obligated funds remain available for expenditure until September 30, 2023. However, HUD reserves the right to require an earlier expenditure deadline under a grant agreement. The applicant is expected to initiate the approved projects promptly in accordance with the requirements of this section of this NOFA. Grant terms, and associated grant operations, may not extend beyond the availability of funds. Applicants must plan accordingly and only submit applications that can start operations in a timely manner with sufficient time to complete the post award process within the awarded grant term. In addition, HUD will take action if the grantee fails to satisfy the timeliness standards found in 24 CFR 578.85.

3. Reporting

a. In accordance with program regulations at 24 CFR 578.103, applicants must maintain records and within the time frame required, make any reports, including those pertaining to race, ethnicity, gender, and disability status that HUD may require. CoC applicants may report this data as part of their APR submission to HUD. Also, recipients who expend $750,000 or more in 1 year in Federal awards are reminded they must have a single or program-specific audit for that year in accordance with the provisions of 2 CFR part 200, subpart F.

b. Section *3* Reporting Regulations. Pursuant to 24 CFR 135.3(a)(2), the Section 3 requirements apply to housing and community development assistance that is used for housing rehabilitation, housing construction and other public constructions. Recipients of CoC Program funds must submit Form HUD-60002 to the Office of Fair Housing and Equal Opportunity (FHEO) at the time they submit their APR to the Office of Special Needs Assistance Programs. This form can be completed electronically at www.hud.gov/section3.

c. Award notices may also include requirements for sub-award reporting in compliance with the requirements of the Federal Financial Assistance Accountability and Transparency Act of 2006 (Pub. L. 109-282) (FFATA) and Section 872 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (Pub. L. 110-417), referred to as "Section 872." See the General Section for further information.

X. Appeals

Debriefing. For a period of at least 120 days, beginning 30 days after the awards for a Program NOFA are publicly announced, HUD will provide to a requesting applicant a debriefing related to its application. A request for debriefing must be made in writing or by email by the authorized official whose signature appears on the SF424 or by his or her successor in office, and be submitted to the person, organization, or email address identified as the contact under the section entitled Agency Contact(s) in the Program NOFA. Information provided during a debriefing may include the final score the applicant received for each rating factor, final evaluator comments for each rating factor, and the final assessment indicating the basis upon which assistance was provided or denied.

A. Description. The process for appeal options are found at 24 CFR 578.35. Sections 578.35(b)(3), (b)(4), (c)(1), and (d)(2) authorize HUD to establish requirements for the form and manner of submissions for appeals by Solo Applicants, applicants with denied or decreased funding, and from competing CoCs. For HUD to consider an appeal under 24 CFR 578.35(b) or (c), the applicant must follow the applicable process set forth in this NOFA. In addition, this NOFA provides guidance to CoCs and applicants regarding appeals of a jurisdiction's refusal to sign the Consolidated Plan certification for a project under 24 CFR 578.35(c).

Additionally, HUD is clarifying the impact that Solo Applicant appeals will have on HUD signing grant agreements for FY 2016 funds awarded under this NOFA. If HUD receives one or more Solo Applicant appeals from a CoC for FY 2016 funds, then HUD will determine the amount of funding that the Solo Applicant(s) have requested; and HUD, will delay signing grant agreements for the awarded project(s) listed at the bottom of the CoC's Priority Listing that have requested funding for FY 2016 equal to double the amount requested by the Solo Applicant(s). Refer to the Solo Applicant appeal process set forth in this NOFA for additional information about the Solo Application appeal process.

Finally, for the purposes of the appeals identified in this NOFA where 24 CFR 578.35 requires that all evidence be sent to the CoC and that the CoC respond to evidence, this means that correspondence to the CoC should be addressed to the CoC-designated Collaborative Applicant and all correspondence to HUD from the CoC should be addressed from the CoC's designated Collaborative Applicant. If the CoC has authorized another entity other than the Collaborative Applicant to respond to the appeals identified in this NOFA on its behalf, it should notify HUD by sending an email to snapsappeals@hud.gov.

B. Types of Appeals. Provision at 24 CFR part 578 set forth the following types of appeals:

1. Solo Applicants. A process for eligible project applicants that attempted to participate in their CoC planning process and believe they were denied the right to participate in a reasonable manner.

2. Denied or Decreased Funding. A process for eligible applicants that are denied funds by HUD, or that requested more funds than HUD awarded to them.

3. Consolidated Plan Certification. A process for eligible applicants whose jurisdiction refused to provide a Certification of Consistency with the Consolidated Plan (form HUD-2990).

4. Competing CoCs. A process when more than one CoC claims the same geographic area for eligible applicants of lower scoring CoCs, to appeal to HUD's decision to fund the competing CoC. There were no competing CoCs for FY 2016 funds; therefore, this NOFA does not address the process for appealing HUD's decision to award funds to the competing CoC.

C. Solo Applicant. Project. Project applicants that attempted to participate in the CoC planning process for FY 2016 funds in the geographic area in which they operate, that believe they were denied the right to participate in a reasonable manner may appeal the CoC decision not to include their project application in the CoC Priority Listing for FY 2016 funds. In order to appeal, the project applicant must have submitted a Solo Application for funding to HUD, in *e-snaps* by the application submission deadline of September 14, 2016 by 7:59:59 p.m. eastern time.

The appeals process for FY 2016 funds is as follows:

1. Written Notice of Intent to Appeal. With the FY 2016 project application that is submitted through *e-snaps* by the application deadline, the project applicant must also submit a written notice of intent to appeal. At the time the application and notice of intent to appeal are submitted to HUD through *e-snaps*, the project applicant must also provide a copy of the notice of intent to appeal to the CoC. The copy should be addressed to the authorized representative from the CoC's designated Collaborative Applicant. Additionally, HUD encourages the project applicant to share a copy of the notice of intent to appeal to the chair of the CoC Board or the Chair of another CoC leadership committee. Once the project applicant submits an appeal, the project applicant is thereafter known as a Solo Applicant.

2. Evidence Supporting Appeal. Between September 14, 2016 at 7:59:59 p.m. eastern time and

October 14, 2016 at 7:59:59 p.m. eastern time, the Solo Applicant must submit any evidence indicating that the CoC did not allow the Solo Applicant to participate in the CoC planning process in a reasonable manner to HUD by email to snapsappeals@hud.gov. Solo Applicants must submit all evidence by email, from the Solo Applicant's organization's email address, on the Solo Applicant's letterhead to HUD and to the authorized representative from the CoC's designated Collaborative Applicant. Additionally, HUD encourages the project applicant to share a copy of the notice of intent to appeal to the chair of the CoC Board or the Chair of another CoC leadership committee.

HUD will only consider one submission from the Solo Applicant. If HUD receives more than one submission from any Solo Applicant, HUD will only consider the first submission it receives and will not review any subsequent submissions; therefore, it is important that the Solo Applicant include all relevant evidence that it intends HUD to consider in its initial submission.

The Solo Applicant should include all evidence that it believes supports its claim that it was not allowed to participate in the CoC planning process in a reasonable manner; however, at a minimum, the evidence submitted to support the appeal request should include the following information:

a. the notification process used by the CoC to provide public notification of all planning meetings;

b. the invitation process used by the CoC to invite new members to join the CoC;

c. the number of CoC planning meetings the Solo Applicant attended between October 1, 2015 and August 31, 2016;

d. the role the Solo Applicant played as a member of its local CoC;

e. the portion of the CoC's governance charter containing the collaborative process used to develop and approve the submission of applications for the FY 2016 CoC Program Competition; and,

f. the selection process used to rate and rank project applications for FY 2016 funds in this NOFA.

In the information submitted to HUD, the Solo Applicant must include documentation that identifies the person to whom within the CoC the evidence was sent and the date on which it was sent.

3. CoC Response. No later than 30 days after the date the CoC receives the evidence from the solo applicant, the CoC must send a response to HUD with a copy to the solo applicant. The CoC must submit its written response by email, from the organization's email address on the organization's letterhead and signed by the authorized representative. If HUD receives more than one written response, HUD will only consider the first response it receives and will not considered any subsequent responses.

The response must include information and documentation that addresses each of the solo applicant's claims that the Solo Applicant was denied the right to participate in the CoC planning process in a reasonable manner. In the information submitted to HUD, the CoC must include documentation that the response was sent to the Solo Applicant and the date on which it was sent.

4. HUD Decision and Notification of Decision. HUD will review the evidence submitted by the Solo Applicant and the written response from the Collaborative Applicant to determine whether the Solo Applicant was permitted to participate in the CoC's planning process in a reasonable manner.

a. If the CoC fails to submit a written response, then HUD will consider the evidence submitted by the Solo Applicant to make its decision. HUD will also consider whether the Solo Applicant complied with 24 CFR 578.35 and with the requirements established in and guidance provided in this NOFA.

b. If HUD finds that the Solo Applicant was permitted to participate in the CoC's planning process in a reasonable manner, then the Solo Applicant will not receive funding for its project application.

c. If HUD finds that the Solo Applicant was not permitted to participate in the CoC's planning process in a reasonable manner, then HUD will review the project application to determine whether it meets the quality and eligibility thresholds set forth in the CoC Program NOFA. If the project

meets all quality and eligibility thresholds, then the Solo Applicant will receive funding directly from HUD, for the project. However, because a CoC is prohibited from receiving more total funding than was awarded in the CoC Program Competition, HUD will reduce or eliminate funding for the awarded project(s) listed at the bottom of the CoC's Priority Listing for FY 2016 funds until the CoC's total FY 2016 award amount, including the solo applicant's project, is within the total amount awarded originally approved by HUD.

d. HUD will provide written notification, by email, of its decision to the authorized representative from the CoC's designated Collaborative Applicant and the Solo Applicant within 60 days of the date of the receipt of the Collaborative Applicant's response. Where the CoC failed to submit a response, HUD will provide written notification within 90 days of its receipt of the evidence submitted by the Solo Applicant. The CoC's designated Collaborative Applicant should share HUD's written notification with the CoC and the CoC Board or other relevant CoC leadership committee or workgroup. If HUD determines that the Solo Applicant will receive funding, then HUD will consider the project application for funding in the FY 2016 CoC Program Competition in accordance with the review standards set forth in this NOFA. HUD will also provide the list of project(s) whose funding will be reduced or eliminated to accommodate the Solo Applicant's project in the notification sent to the CoC.

D. Denied or Decreased Funding. Eligible applicants, including project applicants and Collaborative Applicants, that submitted an application to HUD in response to this NOFA, that were either not awarded funds by HUD, or that requested more funds than HUD awarded, may appeal HUD's decision. Only those applicants with projects that were ranked within the CoC's maximum amount available will be considered for funding or additional funding.

To appeal HUD's decision, the applicant must submit a written appeal to HUD, with a copy to the authorized representative from the CoC's designated Collaborative Applicant. The written appeal must include evidence demonstrating HUD error and follow the instructions in this section.

Note: HUD may correct any funding errors that it identifies, per Section V.D.5. of the Notice of FY 2016 Policy Requirements and General Section to HUD's FY 2016 NOFAs for Discretionary Programs (General Section), outside of the process outlined below for denied or decreased funding. This includes any technical errors to a CoC's score that may have impacted the funding of its projects.

The applicant must submit its written appeal by email to snapsappeals@hud.gov, from the organization's email address on the organization's letterhead and signed by the authorized representative. The appeal process is as follows:

1. Denied Funding. To appeal HUD's decision, the applicant must submit a written appeal to HUD using the process outlined in Section X.F. of this NOFA within 45 days of the date of the announcement of the conditional awards from HUD, with a copy to the authorized representative from the CoC's designated Collaborative Applicant.

a. Projects, including projects for CoC planning funds and Unified Funding Agency (UFA) costs, could have been rejected by HUD because:

(1) the individual project application failed to meet eligibility and quality thresholds set forth in this NOFA;

(2) the individual project application met eligibility and quality thresholds set forth in this NOFA, but was ranked in a position where a portion of the grant funds were outside the CoC's maximum award amount, and after HUD reduced its funding to fit within the CoC's maximum award amount, HUD determined that the project was no longer feasible; or,

(3) HUD did not have sufficient funding to fund all eligible projects ranked within the CoC's maximum award amount.

b. For applicants that were fully denied funding for a grant, the applicant must provide evidence that demonstrates HUD error in not awarding the grant. Documentation submitted by the applicant must include:

(1) documentation that the project was ranked within the maximum award amount available to the CoC;

(2) evidence from the project application supporting the applicant's claim that the project application met eligibility and quality thresholds set forth in this NOFA; and,

(3) evidence that the applicant believes HUD failed to follow its selection priorities set forth in this NOFA which resulted in the project not being funded (e.g., selecting a lower-scored project within the CoC or a similar project from another CoC).

c. For applicants that were denied funding due to the individual project's funding being decreased to such a level that the project was no longer feasible, documentation submitted by the applicant must include the evidence in the Executive Summary, J. Local Competition Deadlines of this NOFA as well as evidence for decreased funding in Section X.D.2. of this NOFA.

d. For CoCs that were denied funding due to the score of the CoC Application or the score of the project application not being high enough to result in the funding of project(s) within the CoC, and the lower score for one or both application types was the result of HUD error, the CoC may appeal the CoC or project application score and request funding for affected projects. Documentation submitted by the Collaborative Applicant on behalf of the CoC must include the evidence of the HUD error when calculating the CoC Application or Project Application score.

Note: HUD can only consider information submitted with the CoC Application. HUD will not consider additional information in support of the CoC Application.

2. Decreased Funding. To appeal HUD's decision, the applicant must submit a written appeal by email, from the organization's email address on the organization's letterhead and signed by the authorized representative to the HUD email address at snapsappeals@hud.gov with a copy to the authorized representative from the CoC's designated Collaborative Applicant.

Documentation submitted by the applicant must include evidence of the HUD error the applicant believes was made.

3. HUD Decision and Notification of Decision. Where HUD determines that HUD error occurred, and the applicant should have been awarded additional funding, then HUD will provide funding from the next available funds and make necessary adjustments by amending the award. HUD will reverse a decision only when the applicant can show that HUD error caused the denial or decrease.

E. Consolidated Plan Certification. An applicant may appeal to HUD a jurisdiction's refusal to provide a certification of consistency with the Consolidated Plan. The appeals process is as follows:

1. Written Appeal. With the project application that is submitted by the application deadline, the applicant must submit a written appeal. Project applicants may submit its appeal in *e-snaps* with its project application. When submitted with the project application in *e-snaps*, the applicant must also email a copy of this appeal to the jurisdiction that denied the certification of consistency, and, should send a copy to the authorized representative from the CoC's designated Collaborative Applicant, unless it is the Collaborative Applicant that is filing the appeal. Otherwise, the project applicant or Collaborative Applicant may submit the appeal to HUD using one of the methods in Section X.F. of this NOFA. The written appeal must include the following information:

a. a copy of the applicant's request to the jurisdiction for the Certification of Consistency with the Consolidated Plan;

b. a copy of the jurisdiction's response stating the reasons for denial, including the reasons the

proposed project is not consistent with the jurisdiction's Consolidated Plan in accordance with 24 CFR 91.510(c); and,

c. a statement of the reasons why the applicant believes its project is consistent with the jurisdiction's Consolidated Plan.

The appeal may include additional information the applicant believes supports its appeal, including: (1) any additional communication between the applicant and the jurisdiction regarding the request for certification of consistency; and (2) documentation that identifies to whom within the jurisdiction the evidence was sent and date on which it was sent.

2. Jurisdiction Response. The jurisdiction will have 10 days after the receipt of the applicant's written appeal to submit a written response to HUD. The response must be sent by email to snapsappeals@hud.gov on the organization's letterhead, with a copy to the project applicant and the authorized representative of the CoC's designated Collaborative Applicant. The response must include the following information:

a. an explanation of the reasons originally given for refusing to provide the Certification of Consistency with the Consolidated Plan; and

b. written rebuttal to any claims made by the applicant in the written appeal.

3. HUD Decision and Notification of Decision.

a. HUD will review the submissions and will provide written notification, by email, of its decision to the applicant and the jurisdiction, with a copy to the authorized representative from the CoC's designated Collaborative Applicant within 45 days of the date of the receipt of the jurisdiction's response. In making its decision, HUD will consider whether the applicant submitted the request to the appropriate certifying jurisdiction and the reasonableness of the jurisdiction's refusal to provide the certificate.

b. If HUD finds that the certifying jurisdiction's refusal to provide a certification of consistency with the Consolidated Plan was reasonable, then HUD will automatically reject the project application. If HUD finds that the certifying jurisdiction's refusal to provide a certification of consistency with the Consolidated Plan was not reasonable, then HUD will consider the project application for funding in the respective FY CoC Program Competition in accordance with the review standards set forth in this NOFA.

c. If the jurisdiction failed to provide written reasons for refusal, including the reasons why the project is not consistent with the jurisdiction's Consolidated Plan in its initial response to the applicant's request for a certification, HUD will find for the applicant without further inquiry or response from the political jurisdiction.

d. HUD will provide written notification of this decision within 45 days of the date of HUD's receipt of the jurisdiction's response. Where the jurisdiction failed to provide a written response, HUD will provide written notification of its decision within 55 days of the date of HUD's receipt of the project applicant's response.

F. Appeals Submission.

1. Submission of Appeals by Email. Appeals must be submitted via email to snapsappeals@hud.gov. The subject line of your email must include the **CoC Number, "Appeal Notice,"** and type of appeal, i.e., **Participation, HUD Error,** or **Consolidated Plan Certification.** A sample email Subject Line is: **Subject: XX-500 – Appeal Notice–Consolidated Plan Certification.**

2. HUD Response. HUD will respond to all appeals via email. HUD will not consider any requests to reconsider funding for FY 2016 funds except for those appeals outlined in this NOFA.

XI. Agency Contacts

HUD staff will be available to provide clarification on the content of this NOFA. Please note that HUD staff cannot assist applicants in preparing their applications.

Questions regarding specific program requirements for this NOFA should be directed to the point of contact listed below.

A. For Further Information. Individuals who are hearing or speech-impaired should use the Information Relay Services at 1-800-877-8339 (these are toll-free numbers). Recipients and individuals can use the locator at www.hudexchange.info to find contact information for the Collaborative Applicant and for the local HUD CPD Field Office serving the CoC's territory.

B. For Technical Assistance. HUD will make appropriate resources available for technical assistance related to *e-snaps*. Specifically, HUD will make available *e-snaps* AAQ at www.hudexchange.info/get-assistance/. To address technical or other questions, local HUD CPD Field Office staff will also be available to help citizens identify organizations in the community that are involved in developing the CoC system. HUD staff and HUD contractors are prohibited from providing CoCs and project applicants with guidance that will result in a competitive advantage for any CoC or project applicant.

Following conditional selection of applications, HUD staff will be available to assist conditionally awarded applicants in clarifying or confirming information that is a prerequisite to the offer of a grant agreement by HUD. However, between the application deadline and the announcement of conditional selections, HUD is prohibited from and will not accept any information that would improve the substantive quality of a CoC's application pertinent to HUD's funding decision.

C. Broadcast. HUD will hold one or more informative broadcast(s) for potential applicants to provide guidance on the CoC Program and preparation of the applications. HUD strongly recommends that applicants view these broadcasts, which will provide critical information on the application process. For more information about the broadcast, individuals should consult the HUD Exchange.

XII. Other Information

Paperwork Reduction Act Statement. The information collection requirements in this notice have been approved by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C.3501-3520). In accordance with the Paperwork Reduction Act, HUD may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid OMB control number. Each Program NOFA will identify its applicable OMB control number unless its collection of information is excluded from these requirements under 5 CFR part 1320.

Environmental Impact. A finding of No Significant Impact with respect to the environment has been made for this notice, in accordance with HUD regulations at 24 CFR part 50 that 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 made available with the posting of this NOFA at http://portal.hud.gov/hudportal/HUD?src=/program_offices/administration/grants/fundsavail.

AUTHENTICATED U.S. GOVERNMENT INFORMATION GPO

FEDERAL REGISTER

Vol. 77 Tuesday,
No. 147 July 31, 2012

Part II

Department of Housing and Urban Development

24 CFR Part 578
Homeless Emergency Assistance and Rapid Transition to Housing: Continuum of Care Program; Interim Final Rule

Exhibit F

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 578

[Docket No. FR–5476–I–01]

RIN 2506–AC29

Homeless Emergency Assistance and Rapid Transition to Housing: Continuum of Care Program

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 the Emergency Solutions Grants program. The HEARTH Act also codifies in 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. The HEARTH Act also directs HUD to promulgate regulations for these new programs and processes.

This interim rule focuses on regulatory implementation of the Continuum of Care program, including the Continuum of Care planning process. The existing homeless assistance programs that comprise the Continuum of Care program are the following: the Supportive Housing program, the Shelter Plus Care program, and the Moderate Rehabilitation/Single Room Occupancy (SRO) program. This rule establishes the regulations for the Continuum of Care program, and, through the establishment of such regulations, the funding made available for the Continuum of Care program in the statute appropriating Fiscal Year (FY) 2012 funding for HUD can more quickly be disbursed, consistent with the HEARTH Act requirements, and avoid any disruption in current Continuum of Care activities.

DATES: *Effective Date:* August 30, 2012.

Comment Due Date. October 1, 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 *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 *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 *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:

Executive Summary

Purpose of and Legal Authority for This Interim Rule

This interim rule implements the Continuum of Care program authorized by the Homeless Emergency Assistance and Rapid Transition to Housing Act of 2009 (HEARTH Act). Section 1504 of the HEARTH Act directs HUD to establish regulations for this program. (See 42 U.S.C. 11301.) The purpose of the Continuum of Care program is to promote communitywide commitment to the goal of ending homelessness; provide funding for efforts by nonprofit providers, and State and local governments to quickly rehouse homeless individuals and families while minimizing the trauma and dislocation caused to homeless individuals, families, and communities by homelessness; promote access to and effective utilization of mainstream programs by homeless individuals and families; and optimize self-sufficiency among individuals and families experiencing homelessness.

The HEARTH Act streamlines HUD's homeless grant programs by consolidating the Supportive Housing, Shelter Plus Care, and Single Room Occupancy grant programs into one grant program: The Continuum of Care program. Local continuums of care, which are community-based homeless assistance program planning networks, will apply for Continuum of Care grants. By consolidating homeless assistance grant programs and creating the Continuum of Care planning process, the HEARTH Act intended to increase the efficiency and effectiveness of coordinated, community-based systems that provide housing and services to the homeless. Through this interim final rule, HUD will implement the Continuum of Care program by establishing the framework for establishing a local continuum of care and the process for applying for Continuum of Care grants.

Summary of Major Provisions

The major provisions of this rulemaking relate to how to establish and operate a Continuum of Care, how to apply for funds under the program, and how to use the funds for projects approved by HUD. These provisions are summarized below.

1. *General Provisions (Subpart A):* The Continuum of Care program includes transitional housing, permanent supportive housing for

disabled persons, permanent housing, supportive services, and Homeless Management Information Systems (HMIS). To implement the program, HUD had to define several key terms. In particular, HUD distinguishes between "Continuum of Care," "applicant," and "collaborative applicant." A "Continuum of Care" is a geographically based group of representatives that carries out the planning responsibilities of the Continuum of Care program, as set out in this regulation. These representatives come from organizations that provide services to the homeless, or represent the interests of the homeless or formerly homeless. A Continuum of Care then designates certain "applicants" as the entities responsible for carrying out the projects that the Continuum has identified through its planning responsibilities. A "Continuum of Care" also designates one particular applicant to be a "collaborative applicant." The collaborative applicant is the only entity that can apply for a grant from HUD on behalf of the Continuum that the collaborative applicant represents.

2. *Establishing and Operating a Continuum of Care (Subpart B):* In order to be eligible for funds under the Continuum of Care program, representatives from relevant organizations within a geographic area must establish a Continuum of Care. The three major duties of a Continuum of Care are to: (1) Operate the Continuum of Care, (2) designate an HMIS for the Continuum of Care, and (3) plan for the Continuum of Care. HUD has delineated certain operational requirements of each Continuum to help measure a Continuum's overall performance at reducing homelessness, in addition to tracking of performance on a project-by-project basis. In addition, each Continuum is responsible for establishing and operating a centralized or coordinated assessment system that will provide a comprehensive assessment of the needs of individuals and families for housing and services. HUD has also defined the minimum planning requirements for a Continuum so that it coordinates and implements a system that meets the needs of the homeless population within its geographic area. Continuums are also responsible for preparing and overseeing an application for funds. Continuums will have to establish the funding priorities for its geographic area when submitting an application.

3. *Application and Grant Award Process (Subpart C):* The Continuum of Care grant award process begins with a determination of a Continuum's maximum award amount. As directed by statute, HUD has developed a formula for determining award amounts that includes the following factors: A Continuum's Preliminary Pro Rata Need (PPRN) amount; renewal demand; any additional increases in amounts for leasing, rental assistance, and operating costs based on Fair Market Rents, planning and Unified Funding Agency cost funds, and amounts available for bonus dollars. HUD has established selection criteria for determining which applications will receive funding under the Continuum of Care program. Recipients awarded Continuum of Care funds must satisfy several conditions prior to executing their grant agreements. All grants submitted for renewal must also submit an annual performance report. For those applicants not awarded funding, the process also provides an appeals process.

4. *Program Components and Eligible Costs (Subpart D):* Continuum of Care funds may be used for projects under five program components: Permanent housing, transitional housing, supportive services only, HMIS, and, in some limited cases, homelessness prevention. The rule further clarifies how the following activities are considered eligible costs under the Continuum of Care program: Continuum of Care planning activities, Unified Funding Agency costs, acquisition, rehabilitation, new construction, leasing, rental assistance, supportive services, operating costs, HMIS, project administrative costs, relocation costs, and indirect costs.

5. *High-Performing Communities (Subpart E):* HUD will annually, subject to the availability of appropriate data, select those Continuums of Care that best meet application requirements to be designated a high-performing community (HPC). An HPC may use grant funds to provide housing relocation and stabilization services, and short- and/or medium-term rental assistance to individuals and families at risk of homelessness. This is the only time that Continuum of Care funds may be used to serve individuals and families at risk of homelessness.

6. *Program Requirements (Subpart F):* All recipients of Continuum of Care funding must comply with the program regulations and the requirements of the Notice of Funding Availability that HUD will issue each year. Notably, the HEARTH Act requires that all eligible funding costs, except leasing, must be matched with no less than 25 percent cash or in-kind match by the Continuum. Other program requirements of recipients include: Abiding by housing quality standards and suitable dwelling size, assessing supportive services on an ongoing basis, initiating and completing approved activities and projects within certain timelines, and providing a formal process for termination of assistance to participants who violate program requirements or conditions of occupancy.

7. *Grant Administration (Subpart G):* To effectively administer the grants, HUD will provide technical assistance to those who apply for Continuum of Care funds, as well as those who are selected for Continuum of Care funds. After having been selected for funding, grant recipients must satisfy certain recordkeeping requirements so that HUD can assess compliance with the program requirements. For any amendments to grants after the funds have been awarded, HUD has established a separate amendment procedure. As appropriate, HUD has also established sanctions to strengthen its enforcement procedures.

Benefits and Costs

This interim rule is intended to help respond to and work toward the goal of eliminating homelessness. This interim rule provides greater clarity and guidance about planning and performance review to the more than 430 existing Continuums of Care that span all 50 states and 6 United States territories. As reported in HUD's Annual Homelessness Assessment Report to Congress, there were approximately 1.59 million homeless persons who entered emergency shelters or transitional housing in FY 2010. HUD serves roughly half that many persons, nearly 800,000 annually, through its three programs that will be consolidated into the Continuum of Care program under the McKinney-Vento Act as amended by the HEARTH Act (i.e., Shelter Plus Care, Supportive Housing Program, Single Room Occupancy). The changes initiated by this interim rule will encourage Continuums of Care to establish formal policies and review procedures, including evaluation of the effectiveness of their projects, by emphasizing performance measurement and developing performance targets for homeless populations. HUD is confident that this systematic review by Continuums of Care will lead to better use of limited resources and more efficient service models, with the end result of preventing and ending homelessness.

The Consolidated and Further Continuing Appropriations Act, 2012 (Pub. L. 112–55) appropriated $1,593,000,000 for the Continuum of Care and Rural Housing Stability

Assistance programs. Upon publication of this rule, those FY 2012 funds will be available for distribution, as governed by these Continuum of Care regulations.

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 in law and enhances the Continuum of Care planning process, the coordinated response to addressing the needs of the homeless, which was 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 is revised to broaden existing emergency shelter and homelessness prevention activities and to add short- and medium-term rental assistance and services to rapidly rehouse homeless people. The HEARTH Act also creates the Rural Housing Stability program to replace the Rural Homelessness Grant program.

HUD commenced the process to implement the HEARTH Act with rulemaking that focused on the definition of "homeless." HUD published a proposed rule, entitled "Defining Homeless" on April 20, 2010 (75 FR 20541), which was followed by a final rule that was published on December 5, 2011 (76 FR 75994). The Defining Homeless rule clarified and elaborated upon the new McKinney-Vento Act definitions for "homeless" and "homeless individual with a disability." In addition, the Defining Homeless rule included recordkeeping requirements related to the "homeless" definition. On December 5, 2011, HUD also published an interim rule for the Emergency Solutions Grants program (76 FR 75954). This interim rule established the program requirements for the Emergency Solutions Grants program and contained corresponding amendments to the Consolidated Plan regulations. On December 9, 2011, HUD continued the process to implement the HEARTH Act, with the publication of the proposed rule titled "Homeless Management Information Systems Requirements" (76 FR 76917), which provides for uniform technical requirements for Homeless Management Information Systems (HMIS), for proper data collection and maintenance of the database, and ensures the confidentiality of the information in the database. Today's publication of the interim rule for the Continuum of Care program continues HUD's implementation of the HEARTH Act.

This rule establishes the regulatory framework for the Continuum of Care program and the Continuum of Care planning process, including requirements applicable to the establishment of a Continuum of Care. Prior to the amendment of the McKinney-Vento Act by the HEARTH Act, HUD's competitively awarded homeless assistance grant funds were awarded to organizations that participate in local homeless assistance program planning networks referred to as a Continuum of Care, a system administratively established by HUD in 1995. A Continuum of Care is designed to address the critical problem of homelessness through a coordinated community-based process of identifying needs and building a system of housing and services to address those needs. The approach is predicated on the understanding that homelessness is not caused merely by a lack of shelter, but involves a variety of underlying, unmet needs—physical, economic, and social.

The HEARTH Act not only codified in law the planning system known as Continuum of Care, but consolidated the three existing competitive homeless assistance grant programs (Supportive Housing, Shelter Plus Care, and Single Room Occupancy) into the single grant program known as the Continuum of Care program. The consolidation of the three existing homeless assistance programs into the Continuum of Care grant program and the codification in law of the Continuum of Care planning process are intended to increase the efficiency and effectiveness of the coordination of the provision of housing and services to address the needs of the homeless. The regulations established by this rule are directed to carrying out this congressional intent.

II. Overview of Interim Rule

As amended by the HEARTH Act, Subpart C of the McKinney-Vento Homeless Assistance Act establishes the Continuum of Care program. The purpose of the program is to promote communitywide commitment to the goal of ending homelessness; provide funding for efforts by nonprofit providers, and State and local governments to quickly rehouse homeless individuals and families while minimizing the trauma and dislocation caused to homeless individuals, families, and communities by homelessness; promote access to and effective utilization of mainstream programs by homeless individuals and families; and optimize self-sufficiency among individuals and families experiencing homelessness.

This interim rule establishes the Continuum of Care as the planning body responsible for meeting the goals of the Continuum of Care program. Additionally, in order to meet the purpose of the HEARTH Act, established in section 1002(b), and the goals of "Opening Doors: Federal Strategic Plan to Prevent and End Homelessness," the Continuum of Care must be involved in the coordination of other funding streams and resources—federal, local, or private—of targeted homeless programs and other mainstream resources. In many communities, the Continuum of Care is the coordinating body, while in other communities it is a local Interagency Council on Homelessness (both would be acceptable forms of coordination under this interim rule). As noted earlier, HUD published on December 9, 2011, a proposed rule to establish HMIS regulations in accordance with the HEARTH Act. However, while the HEARTH Act directed that regulations be established for HMIS, HMIS is not new to many HUD grantees. Until regulations for HMIS are promulgated in final, grantees should continue to follow HUD's existing HMIS instructions and guidance.

The following provides an overview of the proposed rule.

General Provisions (Subpart A)

Purpose and scope. The Continuum of Care program is designed to promote community-wide goals to end homelessness; provide funding to quickly rehouse homeless individuals (including unaccompanied youth) and families while minimizing trauma and dislocation to those persons; promote access to, and effective utilization of, mainstream programs; and optimize self-sufficiency among individuals and

families experiencing homelessness. The program is composed of transitional housing, permanent supportive housing for disabled persons, permanent housing, supportive services, and HMIS.

Definitions. The interim rule adopts the definitions of "developmental disability," "homeless," "homeless individual," and "homeless person" established by the December 5, 2011 Defining Homeless final rule. Public comments have already been solicited and additional public comment is not solicited through this rule. The December 5, 2011, final rule was preceded by an April 20, 2010, proposed rule, which sought public comment on these definitions. The final definitions of these terms took into consideration the public comments received on the proposed definitions as set out in the April 20, 2010, proposed rule. This interim rule adopts the definition of "at risk of homelessness" established by the December 5, 2011, the Emergency Solutions Grants program interim rule. The interim rule sought public comment on this definition, and additional public comment is not being sought through this rule.

HUD received valuable public comment on the definition of "chronically homeless," through the public comment process on the Emergency Solutions Grants program interim rule. Based on public comment, this rule for the Continuum of Care program is not adopting the full definition of "chronically homeless" that was included in the conforming amendments to the Consolidated Plan that were published as a part of the Emergency Solutions Grants program rule. Commenters raised concerns with the meaning of the phrase "where each homeless occasion was at least 15 days." The concerns raised about this phrase, used for the first time in a definition of "chronically homeless," has caused HUD to reconsider proceeding to apply a definition that includes this phrase, without further consideration and opportunity for comment. In this rule, HUD therefore amends the definition of "chronically homeless" in the Consolidated Plan regulations to strike this phrase. The removal of this phrase returns the definition to one with which service providers are familiar. The following highlights key definitions used in the Continuum of Care program regulations, and HUD solicits comment on these definitions.

Applicant is defined to mean an entity that has been designated by the Continuum of Care as eligible to apply for assistance on behalf of that Continuum. HUD highlights that the Act does not contain different definitions for "applicant" and "collaborative applicant." HUD distinguishes between the applicant(s) designated to apply for and carry out projects (the "applicant") and the collaborative applicant designated to apply for a grant on behalf of the Continuum of Care (the "collaborative applicant"). Please see below for more information on the definition of a collaborative applicant, which is the only entity that may apply for and receive Continuum of Care planning funds.

Centralized or coordinated assessment system is defined to mean a centralized or coordinated process designed to coordinate program participant intake, assessment, and provision of referrals. A centralized or coordinated assessment system covers the geographic area, is easily accessed by individuals and families seeking housing or services, is well advertised, and includes a comprehensive and standardized assessment tool. This definition establishes basic minimum requirements for the Continuum's centralized or coordinated assessment system.

Collaborative applicant is defined to mean an eligible applicant that has been designated by the Continuum of Care to apply for a grant for Continuum of Care planning funds on behalf of the Continuum. As discussed above, the "applicant" is the entity(ies) designated to apply for and carry out projects on behalf of the Continuum. In contrast to the definition of "applicant" above, the collaborative applicant applies for a grant to carry out the planning activities on behalf of the Continuum of Care. The interim rule simplifies the statutory language in order to make the Continuum of Care planning process clear.

HUD highlights that its definition of collaborative applicant does not track the statutory definition, which is found in section 401 of the McKinney-Vento Act. As will be discussed in further detail later in this preamble, the concept of collaborative applicant, its duties and functions, as provided in the statute, is provided for in this rule. However, HUD uses the term Continuum of Care to refer to the organizations that carry out the duties and responsibilities assigned to the collaborative applicant, with the exception of applying to HUD for grant funds. The clarification is necessary in this rule because Continuums of Care are not required to be legal entities, but HUD can enter into contractual agreements with legal entities only.

Continuum of Care and *Continuum* are defined to mean the group that is organized to carry out the responsibilities required under this part and that is composed of representatives of organizations including 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. These organizations consist of the relevant parties in the geographic area. Continuums are expected to include representation to the extent that the type of organization exists within the geographic area that the Continuum represents and is available to participate in the Continuum. For example, if a Continuum of Care did not have a university within its geographic boundaries, then HUD would not expect the Continuum to have representation from a university within the Continuum.

These organizations carry out the responsibilities and duties established under Subpart B of this interim rule. The Continuum of Care, as noted above, carries out the statutory duties and responsibilities of a collaborative applicant. HUD established the Continuum of Care in 1995. Local grantees and stakeholders are familiar with the Continuum of Care as the coordinating body for homeless services and homelessness prevention activities across the geographic area. Consequently, HUD is maintaining the Continuum of Care terminology, and the rule provides for the duties and responsibilities of a collaborative applicant to be carried out under the name Continuum of Care.

High-performing community is defined to mean the geographic area under the jurisdiction of a Continuum of Care that has been designated as a high-performing community by HUD. Section 424 of the McKinney-Vento Act provides that HUD shall designate, on an annual basis, which collaborative applicants represent high-performing communities. Consistent with HUD's substitution of the term "Continuum of Care" for "collaborative applicant," the definition of "high-performing community" in this interim rule provides for designation of Continuums of Care that represent geographic areas designated as high-performing communities. The standards for becoming a high-performing community can be found in § 578.65 of this interim

rule and will be discussed later in this preamble.

Private nonprofit organization is based on the statutory definition for "private nonprofit organization." The term "private nonprofit organization" is defined in section 424 of the McKinney-Vento Act as follows: "The term 'private nonprofit organization' means an organization: '(A) No part of the net earnings of which inures to the benefit of any member, founder, contributor, or individual; (B) that has a voluntary board; (C) that has an accounting system, or has designated a fiscal agent in accordance with requirements established by the Secretary; and (D) that practices nondiscrimination in the provision of assistance.'" In HUD's regulatory definition of "private nonprofit organization," HUD clarifies that the organization's accounting system must be functioning and operated in accordance with generally accepted accounting principles. HUD has included this language to make certain that accounting systems are workable and abide by definite, accurate standards. As reflected in the statutory definition of "private nonprofit organization," HUD may establish requirements for the designation of a fiscal agent. HUD has determined that the fiscal agent, such as a Unified Funding Agency, a term that is also defined in section 424 of the McKinney-Vento Act, must maintain a functioning accounting system for the organization in accordance with generally accepted accounting principles.

Permanent housing is consistent with the statutory definition of "permanent housing" in section 401 of the McKinney-Vento Act, but does not track the statutory language. HUD's regulatory definition of "permanent housing" states: "The term 'permanent housing' means community-based housing without a designated length of stay, and includes both permanent supportive housing and rapid re-housing." Additionally, in the regulatory definition of "permanent housing," HUD clarifies that to be permanent housing, "the program participant must be the tenant on a lease for a term of at least one year that is renewable and is terminable only for cause. The lease must be renewable for terms that are a minimum of one month long. HUD has determined that requiring a lease for a term of at least one year that is renewable and terminable only for cause, assists program participants in obtaining stability in housing, even when the rental assistance is temporary. These requirements are consistent with Section 8 requirements.

Specific request for comment. HUD specifically requests comment on requiring a lease for a term of at least one year to be considered permanent housing.

Project is consistent with the statutory definition of "project" in section 401 of the McKinney-Vento Act, but does not track the statutory language. Section 401 defines "project" as, with respect to activities carried out under subtitle C, eligible activities described in section 423(a), undertaken pursuant to a specific endeavor, such as serving a particular population or providing a particular resource. In HUD's definition of "project" in this interim rule, the eligible activities described in section 423(a) of the McKinney-Vento Act have been identified. In the regulatory text, HUD has clarified that it is a group of one or more of these eligible costs that are identified as a project in an application to HUD for Continuum of Care funds.

Recipient is defined to mean an applicant that signs a grant agreement with HUD. HUD's definition of "recipient" is consistent with the statutory definition of "recipient," but does not track the statutory language. Section 424 of the McKinney-Vento Act defines "recipient" as "an eligible entity who—(A) submits an application for a grant under section 422 that is approved by the Secretary; (B) receives the grant directly from the Secretary to support approved projects described in the application; and (C)(i) serves as a project sponsor for the projects; or (ii) awards the funds to project sponsors to carry out the projects." All of the activities specified by the statutory definition are in the rule: (A) and (B) are contained in the definition and (C) is covered in the sections of the rule dealing with what a recipient can do with grant funds.

Safe haven is based on the definition of safe haven in the McKinney-Vento Act prior to amendment by the HEARTH Act. Although no longer used in statute, HUD's position is that the term remains relevant for implementation of the Continuum of Care program and, therefore, HUD proposes to include the term in the Continuum of Care program regulations. The term "safe haven" is used for purposes of determining whether a person is chronically homeless. The housing must serve hard-to-reach homeless persons with severe mental illness who came from the streets and have been unwilling or unable to participate in supportive services. In addition, the housing must provide 24-hour residence for eligible persons for an unspecified period, have an overnight capacity limited to 25 or fewer persons, and provide low-demand services and referrals for the residents.

Subrecipient is defined to mean a private nonprofit organization, State or local government, or instrumentality of a State or local government that receives a subgrant from the recipient to operate a project. The definition of "subrecipient" is consistent with the definition of "project sponsor" found in section 401 of the McKinney-Vento Act, but does not track the statutory language. To be consistent with the Emergency Solutions Grants program regulation, and also to ensure that the relationship between the recipient and subrecipient is clear, HUD is using the term subrecipient, instead of project sponsor, throughout this regulation.

Transitional housing is based on the definition of "transitional housing" in section 401 of the McKinney-Vento Act, as follows: "The term 'transitional housing' means housing, the purpose of which is to facilitate the movement of individuals and families experiencing homelessness to permanent housing within 24 months or such longer period as the Secretary determines necessary." The definition has been expanded to distinguish this type of housing from emergency shelter. 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. The regulatory definition clarifies that, to be transitional housing, program participants must have signed a lease or occupancy agreement that is for a term of at least one month and that ends in 24 months and cannot be extended.

Unified Funding Agency (UFA) means an eligible applicant selected by the Continuum of Care to apply for a grant for the entire Continuum, which has the capacity to carry out the duties delegated to a UFA in this rule, which is approved by HUD and to which HUD awards a grant. HUD's regulatory definition of UFA departs slightly from the statutory definition. The statutory definition refers to the collaborative applicant. The differences between the statutory definition and HUD's regulatory definition reflect HUD's substitution of Continuum of Care for collaborative applicant.

Establishing and Operating the Continuum of Care (Subpart B)

In general. The statutory authority for the Continuum of Care program is section 422 of the McKinney-Vento Act. As stated under section 1002 of the HEARTH Act, one of the main purposes of the HEARTH Act is to codify the Continuum of Care planning process. Consequently, under this interim rule,

HUD focuses on the rules and responsibilities of those involved in the Continuum of Care planning process and describes how applications and grant funds will be processed.

As discussed earlier in the preamble, HUD's interim rule provides for the duties and functions of the collaborative applicant found in section 401 of the McKinney-Vento Act to be designated to the Continuum of Care, with the exception of applying to HUD for grant funds. HUD chose this approach because the Continuum might not be a legal entity, and therefore cannot enter into enforceable contractual agreements, but is the appropriate body for establishing and implementing decisions that affect the entire geographic area covered by the Continuum, including decisions related to funding. This approach allows the Continuum to retain its duties related to planning and prioritizing need (otherwise designated by statute to the collaborative applicant), while the authority to sign a grant agreement with HUD is designated to an eligible applicant that can enter into a contractual agreement. All of the duties assigned to the Continuum are based on the comparable duties of section 402(f) of the McKinney-Vento Act.

Subpart B of the interim rule identifies how Continuums of Care are established, as well as the required duties and functions of the Continuum of Care.

Establishing the Continuum of Care. In order to be eligible for funds under the Continuum of Care program, representatives from relevant organizations within a geographic area must establish a Continuum of Care. As discussed earlier in this preamble, this body is responsible for carrying out the duties identified in this interim regulation. Representatives from relevant organizations include nonprofit homeless assistance providers, victim service providers, faith-based organizations, governments, businesses, advocates, public housing agencies, school districts, social service providers, mental health agencies, hospitals, universities, affordable housing developers, law enforcement, and organizations that serve veterans and homeless and formerly homeless individuals. Where these organizations are located within the geographic area served by the Continuum of Care, HUD expects a representative of the organization to be a part of the Continuum of Care.

Specific request for comment. HUD specifically requests comments on requiring Continuums of Care to have a board that makes the decisions for the Continuum. HUD requires two characteristics for all board compositions. These characteristics are that the Board must be representative of the subpopulations of homeless persons that exist within the geographic area, and include a homeless or formerly homeless person. Continuums will have 2 years from the effective date of the interim rule to establish a board that meets the criteria established in this section. No board member may participate or influence discussions or decisions concerning the award of a grant or other financial benefits for an organization that the member represents.

HUD is considering four additional characteristics for all board compositions for incorporation in the final rule. HUD did not implement them at this stage in order to seek public comment prior to implementing them as requirements. HUD proposes that all boards must have a chair or co-chairs; be composed of an uneven number, serving staggered terms; include members from the public and private sectors; and include a member from at least one Emergency Solutions Grants program (ESG) recipient's agency located within the Continuum's geographic area. HUD is requesting comment on all of these proposed requirements; however, HUD specifically requests comments from Continuums of Care and ESG recipients on the requirement that the Board include an ESG recipient as part of its membership. HUD invites ESG recipients and Continuums to share challenges that will be encountered when implementing this requirement. Ensuring that ESG recipients are represented on the Board is important to HUD; therefore, in communities where ESG recipients and/or Continuums do not feel this requirement is feasible, HUD asks commenters to provide suggestions for how ESG recipients can be involved in the Continuum at one of the core decision-making levels.

Responsibilities of the Continuum of Care. The interim rule establishes three major duties for which the Continuum of Care is responsible: To operate the Continuum of Care, to designate an HMIS for the Continuum of Care, and to plan for the Continuum of Care.

This section of the interim rule establishes requirements within these three major duties.

Operating the Continuum of Care. The interim rule provides that the Continuum of Care must abide by certain operational requirements. These requirements will ensure the effective management of the Continuum of Care process and ensure that the process is inclusive and fair. HUD has established eight duties required of the Continuum necessary to effectively operate the Continuum of Care. HUD has established the specific minimum standards for operating and managing a Continuum of Care for two main reasons. First, the selection criteria established under section 427 of the McKinney-Vento Act require HUD to measure the Continuum of Care's performance in reducing homelessness by looking at the overall performance of the Continuum, as opposed to measuring performance project-by-project as was done prior to the enactment of the HEARTH Act. This Continuum of Care performance approach results in cooperation and coordination among providers. Second, because Continuums of Care will have grants of up to 3 percent of Final Pro Rata Need (FPRN) to be used for eligible Continuum of Care planning costs, HUD is requiring more formal decision-making and operating standards for the Continuum of Care. This requirement ensures that the Continuums have appropriate funding to support planning costs.

One of the duties established in this interim rule is the requirement that the Continuum establish and operate a centralized or coordinated assessment system that provides an initial, comprehensive assessment of the needs of individuals and families for housing and services. As detailed in the Emergency Solutions Grants program interim rule published on December 5, 2011, through the administration of the Rapid Re-Housing for Families Demonstration program and the 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 has required, through this interim rule, each Continuum of Care to develop and implement a centralized or coordinated assessment system for 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, 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 be present to receive 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 show up 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 intends to develop technical assistance materials on a range of centralized and coordinated assessment types, including those most appropriate for rural 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.

Specific request for comment. HUD specifically seeks comment from Continuum of Care-funded victim service providers on this question. As set forth in this interim rule, each Continuum of Care is 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 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. Questions that HUD asks commenters to specifically 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? Under 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 nonvictim service provider.

Another duty set forth in this part, is the requirement to establish and consistently follow written standards when administering assistance under this part. These requirements, established in consultation with recipients of Emergency Solutions Grants program funds within the geographic area, are intended to coordinate service delivery across the geographic area and assist Continuums of Care and their recipients in evaluating the eligibility of individuals and families consistently and administering assistance fairly and methodically. The written standards can be found in § 578.7(a)(9) of this interim rule.

Designating and operating an HMIS. The Continuum of Care is responsible for designating an HMIS and an eligible applicant to manage the HMIS, consistent with the requirements, which will be codified in 24 CFR part 580. This duty is listed under section 402(f)(2) of the McKinney-Vento Act. In addition, the Continuum is responsible for reviewing, revising, and approving a privacy plan, security plan, and data quality plan for the HMIS and ensuring consistent participation of recipients and subrecipients in the HMIS.

Continuum of Care planning. The Continuum is responsible for coordinating and implementing a system for its geographic area to meet the needs of the homeless population and subpopulations within the geographic area. The interim rule defines the minimum requirements for this systematic approach under § 578.7(c)(1), such as emergency shelters, rapid rehousing, transitional housing, permanent supportive housing, and prevention strategies. Because there are not sufficient resources available through the Continuum of Care program to prevent and end homelessness, coordination and integration of other funding streams, including the Emergency Solutions Grants program and mainstream resources, is integral to carrying out the Continuum of Care System.

HUD has determined that since the Continuum of Care will be the larger planning organization, the Continuum of Care must develop and follow a Continuum of Care plan that adheres, not only to the requirements being established by this interim rule, but to the requirements and directions of the most recently issued notice of funding availability (NOFA).

While these planning duties are not explicitly provided in section 402(f) of the Act, HUD has included them to facilitate and clarify the Continuum of Care planning process. Consistent with the goals of the HEARTH Act, HUD strives, through this interim rule, to provide a comprehensive, well-

coordinated and clear planning process, which involves the creation of the Continuum of Care and the duties the Continuum of Care will have to fulfill.

Other planning duties for Continuums established in this section of the interim rule are planning for and conducting at least a biennial-point-in-time count of homeless persons within the geographic area, conducting an annual gaps analysis of the homeless needs and services available within the geographic area, providing information necessary to complete the Consolidated Plan(s) within the geographic area, and consulting with State and local government Emergency Solutions Grants program recipients within the Continuum of Care on the plan for allocating Emergency Solutions Grants program funds and reporting on and evaluating the performance of Emergency Solutions Grants program recipients and subrecipients.

Preparing an application for funds. A major function of the Continuum of Care is preparing and overseeing an application for funds under this part. This section of the interim rule establishes the duties of the Continuum of Care related to the preparation of the application. This section of the interim rule establishes that the Continuum is responsible for designing, operating, and following a collaborative process for the development of applications, as well as approving the submission of applications, in response to a NOFA published by HUD.

The Continuum must also establish priorities for funding projects within the geographic area and determine the number of applications being submitted for funding. As previously noted in this preamble, since the Continuum of Care might not be a legal entity, and therefore may not be able to enter into a contractual agreement with HUD, the Continuum must select one or more eligible applicants to submit an application for funding to HUD on its behalf. If the Continuum of Care is an eligible applicant, the Continuum of Care may submit an application. If the Continuum selects more than one application, the Continuum must select one eligible applicant to be the collaborative applicant. That applicant will collect and combine the required application information from all of the other eligible applicants and for all projects within the geographic area that the Continuum has designated. If only one application is submitted by the collaborative applicant, the collaborative applicant will collect and combine the required application information from all projects within the geographic area that the Continuum has designated for funding. The collaborative applicant will always be the only applicant that can apply for Continuum of Care planning costs. In the case that there is one application for projects, the recipient of the funds is required to have signed agreements with its subrecipients as set forth in § 578.23(c), and is required to monitor and sanction subrecipients in compliance with § 578.107.

Whether the Continuum of Care submits the application or designates an eligible applicant to submit the application for funding, the Continuum of Care retains all of its duties.

Unified Funding Agencies. To be designated as the Unified Funding Agency (UFA) for the Continuum of Care, the Continuum must select the collaborative applicant to apply to HUD to be designated as the UFA for the Continuum. The interim rule establishes the criteria HUD will use when determining whether to designate the collaborative applicant as a UFA. These standards were developed to ensure that collaborative applicants have the capacity to manage the grant and carry out the duties in 578.11(b), and are described below.

The duties of the UFA established in § 578.11 are consistent with the duties set forth in section 402(g) of the Act. Even if the Continuum designates a UFA to submit the application for funding, the Continuum of Care retains all of its duties.

Remedial actions. Section 402(c) of the McKinney-Vento Act gives HUD the authority to ensure the fair distribution of grant amounts for this program, such as designating another body as a collaborative applicant, replacing the Continuum of Care for the geographic area, or permitting other eligible entities to apply directly for grants. Section 578.13 of this interim rule addresses the remedial actions that may be taken.

Overview of the Application and Grant Award Process (Subpart C)

Eligible applicants. Under this interim rule, eligible applicants consist of nonprofit organizations, State and local governments, and instrumentalities of local governments. An eligible applicant must have been designated by the Continuum of Care to submit an application for grant funds under this part. The Continuum's designation must state whether the Continuum is designating more than one applicant to apply for funds, and if it is, which applicant is being designated the collaborative applicant. A Continuum of Care that is designating only one applicant for funds must designate that applicant to be the collaborative applicant. For-profit entities are not eligible to apply for grants or to be subrecipients of grant funds.

Section 401(10) of the McKinney-Vento Act identifies that collaborative applicants may be legal entities, and a legal entity may include a consortium of instrumentalities of a State or local government that has constituted itself as an entity. HUD has not included a consortium in the list of eligible applicants. As noted earlier in this preamble, a Continuum of Care is defined to mean a group that is composed of representatives of organizations across the entire geographic area claimed by the Continuum of Care. A Continuum is able to combine more than one metropolitan city or county into the geographic area that the Continuum represents. In essence, the Continuum of Care acts as a consortium, and it is therefore HUD's position that the inclusion of consortiums in the interim rule would be redundant.

Determining the Continuum's maximum award amount. The total amount for which a Continuum of Care is eligible to apply and be awarded is determined through a four-step process, including the following factors: A Continuum's PPRN amount; renewal demand; any additional increases in amounts for leasing, rental assistance, and operating costs based on Fair Market Rents (FMRs); planning and UFA cost funds; and the amounts available for bonus dollars.

Using the formula that will be discussed below, HUD will first determine a Continuum of Care's PPRN amount, as authorized under section 427(b)(2)(B) of the McKinney-Vento Act. This amount is the sum of the PPRN amounts for each metropolitan city, urban county, non-urban county, and insular area claimed by the Continuum of Care as part of its geographic area, excluding any counties applying for, or receiving funds under the Rural Housing Stability Assistance program, the regulations for which will be established in 24 CFR part 579. The PPRN for each of these areas is based upon the "need formula" under § 579.17(a)(2) and (3). Under the McKinney-Vento Act, HUD is required to publish, by regulation, the formula used to establish grant amounts. The need formula under § 579.17(a)(2) and (3) satisfies this requirement, and HUD specifically seeks comment on this formula. HUD will announce the PPRN amounts prior to the publication of the NOFA on its Web site.

To establish the amount on which the need formula is run, HUD will deduct an amount, which will be published in

the NOFA, to be set aside to provide a bonus, and the amount necessary to fund Continuum of Care planning activities and UFA costs from the total funds made available for the program each fiscal year. On this amount, HUD will use the following process to establish an area's PPRN. First, 2 percent of the total funds available shall be allocated among the four insular areas (American Samoa, Guam, the Commonwealth of the Northern Marianas, and the Virgin Islands) based upon the percentage each area received in the previous fiscal year under section 106 of the Housing and Community Development Act of 1974. Second, 75 percent of the remaining funds made available shall be allocated to metropolitan cities and urban counties that have been funded under the Emergency Solutions Grants program (formerly known as the Emergency Shelter Grants program) every year since 2004. Third, the remaining funds made available shall be allocated to Community Development Block Grant (CDBG) metropolitan cities and urban counties that have not been funded under the Emergency Solutions Grants program every year since 2004 and all other counties in the United States and Puerto Rico.

Recognizing that in some federal fiscal years, the amount available for the formula may be less than the amount required to renew all existing projects eligible for renewal in that year for at least one year, HUD has included a method for distributing the reduction of funds proportionally across all Continuums of Care in § 578.17(a)(4) of this interim rule. HUD will publish the total dollar amount that each Continuum will be required to deduct from renewal projects Continuum-wide, and Continuums will have the authority to determine how to administer the cuts to projects across the Continuum.

Specific request for comment. HUD specifically requests comment on the method established in § 578.17(a)(4) to reduce the total amount required to renew all projects eligible for renewal in that one year, for at least one year, for each Continuum of Care when funding is not sufficient to renew all projects nationwide for at least one year.

The second step in determining a Continuum's maximum award amount is establishing a Continuum of Care's "renewal demand." The Continuum's renewal demand is the sum of the annual renewal amounts of all projects eligible within the Continuum of Care's geographic area to apply for renewal in that federal fiscal year's competition before any adjustments to rental assistance, leasing, and operating line items based on changes to the FMRs in the geographic area.

Third, HUD will determine the Continuum of Care's Final Pro Rata Need (FPRN), which is the higher of: (1) PPRN, or (2) renewal demand for the Continuum of Care. The FPRN establishes the base for the maximum award amount for the Continuum of Care.

Fourth, HUD will determine the maximum award amount. The maximum award amount for the Continuum of Care is the FPRN amount plus any additional eligible amounts for Continuum planning; establishing fiscal controls for the Continuum; updates to leasing, operating, and rental assistance line items based on changes to FMR; and the availability of any bonus funding during the competition.

Application process. Each fiscal year, HUD will issue a NOFA. All applications, including applications for grant funds, and requests for designation as a UFA or HPC, must be submitted to HUD in accordance with the requirements of the NOFA and contain such information as the NOFA specifies. Applications may request up to the maximum award amount for Continuums of Care.

An applicant that is a State or a unit of general local government must have a HUD-approved, consolidated plan in accordance with HUD's Consolidated Plan regulations in 24 CFR part 91. The applicant must submit a certification that the application for funding is consistent with the HUD-approved consolidated plan(s) in the project's jurisdiction(s). Applicants that are not States or units of general local government must submit a certification that the application for funding is consistent with the jurisdiction's HUD-approved consolidated plan. The certification must be made by the unit of general local government or the State, in accordance with HUD's regulations in 24 CFR part 91, subpart F. The required certification must be submitted by the funding application submission deadline announced in the NOFA.

An applicant may provide assistance under this program only in accordance with HUD subsidy layering requirements in section 102 of the Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3545). In this interim rule, HUD clarifies that the applicant must submit information in its application on other sources of funding the applicant has received, or reasonably expects to receive, for a proposed project or activities.

Awarding funds. HUD will review applications in accordance with the guidelines and procedures specified in the NOFA and award funds to recipients through a national competition based on selection criteria as defined in section 427 of the McKinney-Vento Act. HUD will announce the awards and notify selected applicants of any conditions imposed on the awards.

Grant agreements. A recipient of a conditionally awarded grant must satisfy all requirements for obligation of funds; otherwise, HUD will withdraw its offer of the award. These conditions include establishing site control, providing proof of match, complying with environmental review under § 578.31, and documenting financial feasibility within the deadlines under § 578.21(a)(3). HUD has included in the interim rule the deadlines for conditions that may be extended and the reasons for which HUD will consider an extension.

The interim rule requires that site control be established by each recipient receiving funds for acquisition, rehabilitation funding, new construction, or operating costs, or for providing supportive services. HUD has determined that the time to establish site control is 12 months for projects not receiving new construction, acquisition, or rehabilitation funding, as stated under section 426(a) of the McKinney-Vento Act, not 9 months as stated under section 422(d) of the McKinney-Vento Act, for projects receiving operating and supportive service funds. HUD's determination on the time needed to establish site control is based on previous program policy, and the longer time frame takes into consideration the reality of the housing market. Projects receiving acquisition, rehabilitation, or new construction funding must provide evidence of site control no later than 24 months after the announcement of grant awards, as provided under section 422(d) of the McKinney-Vento Act.

The interim rule requires that HUD perform an environmental review for each property as required under HUD's environmental regulations in 24 CFR part 50. All recipients of Continuum of Care program funding under this part must supply all available, relevant information necessary to HUD, and carry out mitigating measures required by HUD. The recipient, its project partners, and its project partner's contractors may not perform any eligible activity for a project under this part, or commit or expend HUD or local funds for such activities until HUD has performed an environmental review and the recipient has received HUD approval of the property agreements.

Executing grant agreements. If a Continuum designates more than one applicant for the geographic area, HUD

will enter into a grant agreement with each designated recipient for which an award is announced. If a Continuum designates only one recipient for the geographic area, HUD may enter into one grant agreement with that recipient for new awards, if any; and one grant agreement for renewals and Continuum of Care planning costs and UFA costs, if any. These two grant agreements will cover the entire geographic area, and a default by the recipient under one of these agreements will also constitute a default under the other. If the Continuum is a UFA, HUD will enter into one grant agreement with the UFA for new awards, if any; and one for renewal and Continuum of Care planning costs and UFA costs, if any. Similarly, these two grant agreements will cover the entire geographic area and a default by the recipient under one of those agreements will also constitute a default under the other.

HUD requires the recipient to enter into the agreement described in § 578.23(c). Under this agreement, the grant recipient must agree to ensure that the operation of the project will be in accordance with the McKinney-Veto Act and the requirements under this part. In addition, the recipient must monitor and report the progress of the projects to the Continuum of Care and to HUD. The recipient must ensure that individuals and families experiencing homelessness are involved in the operation of the project, maintain confidentiality of program participants, and monitor and report matching funds to HUD, among other requirements. The recipient must also agree to use the centralized or coordinated assessment system established by the Continuum of Care, unless the recipient or subrecipient is a victim service provider. Victim service providers may choose not to use the centralized or coordinated assessment system provided that all victim service providers in the area use a centralized or coordinated assessment system that meets HUD's minimum requirements. HUD has provided this optional exception because it understands the unique role that victim service providers have within the Continuum of Care.

Renewals. The interim rule provides that HUD may fund, through the Continuum of Care program, all projects that were previously eligible under the McKinney-Vento Act prior to the enactment of the HEARTH Act. These projects may be renewed to continue ongoing leasing, operations, supportive services, rental assistance, HMIS, and administration beyond the initial funding period even if those projects would not be eligible under the Continuum of Care program. For projects that would no longer be eligible under the Continuum of Care program (*e.g.*, safe havens), but which are serving homeless persons; HUD wants to ensure that housing is maintained and that persons do not become homeless because funding is withdrawn.

HUD may renew projects that were submitted on time and in such manner as required by HUD, but did not have a total score that would allow the project to be competitively funded. HUD may choose to exercise this option to ensure that homeless or formerly homeless persons do not lose their housing. The interim rule provides, based on the language in section 421(e) of the McKinney-Vento Act, that HUD may renew the project, upon a finding that the project meets the purposes of the Continuum of Care program, for up to one year and under such conditions as HUD deems appropriate.

Annual Performance Report. The interim rule also provides that HUD may terminate the renewal of any grant and require the recipient to repay the renewal grant if the recipient fails to submit a HUD Annual Performance Report (APR) within 90 days of the end of the program year or if the recipient submits an APR that HUD deems unacceptable or shows noncompliance with the requirements of the grant and this part. Section 578.103(e) of the Continuum of Care program regulations further clarifies that recipients receiving grant funds for acquisition, rehabilitation, or new construction are expected to submit APRs for 15 years from the date of initial occupancy or the date of initial service provision, unless HUD provides an exception. The recipient's submission of the APR helps HUD review whether the recipient is carrying out the project in the manner proposed in the application. Recipients agree to submit an APR as a condition of their grant agreement. This requirement allows HUD to ensure that recipients submit APRs on grant agreements that have expired as a condition of receiving approval for a new grant agreement for the renewal project.

Appeals. The interim rule provides certain appeal options for applicants that were not awarded funding.

Under section 422(g) of the McKinney-Vento Act, if more than one collaborative applicant submits an application covering the same geographic area, HUD must award funds to the application that scores the highest score based on the selection criteria set forth in section 427 of the Act. Consistent with HUD's use of the term Continuum of Care in the interim rule where the statute uses collaborative applicant, as explained earlier in the preamble, the interim rule stipulates that if more than one Continuum of Care claims the same geographic area, then HUD will award funds to the Continuum applicant(s) whose application(s) has the highest total score and that no projects from the lower scoring Continuum of Care will be funded (and that any projects submitted with both applications will not be funded). To appeal HUD's decision to fund the competing Continuum of Care, the applicant(s) from the lower-scoring Continuum of Care must file the written appeal in such form and manner as HUD may require within 45 days of the date of HUD's announcement of award.

If an applicant has had a certification of consistency with a consolidated plan withheld, that applicant may appeal such a decision to HUD. HUD has established a procedure to process the appeals and no later than 45 days after the date of receipt of an appeal, HUD will make a decision.

Section 422(h) of the McKinney-Vento Act provides the authority for a solo applicant to submit an application to HUD and be awarded a grant by HUD if it meets the criteria under section 427 of the McKinney-Vento Act. The interim rule clarifies that a solo applicant must submit its application to HUD by the deadline established in the NOFA to be considered for funding. The statute also requires that HUD establish an appeal process for organizations that attempted to participate in the Continuum of Care's process and believe they were denied the right to reasonable participation, as reviewed in the context of the local Continuum's process. An organization may submit a solo application to HUD and appeal the Continuum's decision not to include it in the Continuum's application. If HUD finds that the solo applicant was not permitted to participate in the Continuum of Care process in a reasonable manner, then HUD may award the grant to that solo applicant and may direct the Continuum to take remedial steps to ensure reasonable participation in the future. HUD may also reduce the award to the Continuum's applicant(s).

Section 422(h)(1) of the McKinney-Vento Act requires that "HUD establish a timely appeal procedure for grant amounts awarded or denied under this subtitle to a collaborative application." The interim rule sets an appeal process for denied or decreased funding under § 578.35(c). Applicants that are denied funds by HUD, or that requested more funds than HUD awarded, may appeal

by filing a written appeal within 45 days of the date of HUD's announcement of the award. HUD will notify applicant of its decision on the appeal within 60 days of the date of HUD's receipt of the written appeal.

Program Components and Eligible Costs (Subpart D)

Program components. The interim rule provides that Continuum of Care funds may be used for projects under five program components: Permanent housing, transitional housing, supportive services only, HMIS, and, in some cases, homelessness prevention. Administrative costs are eligible under all components. Where possible, the components set forth in the Continuum of Care program are consistent with the components set forth under the Emergency Solutions Grants program. This will ease the administrative burden on recipients of both programs and will ensure that reporting requirements and data quality benchmarks are consistently established and applied to like projects. One significant distinction between the Emergency Solutions Grants program and this part can be found in the eligible activities and administration requirements for assistance provided under the rapid rehousing component in this interim rule. The significant differences between this component in the Emergency Solutions Grants program and this part are discussed below.

The interim rule sets forth the costs eligible for each program component in § 578.37(a). The eligible costs for contributing data to the HMIS designated by the Continuum of Care are also eligible under all components.

Consistent with the definition of permanent housing in section 401 of the McKinney-Vento Act and § 578.3 of this interim rule, the permanent housing component is community-based housing without a designated length of stay that permits formerly homeless individuals and families to live as independently as possible. The interim rule clarifies that Continuum of Care funds may be spent on two types of permanent housing: Permanent supportive housing for persons with disabilities (PSH) and rapid rehousing that provides temporary assistance (i.e., rental assistance and/or supportive services) to program participants in a unit that the program participant retains after the assistance ends.

Although the McKinney-Vento Act authorizes permanent housing without supportive services, the interim rule does not. Based on its experience with the Supportive Housing and Shelter Plus Care programs, HUD has determined that programs should require at least case management for some initial period after exiting homelessness. HUD has imposed the requirement that rapid rehousing include, at a minimum, monthly case management meetings with program participants (except where prohibited by the Violence Against Women Act (VAWA) and the Family Violence Prevention and Services Act (FVPSA)) and allows for a full range of supportive services to be provided for up to 6 months after the rental assistance stops. Many other HUD programs, such as Section 8 and HOME, provide housing without supportive services to low-income individuals and families.

With respect to rapid rehousing, the interim rule provides that funds under this part may be used to provide supportive services and short-term and/or medium-term rental assistance. While the time frames under which a program participant may receive short-term or medium-term rental assistance set forth in this part match the time frames set forth in the Emergency Solutions Grants program, the supportive services available to program participants receiving rapid rehousing assistance under the Continuum of Care program are not limited to housing relocation and stabilization services as they are in the Emergency Solutions Grants program. Program participants receiving rapid rehousing under this part may receive any of the supportive services set forth in § 578.53 during their participation in the program. The Continuum of Care, however, does have the discretion to develop written policies and procedures that limit the services available to program participants that better align the services available to program participants with those set forth in the Emergency Solutions Grants program.

Specific request for comment. While HUD's experience with the Supportive Housing and Shelter Plus Care programs is the basis for HUD's determination to require case management for some initial period after exiting homelessness, HUD specifically welcomes comment on other experiences with monthly case management.

The interim rule provides that the HMIS component is for funds that are used by HMIS Leads only. Eligible costs include leasing a structure in which the HMIS is operated, operating funds to operate a structure in which the HMIS is operated, and HMIS costs related to establishing, operating, and customizing a Continuum of Care's HMIS.

As set forth in Section 424(c) of the McKinney-Veto Act, Continuum of Care funds may be used only for the homelessness prevention component by recipients in Continuums of Care that have been designated HPCs by HUD. Eligible activities are housing relocation and stabilization services, and short- and/or medium-term rental assistance, as set forth in 24 CFR 576.103, necessary to prevent an individual or family from becoming homeless.

Planning activities. Under this interim rule, HUD lists eligible planning costs for the Continuum of Care under § 578.39(b) and (c). HUD will allow no more than 3 percent of the FPRN, or a maximum amount to be established by the NOFA, to be used for certain costs. These costs must be related to designing a collaborative process for an application to HUD, evaluating the outcomes of funded projects under the Continuum of Care and Emergency Solutions Grants programs, and participating in the consolidated plan(s) for the geographic area(s). Under section 423 of the McKinney-Vento Act, a collaborative applicant may use no more than 3 percent of total funds made available to pay for administrative costs related to Continuum of Care planning.

HUD is defining "of the total funds made available" to mean FPRN, the higher of PPRN or renewal demand, in the interim rule. HUD has determined that FPRN strikes the correct balance, as it is the higher of PPRN or renewal demand. This will help Continuums of Care (CoC) balance: (1) Having sufficient planning dollars to be successful in its duties and compete for new money (which would be the PPRN), and (2) being able to monitor and evaluate actual projects in operation (and plan for renewal demand). The administrative funds related to CoC planning made available will be added to a CoC's FPRN to establish the CoCs maximum award amount.

Unified Funding Agency Costs. Under this interim rule, HUD lists eligible UFA costs in § 578.41(b) and (c). Similar to the cap on planning costs for CoC, HUD will allow no more than 3 percent of the FPRN, or a maximum amount to be established by the NOFA, whichever is less, to be used for UFA costs. This amount is in addition to the amount made available for CoC planning costs. UFA costs include costs associated with ensuring that all financial transactions carried out under the Continuum of Care program are conducted and records maintained in accordance with generally accepted accounting principles, including arranging for an annual survey, audit, or evaluation of the financial records of each project carried out by a subrecipient funded by a grant received through the Continuum of Care program. The funds made

available to UFAs related to establishing fiscal controls will be added to a CoC's FPRN to establish the CoC maximum award amount.

Leasing. Under this interim rule, grant funds may be used to pay the costs of leasing a structure or structures, or portions of structures, to provide housing or supportive services. The interim rule further clarifies that leasing means that the lease is between the recipient of funds and the landlord. HUD recognizes that some grantees receiving funds through the Supportive Housing Program may have been using their leasing funds in a manner consistent with the rental assistance requirements established in § 578.51; therefore, since the Continuum of Care program authorizes both leasing and rental assistance, the rule provides for an allowance for projects originally approved to carry out leasing to renew and request funds for rental assistance, so long as the rental assistance meets the requirements in § 578.51. The rule provides that a recipient of a grant awarded under the McKinney-Vento Act, prior to enactment of the HEARTH Act, must apply for leasing if the lease is between the recipient and the landlord, notwithstanding that the grant was awarded prior to the HEARTH Act amendments to the McKinney-Vento Act.

The interim rule provides that leasing funds may not be used to lease units or structures owned by the recipient, subrecipient, their parent organization(s), any other related organization(s), or organizations that are members of a partnership where the partnership owns the structure, unless HUD authorizes an exception for good cause. The interim rule establishes minimum requirements that a request for an exception must include. These exceptions are based on HUD's experience in administering the Homelessness Prevention and Rapid Re-Housing Program (HPRP).

The interim rule establishes that projects for leasing may require that program participants pay an occupancy charge (or in the case of a sublease, rent) of no more than 30 percent of their income. Income must be calculated in accordance with HUD's regulations in 24 CFR 5.609 and 24 CFR 5.611(a). However, the interim rule clarifies that projects may not charge program fees.

Rental assistance. Under this interim rule, rental assistance is an eligible cost for permanent and transitional housing, and this rule clarifies that the rental assistance may be short-term, up to 3 months of rent; medium-term, for 3 to 24 months of rent; and long-term, for longer than 24 months of rent. This section provides that rental assistance may include tenant-based, project-based, or sponsor-based rental assistance. This section also provides that project-based rental assistance may include rental assistance to preserve existing permanent supportive housing for homeless individuals and families. Given that the availability of affordable rental housing has been shown to be a key factor in reducing homelessness, the availability of funding for short-term, medium-term, and long-term rental assistance under both the Emergency Solutions Grants program and the Continuum of Care program is not inefficient use of program funds, but rather effective use of funding for an activity that lowers the number of homeless persons.

As noted in the above discussion of rental housing available for funding under the Continuum of Care program, one eligible form of rental assistance is tenant-based, which allows the program participant to retain rental assistance for another unit. The interim rule limits this retention to within the Continuum of Care boundaries. HUD has determined that Continuum of Care program funds must be used within the Continuum's geographic boundaries. If program participants move outside of the Continuum, the Continuum may pay moving costs, security deposits, and the first month of rent for another unit; however, the Continuum would have to organize assistance with the relevant Continuum of Care for the program participant if rental assistance is to continue. The program participant may be transferred to a rental assistance program in a different Continuum without having to become homeless again. The recipient may also limit the movement of the assistance to a smaller area if this is necessary to coordinate service delivery.

Under this interim rule, the only exception to the limitation for retention of tenant-based rental assistance is for program participants who are victims of domestic violence, dating violence, sexual assault, or stalking. Under the definition of "tenant-based" in the McKinney-Vento Act (section 401(28) of the McKinney-Vento Act), these participants must have complied with all other obligations of the program and reasonably believe that he or she is imminently threatened by harm from further violence if he or she remains in the assisted dwelling unit.

In the interim rule, HUD has clarified that the imminent threat of harm must be from *further* domestic violence, dating violence, sexual assault, or stalking, which would include threats from a third party, such as a friend or family member of the perpetrator of the violence. HUD requires that the program participant provide appropriate documentation of the original incident of domestic violence, dating violence, sexual assault, or stalking, and any evidence of the current imminent threat of harm. Examples of appropriate documentation of the original incident of domestic violence, dating violence, sexual assault, or stalking include written observation by the housing or service provider; a letter or other documentation from a victim service provider, social worker, legal assistance provider, pastoral counselor, mental health provider, or other professional from whom the victim has sought assistance; or medical or dental, court, or law enforcement records. Documentation of reasonable belief of further domestic violence, dating violence, sexual assault, or stalking includes written observation by the housing or service provider; a letter or other written documentation from a victim service provider, social worker, legal assistance provider, pastoral counselor, mental health provider, or other professional from whom the victim has requested assistance; a current restraining order, recent court order, or other court records; or law enforcement reports or records. The housing or service provider may also consider other documentation such as emails, voicemails, text messages, social media posts, and other communication. Because of the particular safety concerns surrounding victims of domestic violence, the interim rule provides that acceptable evidence for both the original violence and the reasonable belief include an oral statement. This oral statement does not need to be verified, but it must be documented by a written certification by the individual or head of household.

This provision is specific to victims of domestic violence, dating violence, sexual assault, and stalking who are receiving tenant-based rental assistance in permanent housing. This interim rule contains other policies for moving program participants receiving any type of assistance under this interim rule, including tenant-based rental assistance, within the Continuum of Care geographic area, or smaller geographic area required by the provider to coordinate service delivery. Moving program participants outside of the geographic area where providers can coordinate service-delivery is administratively difficult for providers and makes it difficult to monitor that program participants have access to, and are receiving, appropriate supportive

services; therefore, moves outside of the geographic area where the provider can effectively deliver and monitor service coordination are allowed only under exceptional circumstances. HUD has established these provisions to provide an exception and to address the challenges that are associated with such a move.

Based on HUD's experience in administering the Shelter Plus Care program, the interim rule includes provisions to clarify when rental payments may continue to be made to a landlord when the program participant no longer resides in the unit. For vacated units, the interim rule provides that assistance may continue for a maximum of 30 days from the end of the month in which the unit was vacated, unless the unit is occupied by another eligible person. A person staying in an institution for less than 90 days is not considered as having vacated the unit. Finally, the recipient may use grant funds, in an amount not to exceed one month's rent, to pay for any damage to housing due to the action of the program participant, one-time, per program participant, per unit. This assistance can be provided only at the time the program participant exits the housing unit.

Supportive services. Grant funds may be used to pay eligible costs of supportive services for the special needs of program participants. All eligible costs are eligible to the same extent for program participants who are unaccompanied homeless youth; persons living with Human Immunodeficiency Virus (HIV)/ Acquired Immune Deficiency Syndrome (AIDS) (HIV/AIDS); and victims of domestic violence, dating violence, sexual assault, or stalking. Any cost that is not described as an eligible cost under this interim rule is not an eligible cost of providing supportive services. Eligible costs consist of assistance with moving costs, case management, child care, education services, employment assistance and job training, housing search and counseling services, legal services, life skills training, mental health services, outpatient health services, outreach services, substance abuse treatment services, transportation, and utility deposits.

The definition of "supportive services" in section 401(27) of the McKinney-Vento Act includes the provision of mental health services, trauma counseling, and victim services. HUD has determined that victim services are eligible as supportive services, and are included as eligible program costs in this interim rule. Providers are allowed to provide services specifically to victims of domestic violence, dating violence, sexual assault, and stalking. The eligible costs for providing victim services are listed as eligible costs in the supportive services funding category. Rather than create a new eligible line item in the project budget, HUD has determined that these costs can be included in the funding categories already established.

Indirect costs. Indirect costs are allowed as part of eligible program costs. Programs using indirect cost allocations must be consistent with Office of Management and Budget (OMB) Circulars A–87 and A–122, as applicable. 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."

Other costs. In addition to the eligible costs described in this preamble, the regulation addresses the following other eligible costs: acquisition, rehabilitation, new construction, operating costs, HMIS, project administrative costs, and relocation costs.

High-Performing Communities (Subpart E)

Section 424 of the McKinney-Vento Act establishes the authority for the establishment of and requirements for HPCs. Applications must be submitted by the collaborative applicant at such time and in such manner as HUD may require and contain such information as HUD determines necessary under § 578.17(b). Applications will be posted on the HUD Web site (*www.hud.gov*) for public comments. In addition to HUD's review of the applications, interested members of the public will be able to provide comment to HUD regarding the applications.

Requirements. The Continuum of Care must use HMIS data (HUD will publish data standards and measurement protocols) to determine that the standards for qualifying as a HPC are met. An applicant must submit a report showing how the Continuum of Care program funds were expended in the prior year, and provide information that the Continuum meets the standards for HPCs.

Standards. In order to qualify as an HPC, a Continuum of Care must demonstrate through reliable data that it meets all of the required standards. The interim rule clarifies which standards will be measured with reliable data from a Continuum's HMIS and which standards will be measured through reliable data from other sources and presented in a narrative form or other format prescribed by HUD.

Continuums must use the HMIS to demonstrate the following measures: (1) That the mean length of homelessness must be less than 20 days for the Continuum's geographic area, or the Continuum's mean length of episodes for individuals and families in similar circumstances was reduced by at least 10 percent from the preceding year; (2) that less than 5 percent of individuals and families that leave homelessness become homeless again any time within the next 2 years, or the percentage of individuals and families in similar circumstances who became homeless again within 2 years after leaving homelessness was decreased by at least 20 percent from the preceding year; and (3) for Continuums of Care that served homeless families with youth defined as homeless under other federal statutes, that 95 percent of those families did not become homeless again within a 2-year period following termination of assistance and that 85 percent of those families achieved independent living in permanent housing for at least 2 years following the termination of assistance.

The McKinney-Vento Act requires that HUD set forth standards for preventing homelessness among the subset of those at the highest risk of becoming homeless among those homeless families and youth defined as homeless under other federal statutes, the third measure above, one of which includes achieving independent living in permanent housing among this population. HUD has set forth the standards of 95 percent and 85 percent. HUD recognizes that these standards are high, but standards are comparable to the other standards in the Act, which are high. It is HUD's position that HPCs should be addressing the needs of those homeless individuals within their communities prior to receiving designation of a HPC and being allowed to spend funds in accordance with § 578.71.

The final standard that the Continuum must use its HMIS data to demonstrate is provided under section 424(d)(4) of the Act. The statute requires each homeless individual or family who sought homeless assistance to be included in the data system used by that community. HUD has defined this as bed-coverage and service-volume coverage rates of at least 80 percent. The documentation that each homeless individual or family who sought homeless assistance be included in the HMIS is not measurable by HUD. This type of standard would be entirely reliant upon self-reporting. Additionally, individuals and families

have the right to decline having their data entered into the HMIS. HUD uses bed-coverage rates and service-volume coverage rates as a proxy for measuring the rate of inclusion of persons who are present for services or housing in the HMIS. This is a measurable standard, and HUD defines the calculation in the HMIS rule; therefore, the measurement will be consistent between Continuums.

Continuums must use reliable data from other sources and presented in a narrative form or other format prescribed by HUD to measure two standards: Community action and renewing HPC status. Section 424(d)(4) of the McKinney-Vento Act establishes another standard for HPCs, which is "community action." This statutory section provides that communities that compose the geographic area must have actively encouraged homeless individuals and families to participate in housing and services available in the geographic area and included each homeless individual or family who sought homeless assistance services in the data system used by that community for determining compliance. HUD has defined "communities that compose the geographic area" to mean the entire geographic area of the Continuum. This definition will also provide consistency of measurement since most of HUD's measurements are across the entire Continuum of Care geographic area. HUD has further defined "actively encourage" within this standard as a comprehensive outreach plan, including specific steps for identifying homeless persons and referring them to appropriate housing and services in that geographic area. The measurement of the last part of this standard, "each homeless individual or family who sought homeless assistance services in the data system used by that community," will be measured using reliable data from an HMIS and has been discussed earlier in this preamble. HUD has determined this will provide clarity and ensure consistent measurement across Continuums.

The interim rule provides that a Continuum of Care that was an HPC in the prior year and used Continuum funds for activities described under § 578.71 must demonstrate that these activities were effective at reducing the number of persons who became homeless in that community, to be renewed as a HPC.

Selection. HUD will select up to 10 Continuums of Care each year that best meet the application requirements and the standards set forth in § 578.65. Consistent with section 424 of the McKinney-Vento Act, the interim rule provides a HPC designation for the grants awarded in the same competition in which the designation is applied for and made. The designation will be for a period of one year.

Eligible activities. Recipients and subrecipients in Continuums that have been designated an HPC may use grant funds to provide housing relocation and stabilization services and short- and/or medium-term rental assistance to individuals and families at risk of homelessness as set for in the Emergency Solutions Grants program. All eligible activities discussed in this section must be effective at stabilizing individuals and families in their current housing, or quickly moving such individuals and families to other permanent housing. This is the only time that Continuum of Care funds may be used to serve nonhomeless individuals and families. Recipients and subrecipients using grant funds on these eligible activities must follow the written standards established by the Continuum of Care in § 578.7(a)(9)(v), and the recordkeeping requirements set for the Emergency Solutions Grants program rule.

Program Requirements (Subpart F)

All recipients of Continuum of Care funding must comply with the program regulations and the requirements of the NOFA issued annually by HUD.

Matching. The HEARTH Act allows for a new, simplified match requirement. All eligible funding costs except leasing must be matched with no less than a 25 percent cash or in-kind match. The interim rule clarifies that the match must be provided for the entire grant, except that recipients that are UFAs or are the sole recipient for the Continuum may provide the match on a Continuum-wide basis.

For in-kind match, the governmentwide grant requirements of HUD's regulations in 24 CFR 84.23 (for private nonprofit organizations) and 85.24 (for governments) apply. The regulations in 24 CFR parts 84 and 85 establish uniform administrative requirements for HUD grants. The requirements of 24 CFR part 84 apply to subrecipients that are private nonprofit organizations. The requirements of 24 CFR part 85 apply to the recipient and subrecipients that are units of general purpose local government. The match requirement in 24 CFR 84.23 and in 24 CFR 85.24 applies to administration funds, as well as Continuum of Care planning costs and UFA's financial management costs. All match must be spent on eligible activities as required under subpart D of this interim rule, except that recipients and subrecipients in HPCs may use match on eligible activities described under § 578.71.

General operations. Recipients of grant funds must provide housing or services that comply with all applicable State and local housing codes, licensing requirements, and any other requirements in the project's jurisdiction. In addition, this interim rule clarifies that recipients must abide by housing quality standards and suitable dwelling size. Recipients must also assess supportive services on an ongoing basis, have residential supervision, and provide for participation of homeless individuals as required under section 426(g) of the McKinney-Vento Act.

Specific request for comment. With respect to housing quality standards, HUD includes in this rule the longstanding requirement from the Shelter Plus Care program that recipients or subrecipients, prior to providing assistance on behalf of a program participant, must physically inspect each unit to assure that the unit meets housing quality standards. This requirement is designed to ensure that program participants are placed in housing that is suitable for living. Additionally, these requirements are consistent with HUD's physical inspection requirements in its other mainstream rental assistance programs. Notwithstanding that this is a longstanding requirement, HUD welcomes comment on alternatives to inspection of each unit that may be less burdensome but ensure that the housing provided to a program participant is decent, safe, and sanitary.

Under Section 578.75, General Operations, subsection (h), entitled "Supportive Service Agreements," states that recipients and subrecipients may require program participants to take part in supportive services so long as they are not disability-related services, provided through the project as a condition of continued participation in the program. Examples of disability-related services include, but are not limited to, mental health services, outpatient health services, and provision of medication, which are provided to a person with a disability to address a condition caused by the disability.

This provision further states that if the purpose of the project is to provide substance abuse treatment services, recipients and subrecipients may require program participants to take part in such services as a condition of continued participation in the program. For example, if a Continuum of Care recipient operates a transitional housing program with substance abuse treatment

services, the recipient may require program participants to participate in those services. By contrast, in a program that offers services but whose purpose is not substance abuse treatment, a recipient may not require a person who is an alcoholic, for example, to sign a supportive service agreement at initial occupancy stating that he or she will participate in substance abuse treatment services as a condition of occupancy. All program participants must, however, meet all terms and conditions of tenancy, including lease requirements. If, as a result of a person's behavior stemming from substance use, a person violates the terms of the lease, a recipient may consider requiring participation in services or any other action necessary in order for such a person to successfully meet the requirements of tenancy.

Finally, the interim rule clarifies that in units where the qualifying member of the household has died, or has been incarcerated or institutionalized for more than 90 days, assistance may continue until the expiration of the lease in effect at the time of the qualifying member's death, incarceration, or institutionalization.

Displacement, relocation, and acquisition. All recipients must ensure that they have taken all reasonable steps to minimize the displacement of persons as a result of projects assisted under this part. This section of the interim rule is substantially revised from the previous programs to increase clarity and comprehension of the directions to recipients and subrecipients in the use of grant funds.

Timeliness standards. Recipients must initiate approved activities and projects promptly. Recipients of funds for rehabilitation and new construction must begin construction activities within 9 months of the signing of the grant, and such activities must be completed within 24 months. HUD is providing these requirements to assist communities in meeting the obligation and expenditure deadline historically imposed by the annual HUD appropriations act. HUD may reduce a grant term to a term of one year if implementation delays reduce the amount of funds that can be used during the original grant term.

Limitation on use of funds. Recipients of funds provided under this part must abide by any limitations that apply to the use of such funds, such as use of funds for explicitly religious activities.

The limitation on use of funds also addresses limitation on uses where religious activities may be concerned. It is HUD's position that faith-based organizations are able to compete for HUD funds and participate in HUD programs on an equal footing with other organizations; that no group of applicants competing for HUD funds should be subject, as a matter of discretion, to greater or fewer requirements than other organizations solely because of their religious character or affiliation, or, alternatively, the absence of religious character or affiliation. HUD's general principles regarding the equal participation of such organizations in its programs are codified at 24 CFR 5.109. Program-specific requirements governing faith-based activities are codified in the regulations for the individual HUD programs. (See, for example, 24 CFR 574.300(c), 24 CFR 582.115(c), and 24 CFR 583.150(b).)

HUD's equal participation regulations were prompted by Executive Order 13279, Equal Protection of the Laws for Faith-Based and Community Organizations, issued by President Bush on December 12, 2002, and published in the **Federal Register** on December 16, 2002 (67 FR 77141). Executive Order 13279 set forth principles and policymaking criteria to guide federal agencies in ensuring the equal protection of the laws for faith-based and community organizations. Executive Order 13279 was amended by Executive Order 13559 (Fundamental Principles and Policymaking Criteria for Partnerships With Faith-Based and Other Neighborhood Organizations), issued by President Obama on November 17, 2010, and published in the **Federal Register** on November 22, 2010 (75 FR 71319).

Executive Order 13559 expands on the equal participation principles provided in Executive Order 13279 to strengthen the capacity of faith-based and other neighborhood organizations to deliver services effectively and ensure the equal treatment of program beneficiaries. Executive Order 13559 reiterates a key principle underlying participation of faith-based organizations in federally funded activities and that is that faith-based organizations be eligible to compete for federal financial assistance used to support social service programs and to participate fully in social service programs supported with federal financial assistance without impairing their independence, autonomy, expression outside the programs in question, or religious character.

With respect to program beneficiaries, the Executive Order states that organizations, in providing services supported in whole or in part with federal financial assistance, and in their outreach activities related to such services, should not be allowed to discriminate against current or prospective program beneficiaries on the basis of religion, a religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice. The Executive Order directs that organizations that engage in explicitly religious activities (including activities that involve overt religious content such as worship, religious instruction, or proselytization) must perform such activities and offer such services outside of programs that are supported with direct federal financial assistance (including through prime awards or subawards), separately in time or location from any such programs or services supported with direct federal financial assistance, and participation in any such explicitly religious activities must be voluntary for the beneficiaries of the social service program supported with such federal financial assistance. For purposes of greater clarity and comprehensibility, the Executive Order uses the term "explicitly religious" in lieu of "inherently religious." The Executive Order further directs that if a beneficiary or prospective beneficiary of a social service program supported by federal financial assistance objects to the religious character of an organization that provides services under the program, that organization shall, within a reasonable time after the date of the objection, refer the beneficiary to an alternative provider.

Executive Order 13559 provides for the establishment of an Interagency Working Group on Faith-Based and Other Neighborhood Partnerships (Working Group) to review and evaluate existing regulations, guidance documents, and policies, and directs the OMB to issue guidance to agencies on uniform implementation following receipt of the Working Group's report. On April 27, 2012, the Working Group issued its report, recommending a model set of regulations and guidance for agencies to adopt.[1]

HUD intends to wait for OMB guidance before initiating any rulemaking directed to broader changes to HUD's existing faith-based regulations, to ensure consistency with faith-based regulations of other federal agencies. However, HUD has revised its regulatory provisions governing faith-based activities to incorporate the principles of Executive Order 13559 pertaining to equal treatment of program beneficiaries and to adopt terminology, such as "explicitly religious" and "overt

[1] The report is available at: *http://www.whitehouse.gov/sites/default/files/uploads/finalfaithbasedworkinggroupreport.pdf.*

religious content," that offers greater clarity to the limitations placed on faith-based organizations when using federal funds for their supportive services. Additionally, HUD is putting in place through this rulemaking the provision of Executive Order 13559 that directs the referral to alternative providers. Executive Order 13559 provides that if a beneficiary or prospective beneficiary of a social service program supported by federal financial assistance objects to the religious character of an organization that provides services under the program, that organization shall, within a reasonable time frame after the date of the objection, refer the beneficiary to an alternative provider. While HUD will benefit from OMB guidance on other provisions of the Executive Order, specifically those which the Working Group is charged to provide recommendations, the "referral" provision of the Executive Order is one that HUD believes it can immediately put in place. HUD may, following receipt of public comment and further consideration of this issue, revise how recipients and subrecipients document the referral to other providers when beneficiaries may assert objections to the original provider. For now, HUD is requiring that any objections and any referrals be documented in accordance with the recordkeeping provisions of § 578.013.

This section of the interim rule also contains limitations on the types of eligible assistance that may not be combined in a single structure or housing unit. As the Continuum of Care substantially increases the types of assistance that may be combined in a project from previous programs, HUD has established standards in this section to provide recipients with clarity about the types of activities that may not be carried out in a single structure or housing unit.

Termination of assistance. The interim rule provides that a recipient may terminate assistance to a participant who violates program requirements or conditions of occupancy. The recipient must provide a formal process that recognizes the due process of law. Recipients may resume assistance to a participant whose assistance has been terminated.

Recipients that are providing permanent supportive housing for hard-to-house populations of homeless persons must exercise judgment and examine all circumstances in determining whether termination is appropriate. Under this interim rule, HUD has determined that a participant's assistance should be terminated only in the most severe cases. HUD is carrying over this requirement from the Shelter Plus Care program.

Fair Housing and Equal Opportunity requirements. The Continuum of Care, as well as its members and subrecipients, are required to comply with applicable civil rights laws. Section 578.93, addressing nondiscrimination and equal opportunity requirements, is provided to offer greater direction to recipients and subrecipients on the use of grant funds. Section 578.93(a) states that the nondiscrimination and equal opportunity requirements set forth in 24 CFR 5.105(a) apply. This includes, but is not limited to, the Fair Housing Act, Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973 (Section 504), and title II of the Americans with Disabilities Act.

Section 578.93(b) explains when recipients and subrecipients may exclusively serve a particular subpopulation in transitional or permanent housing. As part of these requirements, recipients must also administer programs and activities receiving federal financial assistance in the most integrated setting appropriate to the needs of qualified individuals with disabilities. This "integration mandate" requires that HUD-funded programs or activities enable individuals with disabilities to interact with nondisabled persons to the fullest extent possible. In reviewing requests for funding through the Continuum of Care NOFA, HUD will be considering each recipient's proposals to provide integrated housing to individuals with disabilities.

There are certain situations in which a recipient or subrecipient may limit housing to a specific subpopulation, so long as admission does not discriminate against any protected class, as well as instances where recipients or subrecipients may limit admission or provide a preference to certain subpopulations of homeless persons and families who need the specialized services provided in the housing. For example, § 578.93(b)(2) states that the housing may be limited to homeless veterans, so long as admission is not denied based on any membership in a protected class; *e.g.*, homeless veterans with families must be admitted. Similarly, housing may be limited to domestic violence victims and their families or persons who are at risk of institutionalization, so long as admission is not denied based on any membership in a protected class.

Section 578.93(b)(3) states that housing may be limited to families with children.

Section 578.93(b)(1) states that, in consideration of personal privacy, housing may only be limited to a single sex when such housing consists of a single structure with shared bedrooms or bathing facilities such that the considerations of personal privacy and the physical limitations of the configuration of the housing make it appropriate for the housing to be limited to one sex.

Further, §§ 578.93(b)(4) and (5) clearly outline instances when sex offenders or violent offenders may be excluded from housing, and when projects providing sober housing may exclude persons.

HUD's Section 504 regulations permit housing funded under a particular program to be reserved for persons with a specific disability when a federal statute or executive order specifically authorizes such a limitation. Section 578.93(b)(6) states that if the housing is assisted with funds under a federal program that is limited by federal statute or executive order to a specific subpopulation, the housing may be limited to that subpopulation.

Section 578.93(b)(7) provides clarification to recipients of funds under this part as to when a project can limit admission to a specific subpopulation of homeless individuals and families based on the service package offered in the project. To help recipients better understand these requirements, the following paragraphs provide a detailed explanation of the regulatory provision, along with a few examples.

Section 578.93(b)(7) states that recipients may limit admission to or provide a preference for the housing to subpopulations of homeless persons and families who *need* the specialized supportive services that are provided in the housing. The regulation contains the following examples: Substance abuse addiction treatment, domestic violence services, or a high-intensity package designed to meet the needs of hard-to-reach homeless persons. However, § 578.93(b)(7) further states that while the housing may offer services for a particular type of disability, no otherwise eligible individual with a disability, or family that includes an individual with a disability, who may benefit from the services provided may be excluded on the grounds that they do not have a particular disability. Below are general examples to offer guidance on this subsection. Please note that these examples are nonexhaustive, but emphasize that the proper focus is on the services available as part of the Continuum of Care project as opposed to a person's category or subcategory of disability. While these general principles are offered to help clarify this

section, a change in the factual scenario may change the analysis.

One clarifying example is as follows. A private, nonprofit organization or a local government applies for and receives a new grant under this part to provide project-based rental assistance and services, including case management, intensive therapy provided by a psychiatrist, and medication management. The recipient or subrecipient may establish a preference for individuals who are chronically homeless. When filling an opening in the housing, the recipient or subrecipient may target chronically homeless individuals or families, but if there are no such individuals or families either on a waiting list or applying for entrance to the program, the recipient or subrecipient cannot deny occupancy to individuals or families who apply for entrance into the program and who may benefit from the services provided. When filling a vacancy in the housing, the recipient or subrecipient, if presented with two otherwise eligible persons, one who is chronically homeless and one who is not, may give a preference to the chronically homeless individual.

By comparison, § 578.93(b)(6) addresses situations where Continuum of Care funds are combined with HUD funding for housing that may be restricted to a specific disability. For example, if Continuum of Care funds for a specific project are combined with construction or rehabilitation funding for housing from the Housing Opportunities for People With AIDS program, the program may limit eligibility for the project to persons with HIV/AIDS and their families. An individual or a family that includes an individual with a disability may be denied occupancy if the individual or at least one member of the family does not have HIV/AIDS.

In another example, a private, nonprofit organization applies for and receives Continuum of Care funds from a local governmental entity to rehabilitate a five-unit building, and provides services including assistance with daily living and mental health services. While the nonprofit organization intends to target and advertise the project as offering services for persons with developmental disabilities, an individual with a severe psychiatric disability who does not have a developmental disability but who can benefit from these services cannot be denied.

Section 578.93(e) incorporates the "preventing involuntary family separation" requirement set forth in Section 404 of the McKinney-Veto Act into this interim rule. This provision clarifies, especially for projects where the current policy is to deny the admittance of a boy under the age of 18, that denying admittance to a project based on age and gender is no longer permissible. HUD encourages Continuums of Care to use their centralized or coordinated assessment systems to find appropriate shelter or housing for families with male children under the age of 18.

Specific request for comment. HUD specifically seeks comments from Continuum of Care-funded recipients on this requirement. HUD invites comments about the difficulty that recipients are going to experience, if any, in implementing this requirement. In addition to comments about the difficulties, HUD invites communities that have already implemented this requirement locally to describe their methods for use in HUD's technical assistance materials and for posting on the HUD Homeless Resource Exchange.

Other standards. In addition to the program requirements described in this preamble, the interim rule sets forth other program requirements by which all recipients of grant funds must abide. These include a limitation on the use of grant funds to serve persons defined as homeless under other federal laws, conflicts of interest standards, and standards for identifying uses of program income.

Additionally, recipients are required to follow other federal requirements contained in this interim rule under § 578.99. These include compliance with such federal requirements as the Coastal Barriers Resources Act, OMB Circulars, HUD's Lead-Based Paint regulations, and audit requirements. The wording of these requirements has been substantially revised from previous programs, with the objective being to increase clarity and comprehension of the directions to recipients and subrecipients in the use of grant funds.

Administration (Subpart G)

Technical assistance. The purpose of technical assistance under the Continuum of Care program is to increase the effectiveness with which Continuums of Care, eligible applicants, recipients, subrecipients, and UFAs implement and administer their Continuum of Care planning process. Technical assistance will also improve the capacity to prepare applications, and prevent the separation of families in projects funded under the Emergency Solutions Grants, Continuum of Care, and Rural Housing Stability Assistance programs. Under this interim rule, technical assistance means the transfer of skills and knowledge to entities that may need, but do not possess, such skills and knowledge. The assistance may include written information, such as papers, manuals, guides, and brochures; person-to-person exchanges; and training and related costs.

Therefore, as needed, HUD may advertise and competitively select providers to deliver technical assistance. HUD may enter into contracts, grants, or cooperative agreements to implement the technical assistance. HUD may also enter into agreements with other federal agencies when awarding technical assistance funds.

Recordkeeping requirements. Grant recipients under the Supportive Housing Program and the Shelter Plus Care program have always been required to show compliance with regulations through appropriate records. However, the existing regulations are not specific about the records to be maintained. The interim rule for the Continuum of Care program elaborates upon the recordkeeping requirements to provide sufficient notice and clarify the documentation that HUD requires for assessing compliance with the program requirements. The recordkeeping requirements for documenting homeless status were published in the December 5, 2011, Defining Homeless final rule. Because these recordkeeping requirements already went through a 60-day comment period, HUD is not seeking further comment on these requirements. Additionally, recordkeeping requirements with similar levels of specificity apply to documentation of "at risk of homelessness" and these requirements can be found in § 576.500(c) of the Emergency Solutions Grants program interim rule published on December 5, 2011. Because the documentation requirements pertaining to "at risk of homelessness" were already subject to a 60-day public comment period, HUD is not seeking additional comment on these requirements. 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 Continuum of Care rule broadens the program's confidentiality requirements. The McKinney-Vento Act requires only procedures to ensure the

confidentiality of records pertaining to any individual provided family violence prevention or treatment services under this 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 Continuum of Care assistance.

Grant and project changes. The interim rule provides that recipients of grants may not make any significant changes to use of grant funds without prior HUD approval, evidenced by a grant amendment signed by HUD and the recipient. The interim rule provides separate standards for determining when a grant amendment is required for Continuums having only one recipient, including UFAs, and Continuums having more than one recipient. Additionally, the interim rule provides contingencies that must be met before HUD will approve the grant amendment. These contingencies are necessary to ensure that recipients meet the capacity requirements established in the NOFA and to ensure that eligible persons within the geographic area are better served and, since the Continuum of Care program is a competitive program, that the priorities established under the NOFA continue to be met. Any changes to an approved grant or project that do not require a grant amendment, as set forth in this section, must be fully documented in the recipient's or subrecipient's records.

Sanctions. The interim rule establishes sanctions based on existing regulations and strengthens the enforcement procedures and array of remedial actions and sanctions for recipients and subrecipients of Continuum of Care funds. These revisions draw from the requirements at 24 CFR 85.43 and other HUD program regulations.

Close-out. The interim rule provides that grants must be closed out at the end of their grant term if recipients are not seeking renewal. Section 578.109 of this interim rule specifies the actions that must be taken after the closeout, including grantee submission of financial, final performance, or other reports required by HUD within 90 days of the end of the grant term. Any unused funds must be deobligated and returned to HUD.

The interim rule stipulates, for grants seeking renewal, that failure to submit final performance reports, or other reports required by HUD within 90 days, may cause renewal funds to be withdrawn and grant funds expended on the renewal grant to be repaid.

III. Regulations for HUD Homeless Assistance Programs Existing Prior to Enactment of HEARTH Act

Because grants are still being administered under the Shelter Plus Care program and the Supportive Housing program, the regulations for these programs in 24 CFR parts 582, and 583, respectively, will remain in the Code of Federal Regulations for the time being. When no more, or very few, grants remain under these programs, HUD will remove the regulations in these parts by a separate rule (if no grants exist) or will replace them with a savings clause, which will continue to govern grant agreements executed prior to the effective date of the HEARTH Act regulations.

IV. Conforming Regulations

In addition to establishing the new regulations for the Continuum of Care program, HUD is amending the following regulations, which reference the Shelter Plus Care Program and the Supportive Housing Program, to include reference to the Continuum of Care program. These regulations are the regulations pertaining to: (1) Family Income and Family Payment; Occupancy Requirements for Section 8 and Public Housing, Other HUD-Assisted Housing Serving Persons with Disabilities, and Section 8 Project-Based Assistance, the regulations for which are in 24 CFR part 5, subpart F, specifically, § 5.601 (Purpose and Applicability), paragraphs (d) and (e) of this section; § 5.603 (Definitions), specifically the definition of "Responsible Entity;" § 5.617 (Self-Sufficiency Incentives for Persons with Disabilities—Disallowance of Increase in Annual Income), paragraph (a) of this section; (2) Environmental Review Responsibilities for Entities Assuming HUD Environmental Responsibilities, the regulations for which are in 24 CFR part 58, specifically § 58.1 (Purpose and Applicability), paragraph (b)(3) of this section; and (3) the Consolidated Submissions for Community Planning and Development Programs, the regulations for which are in 24 CFR part 91, specifically, § 91.2 (Applicability), paragraph (b) of this section.

V. 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.[2] Notice and public procedures may be omitted, however, if HUD determines that, in a particular case or class of cases, notice and public comment 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 Continuum of Care program.[3] Congress has provided funding for this new program in the Consolidated and Further Continuing Appropriations Act, 2012 (Pub. L. 112–55, approved November 18, 2011) (FY 2012 Appropriations Act). The FY 2012 Appropriations Act, under the account for Homeless Assistance Grants, appropriates not less than $1.593 billion for the Continuum of Care and Rural Housing Stability programs. While many federal programs, including HUD programs, received a reduction in funding in the FY 2012 Appropriations Act, Congress increased funding for HUD's homeless assistance grants, including the Continuum of Care program. Additionally, the Conference Report accompanying the FY 2012 Appropriations Act (House Report 112–284) states in relevant part, as follows: "The conferees express concern that HUD continued to implement pre-HEARTH grant programs in FY 2011, due to a lack of regulations. The conferees direct HUD to publish *at least* interim guidelines for the Emergency Solutions Grants and Continuum of Care programs this fiscal year and to implement the new grant programs as soon as possible so that the updated policies and practices in HEARTH can begin to govern the delivery of homeless assistance funding." (See Conf. Rpt. at page 319. Emphasis added.) Given this congressional direction, HUD is issuing this rule providing for regulations for the Continuum of Care program as an interim rule. Having interim regulations in place will allow HUD to move forward in making FY 2012 funds available to grantees, and avoid a significant delay that would result from issuance, first, of a proposed rule. As

[2] The Administrative Procedure Act (5 U.S.C. Subchapter II) (APA), which governs federal rulemaking, provides in section 553(a) that matters involving a military or foreign affairs function of the United States or a matter relating to federal agency management or personnel or to public property, loans, grants, benefits, or contracts are exempt from the advance notice and public comment requirement of sections 553(b) and (c) of the APA. In its regulations in 24 CFR 10.1, HUD has waived the exemption for advance notice and public comment for matters that relate to public property, loans, grants, benefits, or contracts, and has committed to undertake notice and comment rulemaking for these matters.

[3] Although HUD's regulation in 24 CFR 10.1 provide that HUD will involve public participation in its rulemaking, this regulation also provides that notice and public procedure will be omitted if HUD determines in a particular case or class of cases that notice and public procedure are impracticable, unnecessary, or contrary to the public interest.

has been discussed in this preamble, the foundation for the Continuum of Care regulations is the criteria and requirements provided in NOFAs for the Continuum of Care Homeless Assistance Grants Competition program, which HUD has funded for more than 10 years. Through the Continuum of Care Homeless Assistance Grants Competition program, HUD provided funding for the Supportive Housing program, the Shelter Plus Care program, and the Section 8 Moderate Rehabilitation Single Room Occupancy program. The HEARTH Act consolidated these three competitive programs into the statutorily established Continuum of Care program, which was established as a single grant program. Interim regulations will provide certainty with respect to funding requirements and eligible expenditures for FY 2012, and the public comment solicited through this interim rule will help inform the public procedures that HUD is contemplating in its regulations in 24 CFR part 10, and this public comment, in turn, will inform the final rule that will follow this interim rule and govern the funding years following FY 2012.

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

VI. Findings and Certifications

Regulatory Review—Executive Orders 12866 and 13563

Under Executive Order 12866 (Regulatory Planning and Review), a determination must be made whether a regulatory action is significant and, therefore, subject to review by the Office of Management and Budget (OMB) in accordance with the requirements of the order. Executive Order 13563 (Improving Regulations and Regulatory Review) directs executive agencies to analyze regulations that are "outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance with what has been learned." Executive Order 13563 also directs that, where relevant, feasible, and consistent with regulatory objectives, and to the extent permitted by law, agencies are to identify and consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public. This rule was determined to be a "significant regulatory action," as defined in section 3(f) of Executive Order 12866 (although not an economically significant regulatory action, as provided under section 3(f)(1) of the Executive Order).

As has been discussed in this preamble, this interim rule establishes the regulations for the Continuum of Care program, which is the HEARTH Act's codification of HUD's long-standing Continuum of Care planning process. The HEARTH Act not only codified in law the planning system known as Continuum of Care, but consolidated the three existing competitive homeless assistance grant programs (Supportive Housing, Shelter Plus Care, and Single Room Occupancy) into the single grant program known as the Continuum of Care program. As discussed in the preceding section of the preamble, HUD funded these three programs for more than 10 years through a NOFA, which was titled the Continuum of Care Homeless Assistance Grants Competition Program. However, the funding of the three competitive grant programs, although done through a single NOFA, delineated the different statutes and regulations that governed each of the three programs (see, for example, HUD's 2008 Continuum of Care NOFA at 73 FR 398450, specifically page 39845). In consolidating these three competitive programs into a single grant program, the HEARTH Act achieves the administrative efficiency that HUD strived to achieve to the extent possible, through its administrative establishment of the Continuum of Care planning process. To the extent permitted by the HEARTH Act and where feasible, the regulations build-in flexibility for grantees, based on experience in administering the Continuum of Care program to date. Given the transition from administrative operation of the Continuum of Care program to statutory operation of the Continuum of Care program, this interim rule would also have no discernible impact upon the economy.

The docket file is available for public inspection in the Regulations Division, Office of the General Counsel, Room 10276, 451 7th Street SW., 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 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 proposed by this rule track the regulatory provisions of the Continuum of Care program, with which prospective recipients of the Supportive Housing program and the Shelter Plus Care program are familiar. Accordingly, the program requirements should raise minimal issues because applicants and grantees are familiar with these requirements, and in response to HUD's solicitations to them on the burden of the requirements for the Supportive Housing program and the Shelter Plus Care program, 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 HUD's determination that this rule will not have a significant effect on a substantial number of small entities, 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 imposes substantial direct compliance costs on State and local governments and is not required by statute, or the rule preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This final rule does not have federalism implications and does not impose substantial direct compliance costs on State and local governments nor preempts 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 the Office of Management and Budget (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
§ 578.5(a) Establishing the CoC	450	1	450	8.0	3,600
§ 578.5(b) Establishing the Board	450	1	450	5.0	2,250
§ 578.7(a)(1) Hold CoC Meetings	450	2	900	4.0	3,600
§ 578.7(a)(2) Invitation for New Members	450	1	450	1.0	450
§ 578.7(a)(4) Appoint committees	450	2	900	0.5	450
§ 578.7(a)(5) Governance charter	450	1	450	7.0	3,150
§ 578.7(a)(6) and (7) Monitor performance and evaluation	450	4	450	9.0	4,050
§ 578.7(a)(8) Centralized or coordinated assessment system	450	1	450	8.0	3,600
§ 578.7(a)(9) Written standards	450	1	450	5.0	2,250
§ 578.7(b) Designate HMIS	450	1	450	10.0	4,500
§ 578.9 Application for funds	450	1	450	180.0	81,000
§ 578.11(c) Develop CoC plan	450	1	450	9.0	4,050
§ 578.21(c) Satisfying conditions	8,000	1	8,000	4.0	32,000
§ 578.23 Executing grant agreements	8,000	1	8,000	1.0	8,000
§ 578.35(b) Appeal—solo	10	1	10	4.0	40
§ 578.35(c) Appeal—denied or decreased funding	15	1	15	1.0	15
§ 578.35(d) Appeal—competing CoC	10	1	10	5.0	50
§ 578.35(e) Appeal—Consolidated Plan certification	5	1	5	2.0	10
§ 578.49(a)—Leasing exceptions	5	1	5	1.5	7.5
§ 578.65 HPC Standards	20	1	20	10.0	200
§ 578.75(a)(1) State and local requirements—appropriate service provision	7,000	1	7,000	0.5	3,500
§ 578.75(a)(1) State and local requirements—housing codes	20	1	20	3.0	60
§ 578.75(b) Housing quality standards	72,800	2	145,600	1.0	145,600
§ 578.75(b) Suitable dwelling size	72,800	2	145,600	0.08	11,648
§ 578.75(c) Meals	70,720	1	70,720	0.5	35,360
§ 578.75(e) Ongoing assessment of supportive services	8,000	1	8,000	1.5	12,000
§ 578.75(f) Residential supervision	6,600	3	19,800	0.75	14,850
§ 578.75(g) Participation of homeless individuals	11,500	1	11,500	1.0	11,500
§ 578.75(h) Supportive service agreements	3,000	100	30,000	0.5	15,000
§ 578.77(a) Signed leases/occupancy agreements	104,000	2	208,000	1.0	208,000
§ 578.77(b) Calculating occupancy charges	1,840	200	368,000	0.75	276,000
§ 578.77(c) Calculating rent	2,000	200	400,000	0.75	300,000
§ 578.81(a) Use restriction	20	1	20	0.5	10
§ 578.91(a) Termination of assistance	400	1	400	4.00	1,600
§ 578.91(b) Due process for termination of assistance	4,500	1	4,500	3.0	13,500
§ 578.95(d)—Conflict-of-Interest exceptions	10	1	10	3.0	30
§ 578.103(a)(3) Documenting homelessness	300,000	1	300,000	0.25	75,000
§ 578.103(a)(4) Documenting at risk of homelessness	10,000	1	10,000	0.25	2,500
§ 578.103(a)(5) Documenting imminent threat of harm	200	1	200	0.5	100
§ 578.103(a)(7) Documenting program participant records	350,000	6	2,100,000	0.25	525,000
§ 578.103(a)(7) Documenting case management	8,000	12	96,000	1.0	96,000
§ 578.103(a)(13) Documenting faith-based activities	8,000	1	8,000	1.0	8,000
§ 578.103(b) Confidentiality procedures	11,500	1	11,500	1.0	11,500
§ 578.105(a) Grant/project changes—UFAs	20	2	40	2.0	80
§ 578.105(b) Grant/project changes—multiple project applicants	800	1	800	2.0	1,600
Total					1,921,710.5

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 HUD, including whether the information will have practical utility;

(2) Evaluate the accuracy of HUD'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–5476–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, 451 Seventh Street SW., Room 7233, 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 in 24 CFR Part 578

Community facilities, Continuum of Care, Emergency solutions grants, Grant programs—housing and community development, Grant program—social programs, Homeless, Rural housing, Reporting and recordkeeping requirements, Supportive housing programs— housing and community development, Supportive services.

Accordingly, for the reasons described in the preamble, HUD adds part 578 to subchapter C of chapter V of subtitle B of 24 CFR to read as follows:

PART 578—CONTINUUM OF CARE PROGRAM

Subpart A—General Provisions

Sec.
578.1 Purpose and scope.
578.3 Definitions.

Subpart B—Establishing and Operating a Continuum of Care

578.5 Establishing the Continuum of Care.
578.7 Responsibilities of the Continuum of Care.
578.9 Preparing an application for funds.
578.11 Unified Funding Agency.
578.13 Remedial action.

Subpart C—Application and Grant Award Process

578.15 Eligible applicants.
578.17 Overview of application and grant award process.
578.19 Application process.
578.21 Awarding funds.
578.23 Executing grant agreements.
578.25 Site control.
578.27 Consolidated plan.
578.29 Subsidy layering.
578.31 Environmental review.
578.33 Renewals.
578.35 Appeal.

Subpart D—Program Components and Eligible Costs

578.37 Program components and uses of assistance.
578.39 Continuum of Care planning activities.
578.41 Unified Funding Agency costs.
578.43 Acquisition.
578.45 Rehabilitation.
578.47 New construction.
578.49 Leasing.
578.51 Rental assistance.
578.53 Supportive services.
578.55 Operating costs.
578.57 Homeless Management Information System.
578.59 Project administrative costs.
578.61 Relocation costs.
578.63 Indirect costs.

Subpart E—High-Performing Communities

578.65 Standards.
578.67 Publication of application.
578.69 Cooperation among entities.
578.71 HPC-eligible activities.

Subpart F—Program Requirements

578.73 Matching requirements.
578.75 General operations.
578.77 Calculating occupancy charges and rent.
578.79 Limitation on transitional housing.
578.81 Term of commitment, repayment of grants, and prevention of undue benefits.
578.83 Displacement, relocation, and acquisition.
578.85 Timeliness standards.
578.87 Limitation on use of funds.
578.89 Limitation on use of grant funds to serve persons defined as homeless under other federal laws.
578.91 Termination of assistance to program participants.
578.93 Fair Housing and Equal Opportunity.
578.95 Conflicts of interest.
578.97 Program income.
578.99 Applicability of other federal requirements.

Subpart G—Grant Administration

578.101 Technical assistance.
578.103 Recordkeeping requirements.
578.105 Grant and project changes.
578.107 Sanctions.
578.109 Closeout.

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

Subpart A—General Provisions

§ 578.1 Purpose and scope.

(a) The Continuum of Care program is authorized by subtitle C of title IV of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11381–11389).

(b) The program is designed to:

(1) Promote communitywide commitment to the goal of ending homelessness;

(2) Provide funding for efforts by nonprofit providers, States, and local governments to quickly rehouse homeless individuals (including unaccompanied youth) and families, while minimizing the trauma and dislocation caused to homeless individuals, families, and communities by homelessness;

(3) Promote access to and effective utilization of mainstream programs by homeless individuals and families; and

(4) Optimize self-sufficiency among individuals and families experiencing homelessness.

§ 578.3 Definitions.

As used in this part:

Act means the McKinney-Vento Homeless Assistance Act as amended (42 U.S.C. 11371 *et seq.*).

Annual renewal amount means the amount that a grant can be awarded on an annual basis when renewed. It includes funds only for those eligible activities (operating, supportive services, leasing, rental assistance, HMIS, and administration) that were funded in the original grant (or the original grant as amended), less the unrenewable activities (acquisition, new construction, rehabilitation, and any administrative costs related to these activities).

Applicant means an eligible applicant that has been designated by the Continuum of Care to apply for assistance under this part on behalf of that Continuum.

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 of 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.

Centralized or coordinated assessment system means a centralized or coordinated process designed to coordinate program participant intake assessment and provision of referrals. A centralized or coordinated assessment system covers the geographic area, is easily accessed by individuals and families seeking housing or services, is well advertized, and includes a comprehensive and standardized assessment tool.

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; 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.

Collaborative applicant means the eligible applicant that has been designated by the Continuum of Care to apply for a grant for Continuum of Care planning funds under this part on behalf of the Continuum.

Consolidated plan means the HUD-approved plan developed in accordance with 24 CFR 91.

Continuum of Care and Continuum means the group organized to carry out the responsibilities required under this part and that is composed of representatives of organizations, including 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 to the extent these groups are represented within the geographic area and are available to participate.

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

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

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

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

(iii) Is likely to continue indefinitely;

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

(A) Self-care;

(B) Receptive and expressive language;

(C) Learning;

(D) Mobility;

(E) Self-direction;

(F) Capacity for independent living;

(G) Economic self-sufficiency.

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

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

Eligible applicant means a private nonprofit organization, State, local government, or instrumentality of State and local government.

Emergency shelter is defined in 24 CFR part 576.

Emergency Solutions Grants (ESG) means the grants provided under 24 CFR part 576.

Fair Market Rent (FMR) means the Fair Market Rents published in the **Federal Register** annually by HUD.

High-performing community (HPC) means a Continuum of Care that meets the standards in subpart E of this part and has been designated as a high-performing community by HUD.

Homeless means:

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

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

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

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

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

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

(ii) No subsequent residence has been identified; and

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

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

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

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

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

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

(4) Any individual or family who:

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

(ii) Has no other residence; and

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

Homeless Management Information System (HMIS) means the information system designated by the Continuum of Care to comply with the HMIS requirements prescribed by HUD.

HMIS Lead means the entity designated by the Continuum of Care in accordance with this part to operate the Continuum's HMIS on its behalf.

Permanent housing means community-based housing without a designated length of stay, and includes both permanent supportive housing and rapid rehousing. To be permanent housing, the program participant must be the tenant on a lease for a term of at least one year, which is renewable for terms that are a minimum of one month long, and is terminable only for cause.

Permanent supportive housing means permanent housing in which supportive services are provided to assist homeless persons with a disability to live independently.

Point-in-time count means a count of sheltered and unsheltered homeless persons carried out on one night in the last 10 calendar days of January or at such other time as required by HUD.

Private nonprofit organization means an organization:

(1) No part of the net earnings of which inure to the benefit of any member, founder, contributor, or individual;

(2) That has a voluntary board;

(3) That has a functioning accounting system that is operated in accordance with generally accepted accounting principles, or has designated a fiscal agent that will maintain a functioning accounting system for the organization in accordance with generally accepted accounting principles; and

(4) That practices nondiscrimination in the provision of assistance.

A private nonprofit organization does not include governmental organizations, such as public housing agencies.

Program participant means an individual (including an unaccompanied youth) or family who is assisted with Continuum of Care program funds.

Project means a group of eligible activities, such as HMIS costs, identified as a project in an application to HUD for Continuum of Care funds and includes a structure (or structures) that is (are) acquired, rehabilitated, constructed, or leased with assistance provided under this part or with respect to which HUD provides rental assistance or annual payments for operating costs, or supportive services under this subtitle.

Recipient means an applicant that signs a grant agreement with HUD.

Safe haven means, for the purpose of defining chronically homeless, supportive housing that meets the following:

(1) Serves hard to reach homeless persons with severe mental illness who came from the streets and have been unwilling or unable to participate in supportive services;

(2) Provides 24-hour residence for eligible persons for an unspecified period;

(3) Has an overnight capacity limited to 25 or fewer persons; and

(4) Provides low-demand services and referrals for the residents.

State means each of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, Guam, the Commonwealth of the Northern Marianas, and the Virgin Islands.

Subrecipient means a private nonprofit organization, State, local government, or instrumentality of State or local government that receives a

subgrant from the recipient to carry out a project.

Transitional housing means housing, where all program participants have signed a lease or occupancy agreement, the purpose of which is to facilitate the movement of homeless individuals and families into permanent housing within 24 months or such longer period as HUD determines necessary. The program participant must have a lease or occupancy agreement for a term of at least one month that ends in 24 months and cannot be extended.

Unified Funding Agency (UFA) means an eligible applicant selected by the Continuum of Care to apply for a grant for the entire Continuum, which has the capacity to carry out the duties in § 578.11(b), which is approved by HUD and to which HUD awards a grant.

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.

Subpart B—Establishing and Operating a Continuum of Care

§ 578.5 Establishing the Continuum of Care.

(a) *The Continuum of Care.* Representatives from relevant organizations within a geographic area shall establish a Continuum of Care for the geographic area to carry out the duties of this part. Relevant organizations include nonprofit homeless assistance providers, victim service providers, faith-based organizations, governments, businesses, advocates, public housing agencies, school districts, social service providers, mental health agencies, hospitals, universities, affordable housing developers, law enforcement, and organizations that serve veterans and homeless and formerly homeless individuals.

(b) *The board.* The Continuum of Care must establish a board to act on behalf of the Continuum using the process established as a requirement by § 578.7(a)(3) and must comply with the conflict-of-interest requirements at § 578.95(b). The board must:

(1) Be representative of the relevant organizations and of projects serving homeless subpopulations; and

(2) Include at least one homeless or formerly homeless individual.

(c) *Transition.* Continuums of Care shall have 2 years after August 30, 2012 to comply with the requirements of paragraph (b) of this section.

§ 578.7 Responsibilities of the Continuum of Care.

(a) *Operate the Continuum of Care.* The Continuum of Care must:

(1) Hold meetings of the full membership, with published agendas, at least semi-annually;

(2) Make an invitation for new members to join publicly available within the geographic at least annually;

(3) Adopt and follow a written process to select a board to act on behalf of the Continuum of Care. The process must be reviewed, updated, and approved by the Continuum at least once every 5 years;

(4) Appoint additional committees, subcommittees, or workgroups;

(5) In consultation with the collaborative applicant and the HMIS Lead, develop, follow, and update annually a governance charter, which will include all procedures and policies needed to comply with subpart B of this part and with HMIS requirements as prescribed by HUD; and a code of conduct and recusal process for the board, its chair(s), and any person acting on behalf of the board;

(6) Consult with recipients and subrecipients to establish performance targets appropriate for population and program type, monitor recipient and subrecipient performance, evaluate outcomes, and take action against poor performers;

(7) Evaluate outcomes of projects funded under the Emergency Solutions Grants program and the Continuum of Care program, and report to HUD;

(8) In consultation with recipients of Emergency Solutions Grants program funds within the geographic area, establish and operate either a centralized or coordinated assessment system that provides an initial, comprehensive assessment of the needs of individuals and families for housing and services. The Continuum must develop a specific policy to guide the operation of the centralized or coordinated assessment system on how its 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 nonvictim service providers. This system must comply with any requirements established by HUD by Notice.

(9) In consultation with recipients of Emergency Solutions Grants program funds within the geographic area, establish and consistently follow written standards for providing Continuum of Care assistance. At a minimum, these written standards must include:

(i) Policies and procedures for evaluating individuals' and families' eligibility for assistance under this part;

(ii) Policies and procedures for determining and prioritizing which eligible individuals and families will receive transitional housing assistance;

(iii) Policies and procedures for determining and prioritizing which eligible individuals and families will receive rapid rehousing assistance;

(iv) Standards for determining what percentage or amount of rent each program participant must pay while receiving rapid rehousing assistance;

(v) Policies and procedures for determining and prioritizing which eligible individuals and families will receive permanent supportive housing assistance; and

(vi) Where the Continuum is designated a high-performing community, as described in subpart G of this part, policies and procedures set forth in 24 CFR 576.400(e)(3)(vi), (e)(3)(vii), (e)(3)(viii), and (e)(3)(ix).

(b) *Designating and operating an HMIS.* The Continuum of Care must:

(1) Designate a single Homeless Management Information System (HMIS) for the geographic area;

(2) Designate an eligible applicant to manage the Continuum's HMIS, which will be known as the HMIS Lead;

(3) Review, revise, and approve a privacy plan, security plan, and data quality plan for the HMIS.

(4) Ensure consistent participation of recipients and subrecipients in the HMIS; and

(5) Ensure the HMIS is administered in compliance with requirements prescribed by HUD.

(c) *Continuum of Care planning.* The Continuum must develop a plan that includes:

(1) Coordinating the implementation of a housing and service system within its geographic area that meets the needs of the homeless individuals (including unaccompanied youth) and families. At a minimum, such system encompasses the following:

(i) Outreach, engagement, and assessment;

(ii) Shelter, housing, and supportive services;

(iii) Prevention strategies.

(2) Planning for and conducting, at least biennially, a point-in-time count of homeless persons within the geographic area that meets the following requirements:

(i) Homeless persons who are living in a place not designed or ordinarily used as a regular sleeping accommodation for

humans must be counted as unsheltered homeless persons.

(ii) Persons living in emergency shelters and transitional housing projects must be counted as sheltered homeless persons.

(iii) Other requirements established by HUD by Notice.

(3) Conducting an annual gaps analysis of the homeless needs and services available within the geographic area;

(4) Providing information required to complete the Consolidated Plan(s) within the Continuum's geographic area;

(5) Consulting with State and local government Emergency Solutions Grants program recipients within the Continuum's geographic area on the plan for allocating Emergency Solutions Grants program funds and reporting on and evaluating the performance of Emergency Solutions Grants program recipients and subrecipients.

§ 578.9 Preparing an application for funds.

(a) The Continuum must:

(1) Design, operate, and follow a collaborative process for the development of applications and approve the submission of applications in response to a NOFA published by HUD under § 578.19 of this subpart;

(2) Establish priorities for funding projects in the geographic area;

(3) Determine if one application for funding will be submitted for all projects within the geographic area or if more than one application will be submitted for the projects within the geographic area;

(i) If more than one application will be submitted, designate an eligible applicant to be the collaborative applicant that will collect and combine the required application information from all applicants and for all projects within the geographic area that the Continuum has selected funding. The collaborative applicant will also apply for Continuum of Care planning activities. If the Continuum is an eligible applicant, it may designate itself;

(ii) If only one application will be submitted, that applicant will be the collaborative applicant and will collect and combine the required application information from all projects within the geographic area that the Continuum has selected for funding and apply for Continuum of Care planning activities;

(b) The Continuum retains all of its responsibilities, even if it designates one or more eligible applicants other than itself to apply for funds on behalf of the Continuum. This includes approving the Continuum of Care application.

§ 578.11 Unified Funding Agency.

(a) *Becoming a Unified Funding Agency.* To become designated as the Unified Funding Agency (UFA) for a Continuum, a collaborative applicant must be selected by the Continuum to apply to HUD to be designated as the UFA for the Continuum.

(b) *Criteria for designating a UFA.* HUD will consider these criteria when deciding whether to designate a collaborative applicant a UFA:

(1) The Continuum of Care it represents meets the requirements in § 578.7;

(2) The collaborative applicant has financial management systems that meet the standards set forth in 24 CFR 84.21 (for nonprofit organizations) and 24 CFR 85.20 (for States);

(3) The collaborative applicant demonstrates the ability to monitor subrecipients; and

(4) Such other criteria as HUD may establish by NOFA.

(c) *Requirements.* HUD-designated UFAs shall:

(1) Apply to HUD for funding for all of the projects within the geographic area and enter into a grant agreement with HUD for the entire geographic area.

(2) Enter into legally binding agreements with subrecipients, and receive and distribute funds to subrecipients for all projects within the geographic area.

(3) Require subrecipients to establish fiscal control and accounting procedures as necessary to assure the proper disbursal of and accounting for federal funds in accordance with the requirements of 24 CFR parts 84 and 85 and corresponding OMB circulars.

(4) Obtain approval of any proposed grant agreement amendments by the Continuum of Care before submitting a request for an amendment to HUD.

§ 578.13 Remedial action.

(a) If HUD finds that the Continuum of Care for a geographic area does not meet the requirements of the Act or its implementing regulations, or that there is no Continuum for a geographic area, HUD may take remedial action to ensure fair distribution of grant funds within the geographic area. Such measures may include:

(1) Designating a replacement Continuum of Care for the geographic area;

(2) Designating a replacement collaborative applicant for the Continuum's geographic area; and

(3) Accepting applications from other eligible applicants within the Continuum's geographic area.

(b) HUD must provide a 30-day prior written notice to the Continuum and its collaborative applicant and give them an opportunity to respond.

Subpart C—Application and Grant Award Process

§ 578.15 Eligible applicants.

(a) *Who may apply.* Nonprofit organizations, States, local governments, and instrumentalities of State or local governments are eligible to apply for grants.

(b) *Designation by the Continuum of Care.* Eligible applicant(s) must have been designated by the Continuum of Care to submit an application for grant funds under this part. The designation must state whether the Continuum is designating more than one applicant to apply for funds and, if it is, which applicant is being designated as the collaborative applicant. If the Continuum is designating only one applicant to apply for funds, the Continuum must designate that applicant to be the collaborative applicant.

(c) *Exclusion.* For-profit entities are not eligible to apply for grants or to be subrecipients of grant funds.

§ 578.17 Overview of application and grant award process.

(a) *Formula.* (1) After enactment of the annual appropriations act for each fiscal year, and issuance of the NOFA, HUD will publish, on its Web site, the Preliminary Pro Rata Need (PPRN) assigned to metropolitan cities, urban counties, and all other counties.

(2) HUD will apply the formula used to determine PPRN established in paragraph (a)(3) of this section, to the amount of funds being made available under the NOFA. That amount is calculated by:

(i) Determining the total amount for the Continuum of Care competition in accordance with section 413 of the Act or as otherwise directed by the annual appropriations act;

(ii) From the amount in paragraph (a)(2)(i) of this section, deducting the amount published in the NOFA as being set aside to provide a bonus to geographic areas for activities that have proven to be effective in reducing homelessness generally or for specific subpopulations listed in the NOFA or achieving homeless prevention and independent living goals established in the NOFA and to meet policy priorities set in the NOFA; and

(iii) Deducting the amount of funding necessary for Continuum of Care planning activities and UFA costs.

(3) PPRN is calculated on the amount determined under paragraph (a)(2) of this section by using the following formula:

(i) Two percent will be allocated among the four insular areas (American Samoa, Guam, the Commonwealth of the Northern Marianas, and the Virgin Islands) on the basis of the ratio of the population of each insular area to the population of all insular areas.

(ii) Seventy-five percent of the remaining amount will be allocated, using the Community Development Block Grant (CDBG) formula, to metropolitan cities and urban counties that have been funded under either the Emergency Shelter Grants or Emergency Solutions Grants programs in any one year since 2004.

(iii) The amount remaining after the allocation under paragraphs (a)(1) and (2) of this section will be allocated, using the CDBG formula, to metropolitan cities and urban counties that have not been funded under the Emergency Solutions Grants program in any year since 2004 and all other counties in the United States and Puerto Rico.

(4) If the calculation in paragraph (a)(2) of this section results in an amount less than the amount required to renew all projects eligible for renewal in that year for at least one year, after making adjustments proportional to increases in fair market rents for the geographic area for leasing, operating, and rental assistance for permanent housing, HUD will reduce, proportionately, the total amount required to renew all projects eligible for renewal in that year for at least one year, for each Continuum of Care. HUD will publish, via the NOFA, the total dollar amount that every Continuum will be required to deduct from renewal projects Continuum-wide.

(b) *Calculating a Continuum of Care's maximum award amount.* (1) *Establish the PPRN amount.* First, HUD will total the PPRN amounts for each metropolitan city, urban county, other county, and insular area claimed by the Continuum as part of its geographic area, excluding any counties applying for or receiving funding from the Rural Housing Stability Assistance program under 24 CFR part 579.

(2) *Establishing renewal demand.* Next, HUD will determine the renewal demand within the Continuum's geographic area. Renewal demand is the sum of the annual renewal amounts of all projects within the Continuum eligible to apply for renewal in that fiscal year's competition, before any adjustments to rental assistance, leasing, and operating line items based on FMR changes.

(3) *Establishing FPRN.* The higher of PPRN or renewal demand for the Continuum of Care is the FPRN, which is the base for the maximum award amount for the Continuum.

(4) *Establishing the maximum award amount.* The maximum award amount for the Continuum is the FPRN amount plus any additional eligible amounts for Continuum planning; UFA costs; adjustments to leasing, operating and rental assistance line items based on changes to FMR; and available bonuses.

§ 578.19 Application process.

(a) *Notice of Funding Availability.* After enactment of the annual appropriations act for the fiscal year, HUD will issue a NOFA in accordance with the requirements of 24 CFR part 4.

(b) *Applications.* All applications to HUD, including applications for grant funds and requests for designation as a UFA or HPC, must be submitted at such time and in such manner as HUD may require, and contain such information as HUD determines necessary. At a minimum, an application for grant funds must contain a list of the projects for which it is applying for funds; a description of the projects; a list of the projects that will be carried out by subrecipients and the names of the subrecipients; a description of the subpopulations of homeless or at risk of homelessness to be served by projects; the number of units to be provided and/or the number of persons to be served by each project; a budget request by project; and reasonable assurances that the applicant, or the subrecipient, will own or have control of a site for the proposed project not later than the expiration of the 12-month period beginning upon notification of an award for grant assistance.

§ 578.21 Awarding funds.

(a) *Selection.* HUD will review applications in accordance with the guidelines and procedures provided in the NOFA and will award funds to recipients through a national competition based on selection criteria as defined in section 427 of the Act.

(b) *Announcement of awards.* HUD will announce awards and notify selected applicants of any conditions imposed on awards. Conditions must be satisfied before HUD will execute a grant agreement with the applicant.

(c) *Satisfying conditions.* HUD will withdraw an award if the applicant does not satisfy all conditions imposed on it. Correcting all issues and conditions attached to an award must be completed within the time frame established in the NOFA. Proof of site control, match, environmental review, and the documentation of financial feasibility must be completed within 12 months of the announcement of the award, or 24 months in the case of funds for acquisition, rehabilitation, or new construction. The 12-month deadline may be extended by HUD for up to 12 additional months upon a showing of compelling reasons for delay due to factors beyond the control of the recipient or subrecipient.

§ 578.23 Executing grant agreements.

(a) *Deadline.* No later than 45 days from the date when all conditions are satisfied, the recipient and HUD must execute the grant agreement.

(b) *Grant agreements.* (1) *Multiple applicants for one Continuum.* If a Continuum designates more than one applicant for the geographic area, HUD will enter into a grant agreement with each designated applicant for which an award is announced.

(2) *One applicant for a Continuum.* If a Continuum designates only one applicant for the geographic area, after awarding funds, HUD may enter into a grant agreement with that applicant for new awards, if any, and one grant agreement for renewals, Continuum of Care planning, and UFA costs, if any. These two grants will cover the entire geographic area. A default by the recipient under one of those grant agreements will also be a default under the other.

(3) *Unified Funding Agencies.* If a Continuum is a UFA that HUD has approved, then HUD will enter into one grant agreement with the UFA for new awards, if any, and one grant agreement for renewals, Continuum of Care planning and UFA costs, if any. These two grants will cover the entire geographic area. A default by the UFA under one of those grant agreements will also be a default under the other.

(c) *Required agreements.* Recipients will be required to sign a grant agreement in which the recipient agrees:

(1) To ensure the operation of the project(s) in accordance with the provisions of the McKinney-Veto Act and all requirements under 24 CFR part 578;

(2) To monitor and report the progress of the project(s) to the Continuum of Care and HUD;

(3) To ensure, to the maximum extent practicable, that individuals and families experiencing homelessness are involved, through employment, provision of volunteer services, or otherwise, in constructing, rehabilitating, maintaining, and operating facilities for the project and in providing supportive services for the project;

(4) To require certification from all subrecipients that:

(i) Subrecipients will maintain the confidentiality of records pertaining to any individual or family that was provided family violence prevention or treatment services through the project;

(ii) The address or location of any family violence project assisted under this part will not be made public, except with written authorization of the person responsible for the operation of such project;

(iii) Subrecipients will establish policies and practices that are consistent with, and do not restrict, the exercise of rights provided by subtitle B of title VII of the Act and other laws relating to the provision of educational and related services to individuals and families experiencing homelessness;

(iv) In the case of projects that provide housing or services to families, that subrecipients will designate a staff person to be responsible for ensuring that children being served in the program are enrolled in school and connected to appropriate services in the community, including early childhood programs such as Head Start, part C of the Individuals with Disabilities Education Act, and programs authorized under subtitle B of title VII of the Act;

(v) The subrecipient, its officers, and employees are not debarred or suspended from doing business with the Federal Government; and

(vi) Subrecipients will provide information, such as data and reports, as required by HUD; and

(5) To establish such fiscal control and accounting procedures as may be necessary to assure the proper disbursal of, and accounting for grant funds in order to ensure that all financial transactions are conducted, and records maintained in accordance with generally accepted accounting principles, if the recipient is a UFA;

(6) To monitor subrecipient match and report on match to HUD;

(7) To take the educational needs of children into account when families are placed in housing and will, to the maximum extent practicable, place families with children as close as possible to their school of origin so as not to disrupt such children's education;

(8) To monitor subrecipients at least annually;

(9) To use the centralized or coordinated assessment system established by the Continuum of Care as set forth in § 578.7(a)(8). A victim service provider may choose not to use the Continuum of Care's centralized or coordinated assessment system, provided that victim service providers in the area use a centralized or coordinated assessment system that meets HUD's minimum requirements and the victim service provider uses that system instead;

(10) To follow the written standards for providing Continuum of Care assistance developed by the Continuum of Care, including the minimum requirements set forth in § 578.7(a)(9);

(11) Enter into subrecipient agreements requiring subrecipients to operate the project(s) in accordance with the provisions of this Act and all requirements under 24 CFR part 578; and

(12) To comply with such other terms and conditions as HUD may establish by NOFA.

§ 578.25 Site control.

(a) *In general.* When grant funds will be used for acquisition, rehabilitation, new construction, operating costs, or to provide supportive services, the recipient or subrecipient must demonstrate that it has site control within the time frame established in section § 578.21 before HUD will execute a grant agreement. This requirement does not apply to funds used for housing that will eventually be owned or controlled by the individuals or families served or for supportive services provided at sites not operated by the recipient or subrecipient.

(b) *Evidence.* Acceptable evidence of site control is a deed or lease. If grant funds will be used for acquisition, acceptable evidence of site control will be a purchase agreement. The owner, lessee, and purchaser shown on these documents must be the selected applicant or intended subrecipient identified in the application for assistance.

(c) *Tax credit projects.* (1) Applicants that plan to use the low-income housing tax credit authorized under 26 U.S.C. 42 to finance a project must prove to HUD's satisfaction that the applicant or subrecipient identified in the application is in control of the limited partnership or limited liability corporation that has a deed or lease for the project site.

(i) To have control of the limited partnership, the applicant or subrecipient must be the general partner of the limited partnership or have a 51 percent controlling interest in that general partner.

(ii) To have control of the limited liability company, the applicant or subrecipient must be the sole managing member.

(2) If grant funds are to be used for acquisition, rehabilitation, or new construction, the recipient or subrecipient must maintain control of the partnership or corporation and must ensure that the project is operated in compliance with law and regulation for 15 years from the date of initial occupancy or initial service provision. The partnership or corporation must own the project site throughout the 15-year period. If grant funds were not used for acquisition, rehabilitation, or new construction, then the recipient or subrecipient must maintain control for the term of the grant agreement and any renewals thereof.

§ 578.27 Consolidated plan.

(a) *States or units of general local government.* An applicant that is a State or a unit of general local government must have a HUD-approved, complete or abbreviated, consolidated plan in accordance with 24 CFR part 91. The applicant must submit a certification that the application for funding is consistent with the HUD-approved consolidated plan(s) for the jurisdiction(s) in which the proposed project will be located. Funded applicants must certify in a grant agreement that they are following the HUD-approved consolidated plan.

(b) *Other applicants.* Applicants that are not States or units of general local government must submit a certification by the jurisdiction(s) in which the proposed project will be located that the applicant's application for funding is consistent with the jurisdiction's HUD-approved consolidated plan. The certification must be made by the unit of general local government or the State, in accordance with the consistency certification provisions under 24 CFR part 91, subpart F. If the jurisdiction refuses to provide a certification of consistency, the applicant may appeal to HUD under § 578.35.

(c) *Timing of consolidated plan certification submissions.* The required certification that the application for funding is consistent with the HUD-approved consolidated plan must be submitted by the funding application submission deadline announced in the NOFA.

§ 578.29 Subsidy layering.

HUD may provide assistance under this program only in accordance with HUD subsidy layering requirements in section 102 of the Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3545) and 24 CFR part 4, subpart A. An applicant must submit information in its application on other sources of governmental assistance that the applicant has received, or reasonably expects to receive, for a proposed project or activities. HUD's review of this information is intended to prevent excessive public assistance for

proposed project or activities by combining (layering) assistance under this program with other governmental housing assistance from federal, State, or local agencies, including assistance such as tax concessions or tax credits.

§ 578.31 Environmental review.

(a) Activities under this part are subject to environmental review by HUD under 24 CFR part 50. The recipient or subrecipient 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 or subrecipient must carry out mitigating measures required by HUD or select an alternate eligible property. HUD may eliminate from consideration any application that would require an Environmental Impact Statement.

(b) The recipient or subrecipient, its project partners, and their contractors 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 such eligible activities under this part, until HUD has performed an environmental review under 24 CFR part 50 and the recipient or subrecipient has received HUD approval of the property.

§ 578.33 Renewals.

(a) *In general.* Awards made under this part and title IV of the Act, as in effect before August 30, 2012 (the Supportive Housing Program and the Shelter Plus Care program), may be renewed to continue ongoing leasing, operations, supportive services, rental assistance, HMIS, and administration beyond the initial funding period. To be considered for funding, recipients must submit a request in a form specified by HUD, must meet the requirements of this part, and must submit the request within the time frame established by HUD.

(b) *Length of renewal.* HUD may award up to 3 years of funds for supportive services, leasing, HMIS, and operating costs. Renewals of tenant-based and sponsor-based rental assistance may be for up to one year of rental assistance. Renewals of project-based rental assistance may be for up to 15 years of rental assistance, subject to availability of annual appropriations.

(c) *Assistance available.* (1) Assistance during each year of a renewal period may be for:

(i) Up to 100 percent of the amount for supportive services and HMIS costs in the final year of the prior funding period;

(ii) Up to 100 percent of the amount for leasing and operating in the final year of the prior funding period adjusted in proportion to changes in the FMR for the geographic area; and

(iii) For rental assistance, up to 100 percent of the result of multiplying the number and unit size(s) in the grant agreement by the number of months in the renewal grant term and the applicable FMR.

(d) *Review criteria.* (1) Awards made under title IV of the Act, as in effect before August 30, 2012 are eligible for renewal in the Continuum of Care program even if the awardees would not be eligible for a new grant under the program, so long as they continue to serve the same population and the same number of persons or units in the same type of housing as identified in their most recently amended grant agreement signed before August 30, 2012. Grants will be renewed if HUD receives a certification from the Continuum that there is a demonstrated need for the project, and HUD finds that the project complied with program requirements applicable before August 30, 2012. For purposes of meeting the requirements of this part, a project will continue to be administered in accordance with 24 CFR 582.330, if the project received funding under the Shelter Plus Care program, or 24 CFR 583.325, if the project received funding under the Supportive Housing Program.

(2) *Renewal of awards made after August 30, 2012.* Review criteria for competitively awarded renewals made after August 30, 2012 will be described in the NOFA.

(e) *Unsuccessful projects.* HUD may renew a project that was eligible for renewal in the competition and was part of an application that was not funded despite having been submitted on time, in the manner required by HUD, and containing the information required by HUD, upon a finding that the project meets the purposes of the Continuum of Care program. The renewal will not exceed more than one year and will be under such conditions as HUD deems appropriate.

(f) *Annual Performance Report condition.* HUD may terminate the renewal of any grant and require the recipient to repay the renewal grant if:

(1) The recipient fails to timely submit a HUD Annual Performance Report (APR) for the grant year immediately prior to renewal; or

(2) The recipient submits an APR that HUD deems unacceptable or shows noncompliance with the requirements of the grant and this part.

§ 578.35 Appeal.

(a) *In general.* Failure to follow the procedures or meet the deadlines established in this section will result in denial of the appeal.

(b) *Solo applicants.* (1) *Who may appeal.* Nonprofits, States, and local governments, and instrumentalities of State or local governments that attempted to participate in the Continuum of Care planning process in the geographic area in which they operate, that believe they were denied the right to participate in a reasonable manner, and that submitted a solo application for funding by the application deadline established in the NOFA, may appeal the decision of the Continuum to HUD.

(2) *Notice of intent to appeal.* The solo applicant must submit a written notice of intent to appeal, with a copy to the Continuum, with their funding application.

(3) *Deadline for submitting proof.* No later than 30 days after the date that HUD announces the awards, the solo applicant shall submit in writing, with a copy to the Continuum, all relevant evidence supporting its claim, in such manner as HUD may require by Notice.

(4) *Response from the Continuum of Care.* The Continuum shall have 30 days from the date of its receipt of the solo applicant's evidence to respond to HUD in writing and in such manner as HUD may require, with a copy to the solo applicant.

(5) *Decision.* HUD will notify the solo applicant and the Continuum of its decision within 60 days of receipt of the Continuum's response.

(6) *Funding.* If HUD finds that the solo applicant was not permitted to participate in the Continuum of Care planning process in a reasonable manner, then HUD may award a grant to the solo applicant when funds next become available and may direct the Continuum of Care to take remedial steps to ensure reasonable participation in the future. HUD may also reduce the award to the Continuum's applicant(s).

(c) *Denied or decreased funding.* (1) *Who may appeal.* Eligible applicants that are denied funds by HUD, or that requested more funds than HUD awarded to them, may appeal the award by filing a written appeal, in such form and manner as HUD may require by Notice, within 45 days of the date of HUD's announcement of the award.

(2) *Decision.* HUD will notify the applicant of its decision on the appeal within 60 days of HUD's receipt of the written appeal. HUD will reverse a decision only when the applicant can show that HUD error caused the denial or decrease.

(3) *Funding.* Awards and increases to awards made upon appeal will be made from next available funds.

(d) *Competing Continuums of Care.* (1) *In general.* If more than one Continuum of Care claims the same geographic area, HUD will award funds to the Continuum applicant(s) whose application(s) has the highest total score. No projects will be funded from the lower scoring Continuum. No projects that are submitted in two or more competing Continuum of Care applications will be funded.

(2) *Who may appeal.* The designated applicant(s) for the lower scoring Continuum may appeal HUD's decision to fund the application(s) from the competing Continuum by filing a written appeal, in such form and manner as HUD may require by Notice, within 45 days of the date of HUD's announcement of the award.

(3) *Decision.* HUD will notify the applicant(s) of its decision on the appeal within 60 days of the date of HUD's receipt of the written appeal. HUD will reverse a decision only upon a showing by the applicant that HUD error caused the denial.

(e) *Consolidated plan certification.* (1) *In general.* An applicant may appeal to HUD a jurisdiction's refusal to provide a certification of consistency with the Consolidated Plan.

(2) *Procedure.* The applicant must submit a written appeal with its application to HUD and send a copy of the appeal to the jurisdiction that denied the certification of consistency. The appeal must include, at a minimum:

(i) A copy of the applicant's request to the jurisdiction for the certification of consistency with the Consolidated Plan;

(ii) A copy of the jurisdiction's response stating the reasons for denial, including the reasons the proposed project is not consistent with the jurisdiction's Consolidated Plan in accordance with 24 CFR 91.500(c); and

(iii) A statement of the reasons why the applicant believes its project is consistent with the jurisdiction's Consolidated Plan.

(3) *Jurisdiction response.* The jurisdiction that refused to provide the certification of consistency with the jurisdiction's Consolidated Plan shall have 10 days after receipt of a copy of the appeal to submit a written explanation of the reasons originally given for refusing to provide the certification and a written rebuttal to any claims made by the applicant in the appeal.

(4) *HUD review.* (i) HUD will issue its decision within 45 days of the date of HUD's receipt of the jurisdiction's response. As part of its review, HUD will consider:

(A) Whether the applicant submitted the request to the appropriate political jurisdiction; and

(B) The reasonableness of the jurisdiction's refusal to provide the certificate.

(ii) If the jurisdiction did not provide written reasons for refusal, including the reasons why the project is not consistent with the jurisdiction's Consolidated Plan in its initial response to the applicant's request for a certification, HUD will find for the applicant without further inquiry or response from the political jurisdiction.

Subpart D—Program Components and Eligible Costs

§ 578.37 Program components and uses of assistance.

(a) Continuum of Care funds may be used to pay for the eligible costs listed in § 578.39 through § 578.63 when used to establish and operate projects under five program components: permanent housing; transitional housing; supportive services only; HMIS; and, in some cases, homelessness prevention. Although grant funds may be used by recipients and subrecipients in all components for the eligible costs of contributing data to the HMIS designated by the Continuum of Care, only HMIS Leads may use grant funds for an HMIS component. Administrative costs are eligible for all components. All components are subject to the restrictions on combining funds for certain eligible activities in a single project found in § 578.87(c). The eligible program components are:

(1) *Permanent housing (PH).* Permanent housing is community-based housing, the purpose of which is to provide housing without a designated length of stay. Grant funds may be used for acquisition, rehabilitation, new construction, leasing, rental assistance, operating costs, and supportive services. PH includes:

(i) *Permanent supportive housing for persons with disabilities (PSH).* PSH can only provide assistance to individuals with disabilities and families in which one adult or child has a disability. Supportive services designed to meet the needs of the program participants must be made available to the program participants.

(ii) *Rapid rehousing.* Continuum of Care funds may provide supportive services, as set forth in § 578.53, and/or short-term (up to 3 months) and/or medium-term (for 3 to 24 months) tenant-based rental assistance, as set forth in § 578.51(c), as necessary to help a homeless individual or family, with or without disabilities, move as quickly as possible into permanent housing and achieve stability in that housing. When providing short-term and/or medium-term rental assistance to program participants, the rental assistance is subject to § 578.51(a)(1), but not § 578.51(a)(1)(i) and (ii); (a)(2); (c) and (f) through (i); and (l)(1). These projects:

(A) Must follow the written policies and procedures established by the Continuum of Care for determining and prioritizing which eligible families and individuals will receive rapid rehousing assistance, as well as the amount or percentage of rent that each program participant must pay.

(B) May set a maximum amount or percentage of rental assistance that a program participant may receive, a maximum number of months that a program participant may receive rental assistance, and/or a maximum number of times that a program participant may receive rental assistance. The recipient or subrecipient may also require program participants to share in the costs of rent. For the purposes of calculating rent for rapid rehousing, the rent shall equal the sum of the total monthly rent for the unit and, if the tenant pays separately for utilities, the monthly allowance for utilities (excluding telephone) established by the public housing authority for the area in which the housing is located.

(C) Limit rental assistance to no more than 24 months to a household.

(D) May provide supportive services for no longer than 6 months after rental assistance stops.

(E) Must re-evaluate, not less than once annually, that the program participant lacks sufficient resources and support networks necessary to retain housing without Continuum of Care assistance and the types and amounts of assistance that the program participant needs to retain housing. The recipient or subrecipient may require each program participant receiving assistance to notify the recipient or subrecipient of changes in the program participant's income or other circumstances (*e.g.*, changes in household composition) that affect the program participant's need for assistance. When notified of a relevant change, the recipient or subrecipient must reevaluate the program participant's eligibility and the amount and types of assistance that the program participant needs.

(F) 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. The project is exempt

from this requirement if the Violence Against Women Act of 1994 (42 U.S.C. 13925 *et seq.*) or the Family Violence Prevention and Services Act (42 U.S.C. 10401 *et seq.*) prohibits the recipient carrying out the project from making its housing conditional on the participant's acceptance of services.

(2) *Transitional Housing (TH).* Transitional housing facilitates the movement of homeless individuals and families to PH within 24 months of entering TH. Grant funds may be used for acquisition, rehabilitation, new construction, leasing, rental assistance, operating costs, and supportive services.

(3) *Supportive Service Only (SSO).* Funds may be used for acquisition, rehabilitation, relocation costs, or leasing of a facility from which supportive services will be provided, and supportive services in order to provide supportive services to unsheltered and sheltered homeless persons for whom the recipient or subrecipient is not providing housing or housing assistance. SSO includes street outreach.

(4) *HMIS.* Funds may be used by HMIS Leads to lease a structure in which the HMIS is operated or as operating funds to operate a structure in which the HMIS is operated, and for other costs eligible in § 578.57.

(5) *Homelessness prevention.* Funds may be used by recipients in Continuums of Care-designated high-performing communities for housing relocation and stabilization services, and short- and/or medium-term rental assistance, as described in 24 CFR 576.105 and 24 CFR 576.106, that are necessary to prevent an individual or family from becoming homeless.

(b) *Uses of assistance.* Funds are available to pay for the eligible costs listed in § 578.39 through § 578.63 when used to:

(1) Establish new housing or new facilities to provide supportive services;

(2) Expand existing housing and facilities in order to increase the number of homeless persons served;

(3) Bring existing housing and facilities into compliance with State and local government health and safety standards, as described in § 578.87;

(4) Preserve existing permanent housing and facilities that provide supportive services;

(5) Provide supportive services for residents of supportive housing or for homeless persons not residing in supportive housing;

(6) Continue funding permanent housing when the recipient has received funding under this part for leasing, supportive services, operating costs, or rental assistance;

(7) Establish and operate an HMIS or comparable database; and

(8) Establish and carry out a Continuum of Care planning process and operate a Continuum of Care.

(c) *Multiple purposes.* Structures used to provide housing, supportive housing, supportive services, or as a facility for HMIS activities may also be used for other purposes. However, assistance under this part will be available only in proportion to the use of the structure for supportive housing or supportive services. If eligible and ineligible activities are carried out in separate portions of the same structure or in separate structures, grant funds may not be used to pay for more than the actual cost of acquisition, construction, or rehabilitation of the portion of the structure or structures used for eligible activities. If eligible and ineligible activities are carried out in the same structure, the costs will be prorated based on the amount of time that the space is used for eligible versus ineligible activities.

§ 578.39 Continuum of Care planning activities.

(a) *In general.* Collaborative applicants may use up to 3 percent of their FPRN, or a maximum amount to be established by the NOFA, for costs of:

(1) Designing and carrying out a collaborative process for the development of an application to HUD;

(2) Evaluating the outcomes of projects for which funds are awarded in the geographic area under the Continuum of Care and the Emergency Solutions Grants programs; and

(3) Participating in the consolidated plan(s) for the geographic area(s).

(b) *Continuum of Care planning activities.* Eligible planning costs include the costs of:

(1) Developing a communitywide or regionwide process involving the coordination of 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 veterans, and homeless and formerly homeless individuals;

(2) Determining the geographic area that the Continuum of Care will serve;

(3) Developing a Continuum of Care system;

(4) Evaluating the outcomes of projects for which funds are awarded in the geographic area, including the Emergency Solutions Grants program;

(5) Participating in the consolidated plan(s) of the jurisdiction(s) in the geographic area; and

(6) Preparing and submitting an application to HUD on behalf of the entire Continuum of Care membership, including conducting a sheltered and unsheltered point-in-time count and other data collection as required by HUD.

(c) *Monitoring costs.* The costs of monitoring recipients and subrecipients and enforcing compliance with program requirements are eligible.

§ 578.41 Unified Funding Agency costs.

(a) *In general.* UFAs may use up to 3 percent of their FPRN, or a maximum amount to be established by the NOFA, whichever is less, for fiscal control and accounting costs necessary to assure the proper disbursal of, and accounting for, federal funds awarded to subrecipients under the Continuum of Care program.

(b) *UFA costs.* UFA costs include costs of ensuring that all financial transactions carried out under the Continuum of Care program are conducted and records are maintained in accordance with generally accepted accounting principles, including arranging for an annual survey, audit, or evaluation of the financial records of each project carried out by a subrecipient funded by a grant received through the Continuum of Care program.

(c) *Monitoring costs.* The costs of monitoring subrecipients and enforcing compliance with program requirements are eligible for costs.

§ 578.43 Acquisition.

Grant funds may be used to pay up to 100 percent of the cost of acquisition of real property selected by the recipient or subrecipient for use in the provision of housing or supportive services for homeless persons.

§ 578.45 Rehabilitation.

(a) *Use.* Grant funds may be used to pay up to 100 percent of the cost of rehabilitation of structures to provide housing or supportive services to homeless persons.

(b) *Eligible costs.* Eligible rehabilitation costs include installing cost-effective energy measures, and bringing an existing structure to State and local government health and safety standards.

(c) *Ineligible costs.* Grant funds may not be used for rehabilitation of leased property.

§ 578.47 New construction.

(a) *Use.* Grant funds may be used to:

(1) Pay up to 100 percent of the cost of new construction, including the

building of a new structure or building an addition to an existing structure that increases the floor area by 100 percent or more, and the cost of land associated with that construction, for use as housing.

(2) If grant funds are used for new construction, the applicant must demonstrate that the costs of new construction are substantially less than the costs of rehabilitation or that there is a lack of available appropriate units that could be rehabilitated at a cost less than new construction. For purposes of this cost comparison, costs of rehabilitation or new construction may include the cost of real property acquisition.

(b) *Ineligible costs.* Grant funds may not be used for new construction on leased property.

§ 578.49 Leasing.

(a) *Use.* (1) Where the recipient or subrecipient is leasing the structure, or portions thereof, grant funds may be used to pay for 100 percent of the costs of leasing a structure or structures, or portions thereof, to provide housing or supportive services to homeless persons for up to 3 years. Leasing funds may not be used to lease units or structures owned by the recipient, subrecipient, their parent organization(s), any other related organization(s), or organizations that are members of a partnership, where the partnership owns the structure, unless HUD authorized an exception for good cause.

(2) Any request for an exception must include the following:

(i) A description of how leasing these structures is in the best interest of the program;

(ii) Supporting documentation showing that the leasing charges paid with grant funds are reasonable for the market; and

(iii) A copy of the written policy for resolving disputes between the landlord and tenant, including a recusal for officers, agents, and staff who work for both the landlord and tenant.

(b) *Requirements.* (1) *Leasing structures.* When grants are used to pay rent for all or part of a structure or structures, the rent paid must be reasonable in relation to rents being charged in the area for comparable space. In addition, the rent paid may not exceed rents currently being charged by the same owner for comparable unassisted space.

(2) *Leasing individual units.* When grants are used to pay rent for individual housing units, the rent paid must be reasonable in relation to rents being charged for comparable units, taking into account the location, size, type, quality, amenities, facilities, and management services. In addition, the rents may not exceed rents currently being charged for comparable units, and the rent paid may not exceed HUD-determined fair market rents.

(3) *Utilities.* If electricity, gas, and water are included in the rent, these utilities may be paid from leasing funds. If utilities are not provided by the landlord, these utility costs are an operating cost, except for supportive service facilities. If the structure is being used as a supportive service facility, then these utility costs are a supportive service cost.

(4) *Security deposits and first and last month's rent.* Recipients and subrecipients may use grant funds to pay security deposits, in an amount not to exceed 2 months of actual rent. An advance payment of the last month's rent may be provided to the landlord in addition to the security deposit and payment of the first month's rent.

(5) *Occupancy agreements and subleases.* Occupancy agreements and subleases are required as specified in § 578.77(a).

(6) *Calculation of occupancy charges and rent.* Occupancy charges and rent from program participants must be calculated as provided in § 578.77.

(7) *Program income.* Occupancy charges and rent collected from program participants are program income and may be used as provided under § 578.97.

(8) *Transition.* Beginning in the first year awards are made under the Continuum of Care program, renewals of grants for leasing funds entered into under the authority of title IV, subtitle D of the Act as it existed before May 20, 2009, will be renewed either as grants for leasing or as rental assistance, depending on the characteristics of the project. Leasing funds will be renewed as rental assistance if the funds are used to pay rent on units where the lease is between the program participant and the landowner or sublessor. Projects requesting leasing funds will be renewed as leasing if the funds were used to lease a unit or structure and the lease is between the recipient or subrecipient and the landowner.

§ 578.51 Rental assistance.

(a) *Use.* (1) Grant funds may be used for rental assistance for homeless individuals and families. Rental assistance cannot be provided to a program participant who is already receiving rental assistance, or living in a housing unit receiving rental assistance or operating assistance through other federal, State, or local sources.

(i) The rental assistance may be short-term, up to 3 months of rent; medium-term, for 3 to 24 months of rent; or long-term, for longer than 24 months of rent and must be administered in accordance with the policies and procedures established by the Continuum as set forth in § 578.7(a)(9) and this section.

(ii) The rental assistance may be tenant-based, project-based, or sponsor-based, and may be for transitional or permanent housing.

(2) Grant funds may be used for security deposits in an amount not to exceed 2 months of rent. An advance payment of the last month's rent may be provided to the landlord, in addition to the security deposit and payment of first month's rent.

(b) *Rental assistance administrator.* Rental assistance must be administered by a State, unit of general local government, or a public housing agency.

(c) *Tenant-based rental assistance.* Tenant-based rental assistance is rental assistance in which program participants choose housing of an appropriate size in which to reside. When necessary to facilitate the coordination of supportive services, recipients and subrecipients may require program participants to live in a specific area for their entire period of participation, or in a specific structure for the first year and in a specific area for the remainder of their period of participation. Program participants who are receiving rental assistance in transitional housing may be required to live in a specific structure for their entire period of participation in transitional housing.

(1) Up to 5 years worth of rental assistance may be awarded to a project in one competition.

(2) Program participants who have complied with all program requirements during their residence retain the rental assistance if they move within the Continuum of Care geographic area.

(3) Program participants who have complied with all program requirements during their residence and who have been a victim of domestic violence, dating violence, sexual assault, or stalking, and who reasonably believe they are imminently threatened by harm from further domestic violence, dating violence, sexual assault, or stalking (which would include threats from a third party, such as a friend or family member of the perpetrator of the violence), if they remain in the assisted unit, and are able to document the violence and basis for their belief, may retain the rental assistance and move to a different Continuum of Care geographic area if they move out of the

assisted unit to protect their health and safety.

(d) *Sponsor-based rental assistance.* Sponsor-based rental assistance is provided through contracts between the recipient and sponsor organization. A sponsor may be a private, nonprofit organization, or a community mental health agency established as a public nonprofit organization. Program participants must reside in housing owned or leased by the sponsor. Up to 5 years worth of rental assistance may be awarded to a project in one competition.

(e) *Project-based rental assistance.* Project-based rental assistance is provided through a contract with the owner of an existing structure, where the owner agrees to lease the subsidized units to program participants. Program participants will not retain rental assistance if they move. Up to 15 years of rental assistance may be awarded in one competition.

(f) *Grant amount.* The amount of rental assistance in each project will be based on the number and size of units proposed by the applicant to be assisted over the grant period. The amount of rental assistance in each project will be calculated by multiplying the number and size of units proposed by the FMR of each unit on the date the application is submitted to HUD, by the term of the grant.

(g) *Rent reasonableness.* HUD will only provide rental assistance for a unit if the rent is reasonable. The recipient or subrecipient must determine whether the rent charged for the unit receiving rental assistance is reasonable in relation to rents being charged for comparable unassisted units, taking into account the location, size, type, quality, amenities, facilities, and management and maintenance of each unit. Reasonable rent must not exceed rents currently being charged by the same owner for comparable unassisted units.

(h) *Payment of grant.* (1) The amount of rental assistance in each project will be reserved for rental assistance over the grant period. An applicant's request for rental assistance in each grant is an estimate of the amount needed for rental assistance. Recipients will make draws from the grant funds to pay the actual costs of rental assistance for program participants.

(2) For tenant-based rental assistance, on demonstration of need:

(i) Up to 25 percent of the total rental assistance awarded may be spent in any year of a 5-year grant term; or

(ii) A higher percentage if approved in advance by HUD, if the recipient provides evidence satisfactory to HUD that it is financially committed to providing the housing assistance described in the application for the full 5-year period.

(3) A recipient must serve at least as many program participants as shown in its application for assistance.

(4) If the amount in each grant reserved for rental assistance over the grant period exceeds the amount that will be needed to pay the actual costs of rental assistance, due to such factors as contract rents being lower than FMRs and program participants being able to pay a portion of the rent, recipients or subrecipients may use the excess funds for covering the costs of rent increases, or for serving a greater number of program participants.

(i) *Vacancies.* If a unit assisted under this section is vacated before the expiration of the lease, the assistance for the unit may continue for a maximum of 30 days from the end of the month in which the unit was vacated, unless occupied by another eligible person. No additional assistance will be paid until the unit is occupied by another eligible person. Brief periods of stays in institutions, not to exceed 90 days for each occurrence, are not considered vacancies.

(j) *Property damage.* Recipients and subrecipients may use grant funds in an amount not to exceed one month's rent to pay for any damage to housing due to the action of a program participant. This shall be a one-time cost per participant, incurred at the time a participant exits a housing unit.

(k) *Resident rent.* Rent must be calculated as provided in § 578.77. Rents collected from program participants are program income and may be used as provided under § 578.97.

(l) *Leases.* (1) *Initial lease.* For project-based, sponsor-based, or tenant-based rental assistance, program participants must enter into a lease agreement for a term of at least one year, which is terminable for cause. The leases must be automatically renewable upon expiration for terms that are a minimum of one month long, except on prior notice by either party.

(2) *Initial lease for transitional housing.* Program participants in transitional housing must enter into a lease agreement for a term of at least one month. The lease must be automatically renewable upon expiration, except on prior notice by either party, up to a maximum term of 24 months.

§ 578.53 Supportive services.

(a) *In general.* Grant funds may be used to pay the eligible costs of supportive services that address the special needs of the program participants. If the supportive services are provided in a supportive service facility not contained in a housing structure, the costs of day-to-day operation of the supportive service facility, including maintenance, repair, building security, furniture, utilities, and equipment are eligible as a supportive service.

(1) Supportive services must be necessary to assist program participants obtain and maintain housing.

(2) Recipients and subrecipients shall conduct an annual assessment of the service needs of the program participants and should adjust services accordingly.

(b) *Duration.* (1) For a transitional housing project, supportive services must be made available to residents throughout the duration of their residence in the project.

(2) Permanent supportive housing projects must provide supportive services for the residents to enable them to live as independently as is practicable throughout the duration of their residence in the project.

(3) Services may also be provided to former residents of transitional housing and current residents of permanent housing who were homeless in the prior 6 months, for no more than 6 months after leaving transitional housing or homelessness, respectively, to assist their adjustment to independent living.

(4) Rapid rehousing projects must require the program participant to meet with a case manager not less than once per month as set forth in § 578.37(a)(1)(ii)(F), to assist the program participant in maintaining long-term housing stability.

(c) *Special populations.* All eligible costs are eligible to the same extent for program participants who are unaccompanied homeless youth; persons living with HIV/AIDS; and victims of domestic violence, dating violence, sexual assault, or stalking.

(d) *Ineligible costs.* Any cost that is not described as an eligible cost under this section is not an eligible cost of providing supportive services using Continuum of Care program funds. Staff training and the costs of obtaining professional licenses or certifications needed to provide supportive services are not eligible costs.

(e) *Eligible costs.*

(1) *Annual Assessment of Service Needs.* The costs of the assessment required by § 578.53(a)(2) are eligible costs.

(2) *Assistance with moving costs.* Reasonable one-time moving costs are eligible and include truck rental and hiring a moving company.

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

(i) Counseling;

(ii) Developing, securing, and coordinating services;

(iii) Using the centralized or coordinated assessment system as required under § 578.23(c)(9).

(iv) Obtaining federal, State, and local benefits;

(v) Monitoring and evaluating program participant progress;

(vi) Providing information and referrals to other providers;

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

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

(4) *Child care.* The costs of establishing and operating child care, and providing child-care vouchers, for children from families experiencing homelessness, including providing meals and snacks, and comprehensive and coordinated developmental activities, are eligible.

(i) The children must be under the age of 13, unless they are disabled children.

(ii) Disabled children must be under the age of 18.

(iii) The child-care center must be licensed by the jurisdiction in which it operates in order for its costs to be eligible.

(5) *Education services.* The costs of improving knowledge and basic educational skills are eligible.

(i) Services include instruction or training in consumer education, health education, substance abuse prevention, literacy, English as a Second Language, and General Educational Development (GED).

(ii) 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.

(6) *Employment assistance and job training.* The costs of establishing and operating employment assistance and job training programs are eligible, including classroom, online and/or computer instruction, on-the-job instruction, 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 also an eligible cost.

(i) Learning skills include those skills that can be used to secure and retain a job, including the acquisition of vocational licenses and/or certificates.

(ii) Services that assist individuals in securing employment consist of:

(A) Employment screening, assessment, or testing;

(B) Structured job skills and job-seeking skills;

(C) Special training and tutoring, including literacy training and pre-vocational training;

(D) Books and instructional material;

(E) Counseling or job coaching; and

(F) Referral to community resources.

(7) *Food.* The cost of providing meals or groceries to program participants is eligible.

(8) *Housing search and counseling services.* Costs of assisting eligible program participants to locate, obtain, and retain suitable housing are eligible.

(i) Component services or activities are tenant counseling; assisting individuals and families to understand leases; securing utilities; and making moving arrangements.

(ii) Other eligible costs are:

(A) Mediation with property owners and landlords on behalf of eligible program participants;

(B) Credit counseling, accessing a free personal credit report, and resolving personal credit issues; and

(C) The payment of rental application fees.

(9) *Legal services.* Eligible costs are the fees charged by licensed attorneys and by person(s) under the supervision of licensed attorneys, for advice and representation in matters that interfere with the homeless individual or family's ability to obtain and retain housing.

(i) Eligible subject matters are child support; guardianship; paternity; emancipation; 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; landlord tenant disputes; and the resolution of outstanding criminal warrants.

(ii) Component services or activities may include receiving and preparing cases for trial, provision of legal advice, representation at hearings, and counseling.

(iii) 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.

(iv) Legal services for immigration and citizenship matters and issues related to mortgages and homeownership are ineligible. Retainer fee arrangements and contingency fee arrangements are ineligible.

(10) *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 abuse, and homelessness are eligible. These services must be necessary to assist the program participant to function independently in the community. Component life skills training are the budgeting of resources and money management, household management, conflict management, shopping for food and other needed items, nutrition, the use of public transportation, and parent training.

(11) *Mental health services.* Eligible costs are the direct outpatient treatment of mental health conditions that are provided by licensed professionals. Component services are crisis interventions; counseling; 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.

(12) *Outpatient health services.* Eligible costs are the direct outpatient treatment of medical conditions when provided by licensed medical professionals including:

(i) Providing an analysis or assessment of an individual's health problems and the development of a treatment plan;

(ii) Assisting individuals to understand their health needs;

(iii) Providing directly or assisting individuals to obtain and utilize appropriate medical treatment;

(iv) Preventive medical care and health maintenance services, including in-home health services and emergency medical services;

(v) Provision of appropriate medication;

(vi) Providing follow-up services; and

(vii) Preventive and noncosmetic dental care.

(13) *Outreach services.* The costs of activities to engage persons for the purpose of providing immediate support and intervention, as well as identifying

potential program participants, are eligible.

(i) Eligible costs include the outreach worker's transportation costs and a cell phone to be used by the individual performing the outreach.

(ii) Component activities and services consist of: initial assessment; crisis counseling; addressing urgent physical needs, such as providing meals, blankets, clothes, or toiletries; actively connecting and providing people with information and referrals to homeless and mainstream programs; and publicizing the availability of the housing and/or services provided within the geographic area covered by the Continuum of Care.

(14) *Substance abuse treatment services.* The costs of program participant intake and assessment, outpatient treatment, group and individual counseling, and drug testing are eligible. Inpatient detoxification and other inpatient drug or alcohol treatment are ineligible.

(15) *Transportation.* Eligible costs are:

(i) The costs of program participant's travel on public transportation or in a vehicle provided by the recipient or subrecipient to and from medical care, employment, child care, or other services eligible under this section.

(ii) Mileage allowance for service workers to visit program participants and to carry out housing quality inspections;

(iii) The cost of purchasing or leasing a vehicle in which staff transports program participants and/or staff serving program participants;

(iv) The cost of gas, insurance, taxes, and maintenance for the vehicle;

(v) The costs of recipient or subrecipient staff to accompany or assist program participants to utilize public transportation; and

(vi) If public transportation options are not sufficient within the area, the recipient may make a one-time payment on behalf of a program participant needing car repairs or maintenance required to operate a personal vehicle, subject to the following:

(A) Payments for car repairs or maintenance on behalf of the program participant may not exceed 10 percent of the Blue Book value of the vehicle (Blue Book refers to the guidebook that compiles and quotes prices for new and used automobiles and other vehicles of all makes, models, and types);

(B) Payments for car repairs or maintenance must be paid by the recipient or subrecipient directly to the third party that repairs or maintains the car; and

(C) The recipients or subrecipients may require program participants to share in the cost of car repairs or maintenance as a condition of receiving assistance with car repairs or maintenance.

(16) *Utility deposits.* This form of assistance consists of paying for utility deposits. Utility deposits must be a one-time fee, paid to utility companies.

(17) *Direct provision of services.* If the service described in paragraphs (e)(1) through (e)(16) of this section is being directly delivered by the recipient or subrecipient, eligible costs for those services also include:

(i) The costs of labor or supplies, and materials incurred by the recipient or subrecipient in directly providing supportive services to program participants; and

(ii) The salary and benefit packages of the recipient and subrecipient staff who directly deliver the services.

§ 578.55 Operating costs.

(a) *Use.* Grant funds may be used to pay the costs of the day-to-day operation of transitional and permanent housing in a single structure or individual housing units.

(b) *Eligible costs.* (1) The maintenance and repair of housing;

(2) Property taxes and insurance;

(3) Scheduled payments to a reserve for replacement of major systems of the housing (provided that the payments must be based on the useful life of the system and expected replacement cost);

(4) Building security for a structure where more than 50 percent of the units or area is paid for with grant funds;

(5) Electricity, gas, and water;

(6) Furniture; and

(7) Equipment.

(c) *Ineligible costs.* Program funds may not be used for rental assistance and operating costs in the same project. Program funds may not be used for the operating costs of emergency shelter- and supportive service-only facilities. Program funds may not be used for the maintenance and repair of housing where the costs of maintaining and repairing the housing are included in the lease.

§ 578.57 Homeless Management Information System.

(a) *Eligible costs.* (1) The recipient or subrecipient may use Continuum of Care program funds to pay the costs of contributing data to the HMIS designated by the Continuum of Care, including the costs of:

(i) Purchasing or leasing computer hardware;

(ii) Purchasing software or software licenses;

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

(iv) Obtaining technical support;

(v) Leasing office space;

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

(vii) Paying salaries for operating HMIS, including:

(A) Completing data entry;

(B) Monitoring and reviewing data quality;

(C) Completing data analysis;

(D) Reporting to the HMIS Lead;

(E) Training staff on using the HMIS; and

(F) 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, as authorized by HUD, if the recipient or subrecipient is not the HMIS Lead.

(2) If the recipient or subrecipient is the HMIS Lead, it may also use Continuum of Care 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, including traveling to the training.

(3) If the recipient or subrecipient is a victim services provider, or a legal services provider, it may use Continuum of Care funds to establish and operate a comparable database that complies with HUD's HMIS requirements.

(b) *General restrictions.* Activities funded under this section must comply with the HMIS requirements.

§ 578.59 Project administrative costs.

(a) *Eligible costs.* The recipient or subrecipient may use up to 10 percent of any grant awarded under this part, excluding the amount for Continuum of Care Planning Activities and UFA costs, for the payment of project administrative costs related to the planning and execution of Continuum

of Care activities. This does not include staff and overhead costs directly related to carrying out activities eligible under § 578.43 through § 578.57, 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 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 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 Continuum of Care requirements.* Costs of providing training on Continuum of Care requirements and attending HUD-sponsored Continuum of Care trainings.

(3) *Environmental review.* Costs of carrying out the environmental review responsibilities under § 578.31.

(b) *Sharing requirement.* (1) *UFAs.* If the recipient is a UFA that carries out a project, it may use up to 10 percent of the grant amount awarded for the project on project administrative costs. The UFA must share the remaining project administrative funds with its subrecipients.

(2) *Recipients that are not UFAs.* If the recipient is not a UFA, it must share at least 50 percent of project administrative funds with its subrecipients.

§ 578.61 Relocation costs.

(a) *In general.* Relocation costs under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 are eligible.

(b) *Eligible relocation costs.* Eligible costs are costs to provide relocation payments and other assistance to persons displaced by a project assisted with grant funds in accordance with § 578.83.

§ 578.63 Indirect costs.

(a) *In general.* Continuum of Care funds may be used to pay indirect costs in accordance with OMB Circulars A–87 or A–122, as applicable.

(b) *Allocation.* Indirect costs may be allocated to each eligible activity as provided in subpart D, so long as that allocation is consistent with an indirect cost rate proposal developed in accordance with OMB Circulars A–87 or A–122, as applicable.

(c) *Expenditure limits.* The indirect costs charged to an activity subject to an expenditure limit under §§ 578.39, 578.41, and 578.59 must be added to the direct costs charged for that activity when determining the total costs subject to the expenditure limits.

Subpart E—High-Performing Communities

§ 578.65 Standards.

(a) *In general.* The collaborative applicant for a Continuum may apply to HUD to have the Continuum be designated a high-performing community (HPC). The designation shall be for grants awarded in the same competition in which the designation is applied for and made.

(b) *Applying for HPC designation.* The application must be submitted at such time and in such manner as HUD may require, must use HMIS data where required to show the standards for qualifying are met, and must contain such information as HUD requires, including at a minimum:

(1) A report showing how the Continuum of Care program funds received in the preceding year were expended;

(2) A specific plan for how grant funds will be expended; and

(3) Information establishing that the Continuum of Care meets the standards for HPCs.

(c) *Standards for qualifying as an HPC.* To qualify as an HPC, a Continuum must demonstrate through:

(1) Reliable data generated by the Continuum of Care's HMIS that it meets all of the following standards:

(i) *Mean length of homelessness.* Either the mean length of episode of homelessness within the Continuum's geographic area is fewer than 20 days, or the mean length of episodes of homelessness for individuals or families in similar circumstances was reduced by at least 10 percent from the preceding federal fiscal year.

(ii) *Reduced recidivism.* Of individuals and families who leave homelessness, less than 5 percent become homeless again at any time within the next 2 years; or the percentage of individuals and families in similar circumstances who become homeless again within 2 years after leaving homelessness was decreased by at least 20 percent from the preceding federal fiscal year.

(iii) *HMIS coverage.* The Continuum's HMIS must have a bed coverage rate of 80 percent and a service volume coverage rate of 80 percent as calculated in accordance with HUD's HMIS requirements.

(iv) *Serving families and youth.* With respect to Continuums that served homeless families and youth defined as homeless under other federal statutes in paragraph (3) of the definition of homeless in § 576.2:

(A) 95 percent of those families and youth did not become homeless again within a 2-year period following termination of assistance; or

(B) 85 percent of those families achieved independent living in permanent housing for at least 2 years following termination of assistance.

(2) Reliable data generated from sources other than the Continuum's HMIS that is provided in a narrative or other form prescribed by HUD that it meets both of the following standards:

(i) *Community action.* All the metropolitan cities and counties within the Continuum's geographic area have a

comprehensive outreach plan, including specific steps for identifying homeless persons and referring them to appropriate housing and services in that geographic area.

(ii) *Renewing HPC status.* If the Continuum was designated an HPC in the previous federal fiscal year and used Continuum of Care grant funds for activities described under § 578.71, that such activities were effective at reducing the number of individuals and families who became homeless in that community.

§ 578.67 Publication of application.

HUD will publish the application to be designated an HPC through the HUD Web site, for public comment as to whether the Continuum seeking designation as an HPC meets the standards for being one.

§ 578.69 Cooperation among entities.

An HPC must cooperate with HUD in distributing information about its successful efforts to reduce homelessness.

§ 578.71 HPC-eligible activities.

In addition to using grant funds for the eligible costs described in subpart D of this part, recipients and subrecipients in Continuums of Care designated as HPCs may also use grant funds to provide housing relocation and stabilization services and short- and/or medium-term rental assistance to individuals and families at risk of homelessness as set forth in 24 CFR 576.103 and 24 CFR 576.104, if necessary to prevent the individual or family from becoming homeless. Activities must be carried out in accordance with the plan submitted in the application. When carrying out housing relocation and stabilization services and short- and/or medium-term rental assistance, the written standards set forth in § 578.7(a)(9)(v) and recordkeeping requirements of 24 CFR 576.500 apply.

Subpart F—Program Requirements

§ 578.73 Matching requirements.

(a) *In general.* The recipient or subrecipient must match all grant funds, except for leasing funds, with no less than 25 percent of funds or in-kind contributions from other sources. For Continuum of Care geographic areas in which there is more than one grant agreement, the 25 percent match must be provided on a grant-by-grant basis. Recipients that are UFAs or are the sole recipient for their Continuum, may provide match on a Continuum-wide basis. Cash match must be used for the costs of activities that are eligible under subpart D of this part, except that HPCs may use such match for the costs of activities that are eligible under § 578.71.

(b) *Cash sources.* A recipient or subrecipient may use funds from any source, including any other federal sources (excluding Continuum of Care program funds), as well as State, local, and private sources, provided that funds from the source are not statutorily prohibited to be used as a match. The recipient must ensure that any funds used to satisfy the matching requirements of this section are eligible under the laws governing the funds in order to be used as matching funds for a grant awarded under this program.

(c) *In-kind contributions.* (1) The recipient or subrecipient may use the value of any real property, equipment, goods, or services contributed to the project as match, provided that if the recipient or subrecipient had to pay for them with grant funds, the costs would have been eligible under Subpart D, or, in the case of HPCs, eligible under § 578.71.

(2) The requirements of 24 CFR 84.23 and 85.24 apply.

(3) Before grant execution, services to be provided by a third party must be documented by a memorandum of understanding (MOU) between the recipient or subrecipient and the third party that will provide the services. 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.

(i) The MOU must establish the unconditional commitment, except for selection to receive a grant, by the third party to provide the services, the specific service to be provided, the profession of the persons providing the service, and the hourly cost of the service to be provided.

(ii) During the term of the grant, the recipient or subrecipient must keep and make available, for inspection, records documenting the service hours provided.

§ 578.75 General operations.

(a) *State and local requirements.* (1) Housing and facilities constructed or rehabilitated with assistance under this part must meet State or local building codes, and in the absence of State or local building codes, the International Residential Code or International Building Code (as applicable to the type of structure) of the International Code Council.

(2) Services provided with assistance under this part must be provided in compliance with all applicable State and local requirements, including licensing requirements.

(b) *Housing quality standards.* Housing leased with Continuum of Care program funds, or for which rental assistance payments are made with Continuum of Care program funds, must meet the applicable housing quality standards (HQS) under 24 CFR 982.401 of this title, except that 24 CFR 982.401(j) applies only to housing occupied by program participants receiving tenant-based rental assistance. For housing rehabilitated with funds under this part, the lead-based paint requirements in 24 CFR part 35, subparts A, B, J, and R apply. For housing that receives project-based or sponsor-based rental assistance, 24 CFR part 35, subparts A, B, H, and R apply. For residential property for which funds under this part are used for acquisition, leasing, services, or operating costs, 24 CFR part 35, subparts A, B, K, and R apply.

(1) Before any assistance will be provided on behalf of a program participant, the recipient, or subrecipient, must physically inspect each unit to assure that the unit meets HQS. Assistance will not be provided for units that fail to meet HQS, unless the owner corrects any deficiencies within 30 days from the date of the initial inspection and the recipient or subrecipient verifies that all deficiencies have been corrected.

(2) Recipients or subrecipients must inspect all units at least annually during the grant period to ensure that the units continue to meet HQS.

(c) *Suitable dwelling size.* The dwelling unit must have at least one bedroom or living/sleeping room for each two persons.

(1) Children of opposite sex, other than very young children, may not be required to occupy the same bedroom or living/sleeping room.

(2) If household composition changes during the term of assistance, recipients and subrecipients may relocate the household to a more appropriately sized unit. The household must still have access to appropriate supportive services.

(d) *Meals.* Each recipient and subrecipient of assistance under this part who provides supportive housing for homeless persons with disabilities must provide meals or meal preparation facilities for residents.

(e) *Ongoing assessment of supportive services.* To the extent practicable, each

project must provide supportive services for residents of the project and homeless persons using the project, which may be designed by the recipient or participants. Each recipient and subrecipient of assistance under this part must conduct an ongoing assessment of the supportive services needed by the residents of the project, the availability of such services, and the coordination of services needed to ensure long-term housing stability and must make adjustments, as appropriate.

(f) *Residential supervision.* Each recipient and subrecipient of assistance under this part must provide residential supervision as necessary to facilitate the adequate provision of supportive services to the residents of the housing throughout the term of the commitment to operate supportive housing. Residential supervision may include the employment of a full- or part-time residential supervisor with sufficient knowledge to provide or to supervise the provision of supportive services to the residents.

(g) *Participation of homeless individuals.* (1) Each recipient and subrecipient must provide for the participation of not less than one homeless individual or formerly homeless individual on the board of directors or other equivalent policymaking entity of the recipient or subrecipient, to the extent that such entity considers and makes policies and decisions regarding any project, supportive services, or assistance provided under this part. This requirement is waived if a recipient or subrecipient is unable to meet such requirement and obtains HUD approval for a plan to otherwise consult with homeless or formerly homeless persons when considering and making policies and decisions.

(2) Each recipient and subrecipient of assistance under this part must, to the maximum extent practicable, involve homeless individuals and families through employment; volunteer services; or otherwise in constructing, rehabilitating, maintaining, and operating the project, and in providing supportive services for the project.

(h) *Supportive service agreement.* Recipients and subrecipients may require the program participants to take part in supportive services that are not disability-related services provided through the project as a condition of continued participation in the program. Examples of disability-related services include, but are not limited to, mental health services, outpatient health services, and provision of medication, which are provided to a person with a disability to address a condition caused by the disability. Notwithstanding this provision, if the purpose of the project is to provide substance abuse treatment services, recipients and subrecipients may require program participants to take part in such services as a condition of continued participation in the program.

(i) *Retention of assistance after death, incarceration, or institutionalization for more than 90 days of qualifying member.* For permanent supportive housing projects surviving, members of any household who were living in a unit assisted under this part at the time of the qualifying member's death, long-term incarceration, or long-term institutionalization, have the right to rental assistance under this section until the expiration of the lease in effect at the time of the qualifying member's death, long-term incarceration, or long-term institutionalization.

§ 578.77 Calculating occupancy charges and rent.

(a) *Occupancy agreements and leases.* Recipients and subrecipients must have signed occupancy agreements or leases (or subleases) with program participants residing in housing.

(b) *Calculation of occupancy charges.* Recipients and subrecipients are not required to impose occupancy charges on program participants as a condition of residing in the housing. However, if occupancy charges are imposed, they may not exceed the highest of:

(1) 30 percent of the family's monthly adjusted income (adjustment factors include the number of people in the family, age of family members, medical expenses, and child-care expenses);

(2) 10 percent of the family's monthly income; or

(3) If the family is receiving payments for welfare assistance from a public agency and a part of the payments (adjusted in accordance with the family's actual housing costs) is specifically designated by the agency to meet the family's housing costs, the portion of the payments that is designated for housing costs.

(4) *Income.* Income must be calculated in accordance with 24 CFR 5.609 and 24 CFR 5.611(a). Recipients and subrecipients must examine a program participant's income initially, and if there is a change in family composition (*e.g.*, birth of a child) or a decrease in the resident's income during the year, the resident may request an interim reexamination, and the occupancy charge will be adjusted accordingly.

(c) *Resident rent.* (1) *Amount of rent.* (i) Each program participant on whose behalf rental assistance payments are made must pay a contribution toward rent in accordance with section 3(a)(1) of the U.S. Housing Act of 1937 (42 U.S.C. 1437a(a)(1)).

(ii) Income of program participants must be calculated in accordance with 24 CFR 5.609 and 24 CFR 5.611(a).

(2) *Review.* Recipients or subrecipients must examine a program participant's income initially, and at least annually thereafter, to determine the amount of the contribution toward rent payable by the program participant. Adjustments to a program participant's contribution toward the rental payment must be made as changes in income are identified.

(3) *Verification.* As a condition of participation in the program, each program participant must agree to supply the information or documentation necessary to verify the program participant's income. Program participants must provide the recipient or subrecipient with information at any time regarding changes in income or other circumstances that may result in changes to a program participant's contribution toward the rental payment.

§ 578.79 Limitation on transitional housing.

A homeless individual or family may remain in transitional housing for a period longer than 24 months, if permanent housing for the individual or family has not been located or if the individual or family requires additional time to prepare for independent living. However, HUD may discontinue assistance for a transitional housing project if more than half of the homeless individuals or families remain in that project longer than 24 months.

§ 578.81 Term of commitment, repayment of grants, and prevention of undue benefits.

(a) *In general.* All recipients and subrecipients receiving grant funds for acquisition, rehabilitation, or new construction must operate the housing or provide supportive services in accordance with this part, for at least 15 years from the date of initial occupancy or date of initial service provision. Recipient and subrecipients must execute and record a HUD-approved Declaration of Restrictive Covenants before receiving payment of grant funds.

(b) *Conversion.* Recipients and subrecipients carrying out a project that provides transitional or permanent housing or supportive services in a structure may submit a request to HUD to convert a project for the direct benefit of very low-income persons. The request must be made while the project is operating as homeless housing or supportive services for homeless

individuals and families, must be in writing, and must include an explanation of why the project is no longer needed to provide transitional or permanent housing or supportive services. The primary factor in HUD's decision on the proposed conversion is the unmet need for transitional or permanent housing or supportive services in the Continuum of Care's geographic area.

(c) *Repayment of grant funds.* If a project is not operated as transitional or permanent housing for 10 years following the date of initial occupancy, HUD will require repayment of the entire amount of the grant used for acquisition, rehabilitation, or new construction, unless conversion of the project has been authorized under paragraph (b) of this section. If the housing is used for such purposes for more than 10 years, the payment amount will be reduced by 20 percentage points for each year, beyond the 10-year period in which the project is used for transitional or permanent housing.

(d) *Prevention of undue benefits.* Except as provided under paragraph (e) of this section, upon any sale or other disposition of a project site that received grant funds for acquisition, rehabilitation, or new construction, occurring before the 15-year period, the recipient must comply with such terms and conditions as HUD may prescribe to prevent the recipient or subrecipient from unduly benefiting from such sale or disposition.

(e) *Exception.* A recipient or subrecipient will not be required to comply with the terms and conditions prescribed under paragraphs (c) and (d) of this section if:

(1) The sale or disposition of the property used for the project results in the use of the property for the direct benefit of very low-income persons;

(2) All the proceeds are used to provide transitional or permanent housing that meet the requirements of this part;

(3) Project-based rental assistance or operating cost assistance from any federal program or an equivalent State or local program is no longer made available and the project is meeting applicable performance standards, provided that the portion of the project that had benefitted from such assistance continues to meet the tenant income and rent restrictions for low-income units under section 42(g) of the Internal Revenue Code of 1986; or

(4) There are no individuals and families in the Continuum of Care geographic area who are homeless, in which case the project may serve individuals and families at risk of homelessness.

§ 578.83 Displacement, relocation, and acquisition.

(a) *Minimizing displacement.* Consistent with the other goals and objectives of this part, recipients and subrecipients must ensure that they have taken all reasonable steps to minimize the displacement of persons (families, individuals, businesses, nonprofit organizations, and farms) as a result of projects assisted under this part. "Project," as used in this section, means any activity or series of activities assisted with Continuum of Care funds received or anticipated in any phase of an undertaking.

(b) *Temporary relocation.* (1) *Existing Building Not Assisted under Title IV of the McKinney-Vento Act.* No tenant may be required to relocate temporarily for a project if the building in which the project is being undertaken or will be undertaken is not currently assisted under Title IV of the McKinney-Vento Act. The absence of such assistance to the building means the tenants are not homeless and the tenants are therefore not eligible to receive assistance under the Continuum of Care program. When a tenant moves for such a project under conditions that cause the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA), 42 U.S.C. 4601–4655, to apply, the tenant must be treated as permanently displaced and offered relocation assistance and payments consistent with paragraph (c) of this section.

(2) *Existing Transitional Housing or Permanent Housing Projects Assisted Under Title IV of the McKinney-Vento Act.* Consistent with paragraph (c)(2)(ii) of this section, no program participant may be required to relocate temporarily for a project if the person cannot be offered a decent, safe, and sanitary unit in the same building or complex upon project completion under reasonable terms and conditions. The length of occupancy requirements in § 578.79 may prevent a program participant from returning to the property upon completion (See paragraph (c)(2)(iii)(D) of this section). Any program participant who has been temporarily relocated for a period beyond one year must be treated as permanently displaced and offered relocation assistance and payments consistent with paragraph (c) of this section. Program participants temporarily relocated in accordance with the policies described in this paragraph must be provided:

(i) Reimbursement for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including the cost of moving to and from the temporarily occupied housing and any increase in monthly rent/occupancy charges and utility costs; and

(ii) Appropriate advisory services, including reasonable advance written notice of:

(A) The date and approximate duration of the temporary relocation;

(B) The location of the suitable, decent, safe, and sanitary dwelling to be made available for the temporary period;

(C) The reasonable terms and conditions under which the program participant will be able to occupy a suitable, decent, safe, and sanitary dwelling in the building or complex upon completion of the project; and

(D) The provisions of paragraph (b)(2)(i) of this section.

(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 in accordance with the requirements of the URA and implementing regulations at 49 CFR part 24. A displaced person must be advised of his or her rights under the Fair Housing Act. Whenever possible, minority persons must be given reasonable opportunities to relocate to 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).

(2) *Displaced person.* (i) For the purposes of paragraph (c) of this section, the term "displaced person" means any person (family, individual, business, nonprofit organization, or farm) 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. This includes any permanent, involuntary move for a 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 after the date of the submission by the recipient or subrecipient of an application for assistance to HUD (or the recipient, as applicable) that is later approved and funded and the recipient or subrecipient has site control as evidenced in accordance with § 578.25(b); or

(B) 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 after the date the recipient or subrecipient obtains site control, as evidenced in accordance with § 578.25(b), if that occurs after the application for assistance; or

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

(D) By a tenant of a building that is not assisted under Title IV of the McKinney-Vento Act, if the tenant moves after execution of the agreement covering the acquisition, rehabilitation, or demolition of the property for the project; or

(ii) For the purposes of paragraph (c) of this section, the term "displaced person" means any person (family, individual, business, nonprofit organization, or farm) 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. This includes any permanent, involuntary move for a project that is made by a program participant occupying transitional housing or permanent housing assisted under Title IV of the McKinney-Vento Act, if any one of the following three situations occurs:

(A) The program participant moves after execution of the agreement covering the acquisition, rehabilitation, or demolition of the property for the project and is either not eligible to return upon project completion or the move occurs before the program participant is provided written notice offering the program participant an opportunity to occupy a suitable, decent, safe, and sanitary dwelling in the same building or complex upon project completion under reasonable terms and conditions. Such reasonable terms and conditions must include a lease (or occupancy agreement, as applicable) consistent with Continuum of Care program requirements, including a monthly rent or occupancy charge and monthly utility costs that does not exceed the maximum amounts established in § 578.77; or

(B) The program participant is required to relocate temporarily, does not return to the building or complex, and any one of the following situations occurs:

(*1*) The program participant is not offered payment for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation;

(*2*) The program participant is not eligible to return to the building or complex upon project completion; or

(*3*) Other conditions of the temporary relocation are not reasonable; or

(C) The program participant is required to move to another unit in the same building or complex, and any one of the following situations occurs:

(*1*) The program participant is not offered reimbursement for all reasonable out-of-pocket expenses incurred in connection with the move;

(*2*) The program participant is not eligible to remain in the building or complex upon project completion; or

(*3*) Other conditions of the move are not reasonable.

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

(A) The person has been evicted for serious or repeated violation of the terms and conditions of the lease or occupancy agreement; the eviction complied with applicable federal, State, or local requirements (see § 578.91); and the recipient or subrecipient 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 or occupancy agreement and commencing occupancy, was provided written notice of the project's possible impact on the person (*e.g.*, the person may be displaced, temporarily relocated, or incur a rent increase) and the fact that the person would not qualify as a "displaced person" (or for any relocation assistance provided under this section), as a result of the project;

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

(D) The person is a program participant occupying transitional housing or permanent housing assisted under Title IV of the Act who must move as a direct result of the length-of-occupancy restriction under § 578.79; or

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

(iv) The recipient may request, at any time, HUD's determination of whether a displacement is or would be covered under this section.

(3) *Initiation of negotiations.* For purposes of determining the formula for computing replacement housing payment assistance to be provided to a displaced person pursuant to this section, if the displacement is a 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 between the recipient (or subrecipient, as applicable) and the person owning or controlling the property. In the case of an option contract to acquire property, the initiation of negotiations does not become effective until execution of a written agreement that creates a legally enforceable commitment to proceed with the purchase, such as a purchase agreement.

(d) *Real property acquisition requirements.* Except for acquisitions described in 49 CFR 24.101(b)(1) through (5), the URA and the requirements of 49 CFR part 24, subpart B apply to any acquisition of real property for a project where there are Continuum of Care funds in any part of the project costs.

(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 is eligible, may file a written appeal of that determination with the recipient (see 49 CFR 24.10). A low-income person who is dissatisfied with the recipient's determination on his or her appeal may submit a written request for review of that determination to the local HUD field office.

§ 578.85 Timeliness standards.

(a) *In general.* Recipients must initiate approved activities and projects promptly.

(b) *Construction activities.* Recipients of funds for rehabilitation or new construction must meet the following standards:

(1) Construction activities must begin within 9 months of the later of signing of the grant agreement or of signing an addendum to the grant agreement authorizing use of grant funds for the project.

(2) Construction activities must be completed within 24 months of signing the grant agreement.

(3) Activities that cannot begin until after construction activities are completed must begin within 3 months of the date that construction activities are completed.

(c) *Distribution.* A recipient that receives funds through this part must:

(1) Distribute the funds to subrecipients (in advance of expenditures by the subrecipients);

(2) Distribute the appropriate portion of the funds to a subrecipient no later than 45 days after receiving an approvable request for such distribution from the subrecipient; and

(3) Draw down funds at least once per quarter of the program year, after eligible activities commence.

§ 578.87 Limitation on use of funds.

(a) *Maintenance of effort.* No assistance provided under this part (or any State or local government funds used to supplement this assistance) may be used to replace State or local funds previously used, or designated for use, to assist homeless persons.

(b) *Faith-based activities.* (1) *Equal treatment of program participants and program beneficiaries.* (i) *Program participants.* Organizations that are religious or faith-based are eligible, on the same basis as any other organization, to participate in the Continuum of Care program. Neither the Federal Government nor a State or local government receiving funds under the Continuum of Care program shall discriminate against an organization on the basis of the organization's religious character or affiliation. Recipients and subrecipients of program funds shall not, in providing program assistance, discriminate against a program participant or prospective program participant on the basis of religion or religious belief.

(ii) *Beneficiaries.* In providing services supported in whole or in part with federal financial assistance, and in their outreach activities related to such services, program participants shall not discriminate against current or prospective program beneficiaries on the basis of religion, a religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice.

(2) *Separation of explicitly religious activities.* Recipients and subrecipients of Continuum of Care funds that engage in explicitly religious activities, including activities that involve overt religious content such as worship, religious instruction, or proselytization, must perform such activities and offer such services outside of programs that are supported with federal financial assistance separately, in time or location, from the programs or services funded under this part, and participation in any such explicitly religious activities must be voluntary for the program beneficiaries of the HUD-funded programs or services.

(3) *Religious identity.* A faith-based organization that is a recipient or subrecipient of Continuum of Care program funds is eligible to use such funds as provided under the regulations of this part without impairing its independence, autonomy, expression of religious beliefs, or religious character. Such organization will retain its independence from federal, State, and local government, and may continue to carry out its mission, including the definition, development, practice, and expression of its religious beliefs, provided that it does not use direct program funds to support or engage in any explicitly religious activities, including activities that involve overt religious content, such as worship, religious instruction, or proselytization, or any manner prohibited by law. Among other things, faith-based organizations may use space in their facilities to provide program-funded services, without removing or altering religious art, icons, scriptures, or other religious symbols. In addition, a Continuum of Care program-funded religious organization retains its authority over its internal governance, and it 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.

(4) *Alternative provider.* If a program participant or prospective program participant of the Continuum of Care program supported by HUD objects to the religious character of an organization that provides services under the program, that organization shall, within a reasonably prompt time after the objection, undertake reasonable efforts to identify and refer the program participant to an alternative provider to which the prospective program participant has no objection. Except for services provided by telephone, the Internet, or similar means, the referral must be to an alternate provider in reasonable geographic proximity to the organization making the referral. In making the referral, the organization shall comply with applicable privacy laws and regulations. Recipients and subrecipients shall document any objections from program participants and prospective program participants and any efforts to refer such participants to alternative providers in accordance with the requirements of § 578.103(a)(13). Recipients shall ensure that all subrecipient agreements make organizations receiving program funds aware of these requirements.

(5) *Structures.* Program funds may not be used for the acquisition, construction, or rehabilitation of structures to the extent that those structures are used for explicitly religious activities. Program funds may be used for the acquisition, construction, or rehabilitation of structures only to the extent that those structures are used for conducting eligible activities under this part. When a structure is used for both eligible and explicitly religious activities, program funds may not exceed the cost of those portions of the acquisition, new construction, or rehabilitation that are attributable to eligible activities in accordance with the cost accounting requirements applicable to the Continuum of Care program. Sanctuaries, chapels, or other rooms that a Continuum of Care program-funded religious congregation uses as its principal place of worship, however, are ineligible for Continuum of Care program-funded improvements. Disposition of real property after the term of the grant, or any change in the use of the property during the term of the grant, is subject to governmentwide regulations governing real property disposition (see 24 CFR parts 84 and 85).

(6) *Supplemental funds.* If a State or local government voluntarily contributes its own funds to supplement federally funded activities, the State or local government 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.

(c) *Restriction on combining funds.* In a single structure or housing unit, the following types of assistance may not be combined:

(1) Leasing and acquisition, rehabilitation, or new construction;

(2) Tenant-based rental assistance and acquisition, rehabilitation, or new construction;

(3) Short- or medium-term rental assistance and acquisition, rehabilitation, or new construction;

(4) Rental assistance and leasing; or

(5) Rental assistance and operating.

(d) *Program fees.* Recipients and subrecipients may not charge program participants program fees.

§ 578.89 Limitation on use of grant funds to serve persons defined as homeless under other federal laws.

(a) *Application requirement.* Applicants that intend to serve unaccompanied youth and families with children and youth defined as homeless under other federal laws in paragraph (3) of the homeless definition in § 576.2 must demonstrate in their application, to HUD's satisfaction, that the use of grant funds to serve such persons is an equal or greater priority than serving persons defined as homeless under paragraphs (1), (2), and (4) of the

definition of homeless in § 576.2. To demonstrate that it is of equal or greater priority, applicants must show that it is equally or more cost effective in meeting the overall goals and objectives of the plan submitted under section 427(b)(1)(B) of the Act, especially with respect to children and unaccompanied youth.

(b) *Limit.* No more than 10 percent of the funds awarded to recipients within a single Continuum of Care's geographic area may be used to serve such persons.

(c) *Exception.* The 10 percent limitation does not apply to Continuums in which the rate of homelessness, as calculated in the most recent point-in-time count, is less than one-tenth of one percent of the total population.

§ 578.91 Termination of assistance to program participants.

(a) *Termination of assistance.* The recipient or subrecipient may terminate assistance to a program participant who violates program requirements or conditions of occupancy. Termination under this section does not bar the recipient or subrecipient from providing further assistance at a later date to the same individual or family.

(b) *Due process.* In terminating assistance to a program participant, the recipient or subrecipient must provide a formal process that recognizes the rights of individuals receiving assistance under the due process of law. This process, at a minimum, must consist of:

(1) Providing the program participant with a written copy of the program rules and the termination process before the participant begins to receive assistance;

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

(3) 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

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

(c) *Hard-to-house populations.* Recipients and subrecipients that are providing permanent supportive housing for hard-to-house populations of homeless persons must exercise judgment and examine all extenuating circumstances in determining when violations are serious enough to warrant termination so that a program participant's assistance is terminated only in the most severe cases.

§ 578.93 Fair Housing and Equal Opportunity.

(a) *Nondiscrimination and equal opportunity requirements.* The nondiscrimination and equal opportunity requirements set forth in 24 CFR 5.105(a) are applicable.

(b) *Housing for specific subpopulations.* Recipients and subrecipients may exclusively serve a particular homeless subpopulation in transitional or permanent housing if the housing addresses a need identified by the Continuum of Care for the geographic area and meets one of the following:

(1) The housing may be limited to one sex where such housing consists of a single structure with shared bedrooms or bathing facilities such that the considerations of personal privacy and the physical limitations of the configuration of the housing make it appropriate for the housing to be limited to one sex;

(2) The housing may be limited to a specific subpopulation, so long as admission does not discriminate against any protected class under federal nondiscrimination laws in 24 CFR 5.105 (*e.g.*, the housing may be limited to homeless veterans, victims of domestic violence and their children, or chronically homeless persons and families).

(3) The housing may be limited to families with children.

(4) If the housing has in residence at least one family with a child under the age of 18, the housing may exclude registered sex offenders and persons with a criminal record that includes a violent crime from the project so long as the child resides in the housing.

(5) Sober housing may exclude persons who refuse to sign an occupancy agreement or lease that prohibits program participants from possessing, using, or being under the influence of illegal substances and/or alcohol on the premises.

(6) If the housing is assisted with funds under a federal program that is limited by federal statute or Executive Order to a specific subpopulation, the housing may be limited to that subpopulation (*e.g.*, housing also assisted with funding from the Housing Opportunities for Persons with AIDS program under 24 CFR part 574 may be limited to persons with acquired immunodeficiency syndrome or related diseases).

(7) Recipients may limit admission to or provide a preference for the housing to subpopulations of homeless persons and families who need the specialized supportive services that are provided in the housing (*e.g.*, substance abuse addiction treatment, domestic violence services, or a high intensity package designed to meet the needs of hard-to-reach homeless persons). While the housing may offer services for a particular type of disability, no otherwise eligible individuals with disabilities or families including an individual with a disability, who may benefit from the services provided may be excluded on the grounds that they do not have a particular disability.

(c) *Affirmatively furthering fair housing.* A recipient must implement its programs in a manner that affirmatively furthers fair housing, which means that the recipient must:

(1) Affirmatively market their housing and supportive services to eligible persons regardless of race, color, national origin, religion, sex, age, familial status, or handicap who are least likely to apply in the absence of special outreach, and maintain records of those marketing activities;

(2) Where a recipient encounters a condition or action that impedes fair housing choice for current or prospective program participants, provide such information to the jurisdiction that provided the certification of consistency with the Consolidated Plan; and

(3) Provide program participants with information on rights and remedies available under applicable federal, State and local fair housing and civil rights laws.

(d) *Accessibility and integrative housing and services for persons with disabilities.* Recipients and subrecipients must comply with the accessibility requirements of the Fair Housing Act (24 CFR part 100), Section 504 of the Rehabilitation Act of 1973 (24 CFR part 8), and Titles II and III of the Americans with Disabilities Act, as applicable (28 CFR parts 35 and 36). In accordance with the requirements of 24 CFR 8.4(d), recipients must ensure that their program's housing and supportive services are provided in the most integrated setting appropriate to the needs of persons with disabilities.

(e) *Prohibition against involuntary family separation.* The age and gender of a child under age 18 must not be used as a basis for denying any family's admission to a project that receives funds under this part.

§ 578.95 Conflicts of interest.

(a) *Procurement.* For the procurement of property (goods, supplies, or equipment) 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).

(b) *Continuum of Care board members.* No Continuum of Care board member may participate in or influence discussions or resulting decisions concerning the award of a grant or other financial benefits to the organization that the member represents.

(c) *Organizational conflict.* An organizational conflict of interest arises when, because of activities or relationships with other persons or organizations, the recipient or subrecipient is unable or potentially unable to render impartial assistance in the provision of any type or amount of assistance under this part, or when a covered person's, as in paragraph (d)(1) of this section, objectivity in performing work with respect to any activity assisted under this part is or might be otherwise impaired. Such an organizational conflict would arise when a board member of an applicant participates in decision of the applicant concerning the award of a grant, or provision of other financial benefits, to the organization that such member represents. It would also arise when an employee of a recipient or subrecipient participates in making rent reasonableness determinations under § 578.49(b)(2) and § 578.51(g) and housing quality inspections of property under § 578.75(b) that the recipient, subrecipient, or related entity owns.

(d) *Other conflicts.* For all other transactions and activities, the following restrictions apply:

(1) No covered person, meaning a person who is an employee, agent, consultant, officer, or elected or appointed official of the recipient or its subrecipients and who exercises or has exercised any functions or responsibilities with respect to activities assisted under this part, or who is in a position to participate in a decision-making process or gain inside information with regard to activities assisted under this part, 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 immediate family or business ties, during his or her tenure or during the one-year period following his or her tenure.

(2) *Exceptions.* Upon the written request of the recipient, HUD may grant an exception to the provisions of this section on a case-by-case basis, taking into account the cumulative effects of the criteria in paragraph (d)(2)(ii) of this section, provided that the recipient has satisfactorily met the threshold requirements of paragraph (d)(2)(ii) of this section.

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

(A) Disclosure of the nature of the conflict, accompanied by a written assurance, if the recipient is a government, that there has been public disclosure of the conflict and a description of how the public disclosure was made; and if the recipient is a private nonprofit organization, that the conflict has been disclosed in accordance with their written code of conduct or other conflict-of-interest policy; 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, or if the subrecipient is a private nonprofit organization, the exception would not violate the organization's internal policies.

(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 (c)(3)(i) of this section, HUD must conclude that the exception will serve to further the purposes of the Continuum of Care program and the effective and efficient administration of the recipient's or subrecipient's 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 (c)(1) of this section;

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

(F) Whether the person affected is a member of a group or class of persons intended to be the beneficiaries of the assisted activity, and the exception will permit such person to receive generally the same interests or benefits as are being made available or provided to the group or class; and

(G) Any other relevant considerations.

§ 578.97 Program income.

(a) *Defined.* Program income is the income received by the recipient or subrecipient directly generated by a grant-supported activity.

(b) *Use.* Program income earned during the grant term shall be retained by the recipient, and added to funds committed to the project by HUD and the recipient, used for eligible activities in accordance with the requirements of this part. Costs incident to the generation of program income may be deducted from gross income to calculate program income, provided that the costs have not been charged to grant funds.

(c) *Rent and occupancy charges.* Rents and occupancy charges collected from program participants are program income. In addition, rents and occupancy charges collected from residents of transitional housing may be reserved, in whole or in part, to assist the residents from whom they are collected to move to permanent housing.

§ 578.99 Applicability of other federal requirements.

In addition to the requirements set forth in 24 CFR part 5, use of assistance provided under this part must comply with the following federal requirements:

(a) *Environmental review.* Activities under this part are subject to environmental review by HUD under 24 CFR part 50 as noted in § 578.31.

(b) *Section 6002 of the Solid Waste Disposal Act.* State agencies and agencies of a political subdivision of a state that are using assistance under this part for procurement, and any person contracting with such an agency with respect to work performed under an assisted contract, must comply with the requirements of Section 6003 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. In accordance with Section 6002, these agencies and persons must:

(1) Procure 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 in the preceding fiscal year exceeded $10,000;

(2) Procure solid waste management services in a manner that maximizes energy and resource recovery; and

(3) Must have established an affirmative procurement program for the procurement of recovered materials identified in the EPA guidelines.

(c) *Transparency Act Reporting.* Section 872 of the Duncan Hunter Defense Appropriations Act of 2009, and additional requirements published by the Office of Management and Budget (OMB), requires recipients to report subawards made either as pass-through awards, subrecipient awards, or vendor awards in the Federal Government Web site *www.fsrs.gov* or its successor system. The reporting of award and subaward information is in accordance with the requirements of the Federal Financial Assistance Accountability and Transparency Act of 2006, as amended by section 6202 of Public Law 110–252 and in OMB Policy Guidance issued to the federal agencies on September 14, 2010 (75 FR 55669).

(d) *The Coastal Barrier Resources Act of 1982* (16 U.S.C. 3501 *et seq.*) may apply to proposals under this part, depending on the assistance requested.

(e) *Applicability of OMB Circulars.* The requirements of 24 CFR part 85—Administrative Requirements for Grants and Cooperative Agreements to State, Local, and Federally Recognized Indian Tribal Governments and 2 CFR part 225—Cost Principles for State, Local and Indian Tribal Governments (OMB Circular A–87)—apply to governmental recipients and subrecipients except where inconsistent with the provisions of this part. The requirements of 24 CFR part 84—Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations; 2 CFR part 230—Cost Principles for Non-Profit Organizations (OMB Circular A–122); and 2 CFR part 220—Cost Principles for Education Institutions apply to the nonprofit recipients and subrecipients, except where inconsistent with the provisions of the McKinney-Vento Act or this part.

(f) *Lead-based paint.* 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 at 24 CFR part 35, subparts A, B, H, J, K, M, and R apply to activities under this program.

(g) *Audit.* Recipients and subrecipients must comply with the audit requirements of OMB Circular A–133, "Audits of States, Local Governments, and Non-profit Organizations."

(h) *Davis-Bacon Act.* The provisions of the Davis-Bacon Act do not apply to this program.

(i) *Section 3 of the Housing and Urban Development Act.* Recipients and subrecipients must, as applicable, comply with Section 3 of the Housing and Urban Development Act of 1968 and its implementing regulations at 24 CFR part 135, as applicable.

Subpart G—Grant Administration

§ 578.101 Technical assistance.

(a) *Purpose.* The purpose of Continuum of Care technical assistance is to increase the effectiveness with which Continuums of Care, eligible applicants, recipients, subrecipients, and UFAs implement and administer their Continuum of Care planning process; improve their capacity to prepare applications; prevent the separation of families in projects funded under the Emergency Solutions Grants, Continuum of Care, and Rural Housing Stability Assistance programs; and adopt and provide best practices in housing and services for persons experiencing homelessness.

(b) *Defined.* Technical assistance means the transfer of skills and knowledge to entities that may need, but do not possess, such skills and knowledge. The assistance may include, but is not limited to, written information such as papers, manuals, guides, and brochures; person-to-person exchanges; web-based curriculums, training and Webinars, and their costs.

(c) *Set-aside.* HUD may set aside funds annually to provide technical assistance, either directly by HUD staff or indirectly through third-party providers.

(d) *Awards.* From time to time, as HUD determines the need, HUD may advertise and competitively select providers to deliver technical assistance. HUD may enter into contracts, grants, or cooperative agreements, when necessary; to implement the technical assistance. HUD may also enter into agreements with other federal agencies for awarding the technical assistance funds.

§ 578.103 Recordkeeping requirements.

(a) *In general.* The recipient and its subrecipients must establish and maintain standard operating procedures for ensuring that Continuum of Care program funds are used in accordance with the requirements of this part and must establish and maintain sufficient records to enable HUD to determine whether the recipient and its subrecipients are meeting the requirements of this part, including:

(1) *Continuum of Care records.* Each collaborative applicant must keep the following documentation related to establishing and operating a Continuum of Care:

(i) Evidence that the Board selected by the Continuum of Care meets the requirements of § 578.5(b);

(ii) Evidence that the Continuum has been established and operated as set forth in subpart B of this part, including published agendas and meeting minutes, an approved Governance Charter that is reviewed and updated annually, a written process for selecting a board that is reviewed and updated at least once every 5 years, evidence required for designating a single HMIS for the Continuum, and monitoring reports of recipients and subrecipients;

(iii) Evidence that the Continuum has prepared the application for funds as set forth in § 578.9, including the designation of the eligible applicant to be the collaborative applicant.

(2) *Unified funding agency records.* UFAs that requested grant amendments from HUD, as set forth in § 578.105, must keep evidence that the grant amendment was approved by the Continuum. This evidence may include minutes of meetings at which the grant amendment was discussed and approved.

(3) *Homeless status.* Acceptable evidence of the homeless as status is set forth in 24 CFR 576.500(b).

(4) *At risk of homelessness status.* For those recipients and subrecipients that serve persons at risk of homelessness, the recipient or subrecipient must keep records that establish "at risk of homelessness" status of each individual or family who receives Continuum of Care homelessness prevention assistance. Acceptable evidence is found in 24 CFR 576.500(c).

(5) *Records of reasonable belief of imminent threat of harm.* For each program participant who moved to a different Continuum of Care due to imminent threat of further domestic violence, dating violence, sexual assault, or stalking under § 578.51(c)(3), each recipient or subrecipient of assistance under this part must retain:

(i) Documentation of the original incidence of domestic violence, dating violence, sexual assault, or stalking, only if the original violence is not already documented in the program participant's case file. This may be written observation of the housing or service provider; a letter or other documentation from a victim service provider, social worker, legal assistance provider, pastoral counselor, mental health provider, or other professional from whom the victim has sought assistance; medical or dental records; court records or law enforcement records; or written certification by the

program participant to whom the violence occurred or by the head of household.

(ii) Documentation of the reasonable belief of imminent threat of further domestic violence, dating violence, or sexual assault or stalking, which would include threats from a third-party, such as a friend or family member of the perpetrator of the violence. This may be written observation by the housing or service provider; a letter or other documentation from a victim service provider, social worker, legal assistance provider, pastoral counselor, mental health provider, or other professional from whom the victim has sought assistance; current restraining order; recent court order or other court records; law enforcement report or records; communication records from the perpetrator of the violence or family members or friends of the perpetrator of the violence, including emails, voicemails, text messages, and social media posts; or a written certification by the program participant to whom the violence occurred or the head of household.

(6) *Annual income.* For each program participant who receives housing assistance where rent or an occupancy charge is paid by the program participant, the recipient or subrecipient must keep the following documentation of annual income:

(i) Income evaluation form specified by HUD and completed by the recipient or subrecipient; and

(ii) Source documents (*e.g.*, most recent wage statement, unemployment compensation statement, public benefits statement, bank statement) for the assets held by the program participant and income received before the date of the evaluation;

(iii) To the extent that source documents are unobtainable, a written statement by the relevant third party (*e.g.*, employer, government benefits administrator) or the written certification by the recipient's or subrecipient's intake staff of the oral verification by the relevant third party of the income the program participant received over the most recent period; or

(iv) To the extent that source documents and third-party verification are unobtainable, the written certification by the program participant of the amount of income that the program participant is reasonably expected to receive over the 3-month period following the evaluation.

(7) *Program participant records.* In addition to evidence of "homeless" status or "at-risk-of-homelessness" status, as applicable, the recipient or subrecipient must keep records for each program participant that document:

(i) The services and assistance provided to that program participant, including evidence that the recipient or subrecipient has conducted an annual assessment of services for those program participants that remain in the program for more than a year and adjusted the service package accordingly, and including case management services as provided in § 578.37(a)(1)(ii)(F); and

(ii) Where applicable, compliance with the termination of assistance requirement in § 578.91.

(8) *Housing standards.* The recipient or subrecipient must retain documentation of compliance with the housing standards in § 578.75(b), including inspection reports.

(9) *Services provided.* The recipient or subrecipient must document the types of supportive services provided under the recipient's program and the amounts spent on those services. The recipient or subrecipient must keep record that these records were reviewed at least annually and that the service package offered to program participants was adjusted as necessary.

(10) *Match.* The recipient must keep records of the source and use of contributions made to satisfy the match requirement in § 578.73. The records must indicate the grant and fiscal year for which each matching contribution is counted. The records must show how the value placed on third party in-kind 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.

(11) *Conflicts of interest.* The recipient and its subrecipients must keep records to show compliance with the organizational conflict-of-interest requirements in § 578.95(c), the Continuum of Care board conflict-of-interest requirements in § 578.95(b), the other conflict requirements in § 578.95(d), a copy of the personal conflict-of-interest policy developed and implemented to comply with the requirements in § 578.95, and records supporting exceptions to the personal conflict-of-interest prohibitions.

(12) *Homeless participation.* The recipient or subrecipient must document its compliance with the homeless participation requirements under § 578.75(g).

(13) *Faith-based activities.* The recipient and its subrecipients must document their compliance with the faith-based activities requirements under § 578.87(b).

(14) *Affirmatively Furthering Fair Housing.* Recipients and subrecipients must maintain copies of their marketing, outreach, and other materials used to inform eligible persons of the program to document compliance with the requirements in § 578.93(c).

(15) *Other federal requirements.* The recipient and its subrecipients must document their compliance with the federal requirements in § 578.99, as applicable.

(16) *Subrecipients and contractors.* (i) 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.

(ii) The recipient must retain documentation of monitoring subrecipients, including any monitoring findings and corrective actions required.

(iii) 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 part 84.

(17) *Other records specified by HUD.* The recipient and subrecipients must keep other records specified by HUD.

(b) *Confidentiality.* In addition to meeting the specific confidentiality and security requirements for HMIS data, the recipient and its subrecipients must develop and implement written procedures to ensure:

(1) All records containing protected identifying information of any individual or family who applies for and/or receives Continuum of Care assistance will be kept secure and confidential;

(2) The address or location of any family violence project assisted with Continuum of Care funds will not be made public, except with written authorization of the person responsible for the operation of the project; and

(3) 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;

(c) *Period of record retention.* All records pertaining to Continuum of Care 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; and

(2) Where Continuum of Care funds are used for the acquisition, new construction, or rehabilitation of a project site, records must be retained until 15 years after the date that the project site is first occupied, or used, by program participants.

(d) *Access to records.* (1) *Federal Government rights.* Notwithstanding the confidentiality procedures established under paragraph (b) 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 Continuum of Care 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 to records regarding any uses of Continuum of Care funds the recipient received during the preceding 5 years, consistent with State and local laws regarding privacy and obligations of confidentiality and confidentiality requirements in this part.

(e) *Reports.* In addition to the reporting requirements in 24 CFR parts 84 and 85, the recipient must collect and report data on its use of Continuum of Care funds in an Annual Performance Report (APR), as well as in any additional reports as and when required by HUD. Projects receiving grant funds only for acquisition, rehabilitation, or new construction must submit APRs for 15 years from the date of initial occupancy or the date of initial service provision, unless HUD provides an exception under § 578.81(e).

§ 578.105 Grant and project changes.

(a) *For Unified Funding Agencies and Continuums having only one recipient.* (1) The recipient may not make any significant changes without prior HUD approval, evidenced by a grant amendment signed by HUD and the recipient. Significant grant changes include a change of recipient, a shift in a single year of more than 10 percent of the total amount awarded under the grant for one approved eligible activity category to another activity and a permanent change in the subpopulation served by any one project funded under the grant, as well as a permanent proposed reduction in the total number of units funded under the grant.

(2) Approval of substitution of the recipient is contingent on the new recipient meeting the capacity criteria in the NOFA under which the grant was awarded, or the most recent NOFA. Approval of shifting funds between activities and changing subpopulations is contingent on the change being necessary to better serve eligible persons within the geographic area and ensuring that the priorities established under the NOFA in which the grant was originally awarded, or the most recent NOFA, are met.

(b) *For Continuums having more than one recipient.* (1) The recipients or subrecipients may not make any significant changes to a project without prior HUD approval, evidenced by a grant amendment signed by HUD and the recipient. Significant changes include a change of recipient, a change of project site, additions or deletions in the types of eligible activities approved for a project, a shift of more than 10 percent from one approved eligible activity to another, a reduction in the number of units, and a change in the subpopulation served.

(2) Approval of substitution of the recipient is contingent on the new recipient meeting the capacity criteria in the NOFA under which the grant was awarded, or the most recent NOFA. Approval of shifting funds between activities and changing subpopulations is contingent on the change being necessary to better serve eligible persons within the geographic area and ensuring that the priorities established under the NOFA in which the grant was originally awarded, or the most recent NOFA, are met.

(c) *Documentation of changes not requiring a grant amendment.* Any other changes to an approved grant or project must be fully documented in the recipient's or subrecipient's records.

§ 578.107 Sanctions.

(a) *Performance reviews.* (1) HUD will review the performance of each recipient in carrying out its responsibilities under this part, with or without prior notice to the recipient. In conducting performance reviews, HUD will rely primarily on information obtained from the records and reports from the recipient and subrecipients, as well as information from on-site monitoring, audit reports, and information generated from HUD's financial and reporting systems (*e.g.*, LOCCS and e-snaps) 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.

(2) If HUD determines preliminarily that the recipient or one of its subrecipients has not complied with a 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 the requirements. HUD may change the method of payment to require the recipient to submit documentation before payment and obtain HUD's prior approval each time the recipient draws down 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 program requirements.

(3) If the recipient fails to demonstrate to HUD's satisfaction that the activities were carried out in compliance with program requirements, HUD may 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 a program requirement will be designed to prevent a continuation of the deficiency; to mitigate, to the extent possible, its adverse effects or consequences; and to prevent its recurrence.

(1) HUD may instruct the recipient to submit and comply with proposals for action to correct, mitigate, and prevent noncompliance with program requirements, including:

(i) Preparing and following a schedule of actions for carrying out activities and projects affected by the noncompliance, including schedules, timetables, and milestones necessary to implement the affected activities and projects;

(ii) Establishing and following a management plan that assigns responsibilities for carrying out the remedial actions;

(iii) Canceling or revising activities or projects likely to be affected by the noncompliance, before expending grant funds for them;

(iv) Reprogramming grant funds that have not yet been expended from affected activities or projects to other eligible activities or projects;

(v) Suspending disbursement of grant funds for some or all activities or projects;

(vi) Reducing or terminating the remaining grant of a subrecipient and either reallocating those funds to other

subrecipients or returning funds to HUD; and

(vii) Making matching contributions before or as draws are made from the recipient's grant.

(2) HUD may change the method of payment to a reimbursement basis.

(3) HUD may suspend payments to the extent HUD determines necessary to preclude the further expenditure of funds for affected activities or projects.

(4) HUD may continue the grant with a substitute recipient of HUD's choosing.

(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 the recipient's 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.

(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 a program requirement or its subrecipient agreement, the recipient must take one of the actions listed in paragraphs (a) and (b) of this section.

(d) *Deobligation.* HUD may deobligate funds for the following reasons:

(1) If the timeliness standards in § 578.85 are not met;

(2) If HUD determines that delays completing construction activities for a project will mean that the funds for other funded activities cannot reasonably be expected to be expended for eligible costs during the remaining term of the grant;

(3) If the actual total cost of acquisition, rehabilitation, or new construction for a project is less than the total cost agreed to in the grant agreement;

(4) If the actual annual leasing costs, operating costs, supportive services costs, rental assistance costs, or HMIS costs are less than the total cost agreed to in the grant agreement for a one-year period;

(5) Program participants have not moved into units within 3 months of the time that the units are available for occupancy; and

(6) The grant agreement may set forth in detail other circumstances under which funds may be deobligated and other sanctions may be imposed.

§ 578.109 Closeout.

(a) *In general.* Grants will be closed out in accordance with the requirements of 24 CFR parts 84 and 85, and closeout procedures established by HUD.

(b) *Reports.* Applicants must submit all reports required by HUD no later than 90 days from the date of the end of the project's grant term.

(c) *Closeout agreement.* Any obligations remaining as of the date of the closeout must be covered by the terms of a closeout agreement. The agreement will be prepared by HUD in consultation with the recipient. The agreement must identify the grant being closed out, and include provisions with respect to the following:

(1) Identification of any closeout costs or contingent liabilities subject to payment with Continuum of Care program funds after the closeout agreement is signed;

(2) Identification of any unused grant funds to be deobligated by HUD;

(3) Identification of any program income on deposit in financial institutions at the time the closeout agreement is signed;

(4) Description of the recipient's responsibility after closeout for:

(i) Compliance with all program requirements in using program income on deposit at the time the closeout agreement is signed and in using any other remaining Continuum of Care program funds available for closeout costs and contingent liabilities;

(ii) Use of real property assisted with Continuum of Care program funds in accordance with the terms of commitment and principles;

(iii) Use of personal property purchased with Continuum of Care program funds; and

(iv) Compliance with requirements governing program income received subsequent to grant closeout.

(5) Other provisions appropriate to any special circumstances of the grant closeout, in modification of or in addition to the obligations in paragraphs (c)(1) through (4) of this section.

Dated: June 28, 2012.

Mark Johnston,

Assistant Secretary for Community Planning and Development (Acting).

[FR Doc. 2012–17546 Filed 7–30–12; 8:45 am]

BILLING CODE 4210–67–P