



FEDERAL REGISTER

Vol. 78

Wednesday,

No. 59

March 27, 2013

Part III

Department of Housing and Urban
Development

24 CFR Part 579

Homeless Emergency Assistance and Rapid Transition to Housing: Rural
Housing Stability Assistance Program and Revisions to the Definition of
“Chronically Homeless”; Proposed Rule

**DEPARTMENT OF HOUSING AND
URBAN DEVELOPMENT**

24 CFR Part 579

[Docket No. 5573-P-01]

RIN 2506-AC33

**Homeless Emergency Assistance and
Rapid Transition to Housing: Rural
Housing Stability Assistance Program
and Revisions to the Definition of
“Chronically Homeless”**

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

ACTION: Proposed 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 Continuum of Care program, revises the Emergency Shelter Grants program and renames this program the Emergency Solutions Grants program, and creates the Rural Housing Stability Assistance program to replace the Rural Homelessness Grant program.

The HEARTH Act also directs HUD to promulgate regulations for these new programs and processes. This proposed rule would provide for the establishment of regulations to implement the new Rural Housing Stability Assistance program. In addition to proposing the regulatory framework for the new Rural Housing Stability Assistance program, this rule also proposes to establish a definition for “chronically homeless” that includes a definition of “homeless occasion” that better targets persons with the longest histories of homelessness and the highest level of need.

DATES: *Comment Due Date.* May 28, 2013.

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. 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., eastern time, 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 (this is a toll-free number). 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 Proposed Rule

This proposed rule would establish the regulations for the Rural Housing Stability Assistance 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 Rural Housing Stability Assistance program is to rehouse or improve the housing situations of individuals and families who are homeless or in the worst housing situations in the geographic area; stabilize the housing of individuals and families who are in imminent danger of losing housing; and improve the ability of the lowest-income residents of the community to afford stable housing.

Section 491 of the McKinney-Vento Act (42 U.S.C. 11408) establishes the new Rural Housing Stability Assistance program which replaces the Rural Homelessness Grant program, a program that was authorized but never implemented, and which expands the types of eligible activities available to recipients under the predecessor program. This new program provides grants competitively for rural counties in lieu of grants under the Continuum of Care program (42 U.S.C. 11408(a)). The Rural Housing Stability Assistance program focuses on the homeless issues that are unique to rural areas. Grants under the Rural Housing Stability Assistance program may be used for items such as rent, mortgage, utility assistance; relocation assistance; short-term emergency lodging; new construction; acquisition; rehabilitation; emergency food and clothing; employment assistance and job training; health related services; housing search and counseling services; referrals to legal services; mental health services; substance abuse treatment services; and transportation.

Summary of Major Provisions

The major provisions of this proposed rule relate to how to establish and operate a Rural Housing Stability Assistance program, 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):* This section proposes the key definitions for the Rural Housing Stability Assistance program. Of particular note, the terms “county” and “county equivalent” would be defined

to mean organized local governments authorized in state constitutions and statutes and established to provide general government. This definition reflects the meaning of “county” used by the United States Census Bureau, and creates clear boundaries and coincides with existing programs that are generally defined by existing state and local government boundaries. In addition, “rural area” and “rural community” would be defined in terms of the geographical equivalent of a “county.” Although section 491(k)(2) of the McKinney-Vento Act provides a definition for the terms “rural area” and “rural community,” HUD determined that it is necessary to further define these terms in order to clarify the geographic areas eligible to receive assistance under this program, and to make the administration of the program more feasible. Under this program, the term “worst housing situation” would be defined to mean housing that has serious health and safety defects and at least one major system that has failed or is failing. HUD construes this category as meaning those individuals and families in housing situations who are in dire need of assistance due to the physical condition of their homes.

In addition to defining these terms, in this proposed rule, HUD follows through on the commitment made in the Continuum of Care interim rule published on July 31, 2012, to submit for comment any proposed revision to the definition of “chronically homeless,” specifically defining in this definition what is meant by an “occasion of homelessness.” This proposed rule includes a further revised definition of chronically homeless.

2. Application (Subpart B): The section proposes that in order to be eligible for funds under the Rural Housing Stability Assistance program, an eligible applicant must be either a county government or a designee of the county government that agrees to represent the county. Units of local governments and private nonprofit entities may be selected as the designee by the county, based upon a written designation, and would be required to support the needs of the county. Under this proposed rule, this subpart provides that only one applicant per county may apply for program funds because HUD intends to award one lump sum award to an approved county, or its designee, with one grant per county. Funds awarded under this program are in lieu of grants awarded under the Continuum of Care program, and funds awarded to a county shall only be awarded under either the Continuum of Care program or the Rural Housing Stability

Assistance program. A county may apply for funds under either program, but not both. Any county must make a determination before it submits an application whether it will submit a Rural Housing Stability Assistance program application or a Continuum of Care application; counties cannot submit both applications simultaneously.

3. Eligible Activities (Subpart C): Grant assistance under the Rural Housing Stability Assistance program is available for rent, mortgage, and utility assistance; relocation assistance; short-term emergency lodging; new construction; acquisition; rehabilitation; leasing; rental assistance; operating costs, rehabilitation, and repairs to make premises habitable; supportive services; use of Federal inventory property; capacity building; data collection costs; and administrative costs. HUD will issue notices and policy guidance to elaborate on specific activities that are eligible for funding.

4. Grant Selection and Award Process (Subpart D): HUD proposes to award funds to recipients through a national competition based on seven selection criteria, such as the participation of potential program beneficiaries of the grant in assessing the need for and importance of the grant in the county; the degree to which the grant addresses the worst housing situations present in the county; and the performance of the organization in improving housing situations, taking account of the severity of barriers of individuals and families served by the organization. Under this program, not less than 50 percent of the total funds awarded shall be for recipients serving communities with populations of less than 10,000. Within this set-aside, priority must be given to recipients serving counties with populations of less than 5,000. Priority will be given to eligible recipients serving communities not currently receiving significant Federal assistance under the McKinney-Vento Act.

5. Program Requirements (Subpart E): Under this proposed rule, all recipients of funding under the Rural Housing Stability Assistance program must comply with the program regulations and the requirements of the Notice of Funding Availability (NOFA) that HUD will issue each year. The HEARTH Act requires a minimum of 25 percent cash or in-kind match on all eligible funding costs except leasing. Recipients of grant funds must also abide by other applicable requirements, such as housing quality standards and suitable dwelling size; limitations on transitional housing; limitations on use of funds; 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.

6. Grant Administration (Subpart F): Under this proposed rule, recipients of funding under the Rural Housing Stability Assistance program would be required to collect and report data using methods determined by HUD. These methods shall include, at a minimum, participation in a Homeless Management Information System (HMIS), a point-in-time count, and an annual housing inventory count. To effectively administer the grants, HUD will provide technical assistance through a variety of methods to assist recipients with complying with requirements under this program. 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

These proposed regulations are intended to work toward the goal of eliminating homelessness in rural communities, by providing the requirements for the new Rural Housing Stability Assistance program, which focuses on improving homeless assistance and prevention in rural areas. This program would fund eligible activities for the purpose of rehousing and improving the housing situations of individuals and families who are homeless or in the worst housing situations in the geographic area, stabilizing the housing of individuals and families who are at risk of becoming homeless, and improving the ability of the lowest-income residents of the community to afford stable housing. In addition, this proposed rule establishes a definition of “chronically homeless” that aids HUD and local jurisdictions in being able to better estimate the number of chronically homeless, and will aid HUD and local jurisdictions in targeting resources to strategies designed to reduce the number of chronically homeless.

Congress appropriated a total of \$1,593,000,000 for the Continuum of Care and Rural Housing Stability Assistance programs. (See Consolidated and Further Continuing Appropriations Act, 2012, Public Law 112–55, approved

November 18, 2011.) With the Continuum of Care program as an established program, established first administratively by HUD and then statutorily by the HEARTH Act, the overwhelming majority of appropriated funds have been allocated to the Continuum of Care program.

I. Background—HEARTH Act

On May 20, 2009, the President signed into law legislation entitled “An Act to Prevent Mortgage Foreclosures and Enhance Mortgage Credit Availability,” which became Public Law 111–22. This new law implements a variety of measures directed toward keeping individuals and families from losing their homes. Division B of this new law is the 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 Continuum of Care program that is designed to improve administrative efficiency and enhance response coordination and effectiveness in addressing the needs of homeless persons. The former Emergency Shelter Grants program is renamed the Emergency Solutions Grants program and revised to broaden the activities that are eligible for funding as emergency shelter and homelessness prevention activities and to add rapid rehousing activities as eligible activities. Section 491 of the McKinney-Vento Act (42 U.S.C. 11408) establishes the new Rural Housing Stability Assistance program (or RHSP), which replaces the Rural Homelessness Grant program, a program that was authorized but never implemented, and expands the types of eligible activities, which could not have been funded under the predecessor Rural Homelessness Grant program. This new program provides grants competitively for rural counties, in lieu of grants under the Continuum of Care program (or CoC program). While the emphasis of the Continuum of Care program is on promoting communitywide planning to end homelessness, and that of the Emergency Solutions Grants program is on improving the quantity and quality of emergency or transitional shelters and homelessness prevention, the RHSP focuses largely on the homeless issues that are unique to rural areas, including stabilizing the housing of individuals in imminent danger of losing housing, through rehabilitation of existing housing or construction of new transitional or permanent housing.

HUD commenced the process to implement the HEARTH Act with a

proposed rule, which published on April 20, 2010 (75 FR 20541) and titled “Defining Homeless.” That proposed rule sought to clarify and elaborate upon the new McKinney-Vento Act definitions for “homeless” and “homeless individual with a disability.” In addition, the proposed rule included recordkeeping requirements related to the “homeless” definition. The final rule, titled “Defining Homeless,” was published on December 5, 2011 (76 FR 75994). On December 5, 2011, HUD also published an interim rule, titled the “Emergency Solutions Grants Rule.” (See 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, at 76 FR 76917, HUD continued the process to implement the HEARTH Act with the publication of the proposed rule titled “Homeless Management Information Systems Requirements,” which proposed uniform technical requirements for HMIS to ensure proper data collection and maintenance of the database and protect the confidentiality of the information in the database. On July 31, 2012, at 77 FR 45422, HUD published an interim rule for a second HEARTH Act program, the Continuum of Care program. The rulemaking for the Rural Housing Stability Assistance program, which commences with this proposed rule, will conclude the initial stage of HUD’s implementation of the HEARTH Act programs.

II. Overview of Proposed RHSP Regulations

This section of the preamble provides an overview of the proposed regulations for the RHSP that are proposed by this rule.

General Provisions (Subpart A)

This subpart sets out the general provisions applicable to RHSP.

Purpose and Scope (§ 579.1)

This section provides that the RHSP is designed to provide assistance for rural counties to rehouse or improve the housing situations of, individuals and families who are homeless or in the worst housing situations; stabilize the housing of individuals and families who are at risk of homelessness; and improve the ability of the lowest-income residents to afford stable housing. The language in the statute refers to stabilizing the housing of individuals and families who are “in imminent danger of losing housing.” Because HUD would define “in imminent danger of losing housing” the same way it defines

“at risk of homelessness,” HUD has opted to use the term “at risk of homelessness” to maintain consistency with the CoC (77 FR 45422) and ESG (76 FR 75954) regulations, as implemented per the HEARTH Act.

Definitions (§ 579.3)

The definitions section of these proposed regulations also includes definitions for which public comment has already been solicited. The definitions of “homeless,” “homeless individual,” and “homeless person” were established by the December 5, 2011, Defining Homeless final rule (76 FR 75994). The December 5, 2011, final rule was preceded by an April 20, 2010, proposed rule (75 FR 20451), which sought public comment on these definitions. The final definitions of these terms took into consideration the public comment received on the proposed definitions as set out in the April 20, 2010, proposed rule. The definition of “at risk of homelessness” was established by the Emergency Solutions Grants program interim rule (76 FR 7954) published on December 5, 2011. The interim rule sought public comment on this definition and additional public comment is not sought through this proposed rule. HUD believes it is very important to have identical definitions of these terms across its programs addressing homelessness, to the extent feasible.

The definitions section defines key terms used in this proposed rule. HUD solicits public comment on the following key terms.

Abbreviated Consolidated Plan. An “abbreviated consolidated plan” is defined as an assessment of housing and homeless needs, resources, and planned activities that are appropriate for the type and amount of assistance sought from HUD. Community Development Block Grant (CDBG) entitlement communities, under 24 CFR part 570, subpart D, and participating jurisdictions in the HOME Investments Partnerships (HOME) program, under 24 CFR part 92, are required to submit consolidated plans to assess the housing needs of their areas. If a county does not have its own consolidated plan then it must create an abbreviated consolidated plan in order to perform the requisite need and resource assessment to qualify for funding under the RHSP. In almost all circumstances, an eligible applicant under RHSP is participating in a statewide consolidated plan and thus is not a CDBG or HOME entitlement community. Therefore, in most cases, eligible applicants under the RHSP program would be required to submit an abbreviated consolidated plan. In order

to ensure that reasonable planning efforts specific to the county receiving funds are made, each county applying for funds, directly or through a designated applicant, will be required to prepare and submit an abbreviated consolidated plan, in accordance with 24 CFR 91.235, as part of the application process.

Chronically homeless. As noted earlier in this preamble, HUD submits for public comment a further revised definition of “chronically homeless.” The definition of “chronically homeless” was first introduced in the corresponding amendments to the Consolidated Plan interim rule, published on December 5, 2011, at 76 FR 75954. The Consolidated Plan interim rule tracked the statutory definition of “chronically homeless,” but defined for the first time an “occasion of homelessness” or “homeless occasion” to mean a period of at least 15 days. Specifically, the definition of chronically homeless that includes the definition of homeless occasion, as provided in the Consolidated Plan interim rule, reads as follows: “An individual who * * * has been homeless and living or residing in a place not meant for human habitation, a safe haven, or in an emergency shelter continuously for at least one year or on at least four separate occasions in the last 3 years, where each homeless occasion was at least 15 days.”

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

In the development of the Continuum of Care (CoC) program interim rule, published on July 31, 2012, at 77 FR 45422, HUD already had received and commenced review of the public comments received on the ESG’s rule definition of “chronically homeless,” and decided to address this definition in the CoC program rule. In the preamble

to the CoC program rule, HUD stated as follows:

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.

On May 30, 2012, HUD convened an informal gathering of nationally recognized experts involved in homelessness to seek individual views and suggestions on the definition of chronically homeless. The attendees at these meetings and a summary of the statements made are available at HUD’s Web site at <http://www.hudhre.info>. In addition to the May 30, 2012, meeting, HUD reached out to the U.S. Interagency Council on Homelessness (USICH), and to several CoC leads for their views on a workable definition of chronically homeless. Based on this feedback, this proposed rule, submits for public comment a definition of “chronically homeless” that defines “homeless occasion in paragraph (1)(ii) of the definition as “has been homeless and living or residing in a place not meant for human habitation, a safe haven, or in an emergency shelter continuously for at least one year or on at least four separate occasions in the last 3 years, where the cumulative total of the four occasions is at least one year. Stays in institutions of 90 days or less will not constitute a break in homelessness, but rather such stays are included in the cumulative total; * * *” (The additional language is highlighted in bold.)

HUD believes that this definition of “homeless occasion” in paragraph (1)(ii) better targets persons with the longest histories of homelessness and therefore the highest level of need. The definition of “homeless occasion” also allows for limited resources to be more effectively targeted and considers stays in institutions to be part of an episode of

homelessness. HUD has chosen the duration of one year to be consistent with section 401(2)(A)(ii) of the HEARTH Act, which discusses a one year timeframe, and based on consensus from the participants in the expert convening on the “chronically homeless” definition. Additionally, HUD adopted the 90 day or less duration in institutions to be consistent with section 401(2)(B) of the HEARTH Act.

Because the definition of “chronically homeless” applies to all of HUD’s homeless assistance programs, at the conclusion of the public comment period of this proposed rule, HUD plans to review the public comments on the definition and incorporate a final definition of “chronically homeless” into the final rules for the Continuum of Care program, Emergency Solutions Grants program, and the corresponding amendments to the Consolidated Plan.

Specific solicitation of comment. HUD specifically solicits comment on the definition of “homeless occasion” in the definition of “chronically homeless.”

County and county equivalent. The terms “county” and “county equivalent” are defined to mean organized local governments authorized in State constitutions and statutes and established to provide general government. This includes governments designated as boroughs in Alaska, as parishes in Louisiana, and as counties in other States. This definition reflects the meaning of “county” used by the United States Census Bureau (see http://www.census.gov/geo/www/geo_defn.html#County), and creates clear boundaries and coincides with existing programs that are generally defined by existing State and local government boundaries.

Private nonprofit organization. A private nonprofit organization is defined as a secular or religious organization described in section 501(c) of the Internal Revenue Code (IRC) of 1986 (26 U.S.C. 501(c)), that is exempt from taxation under subtitle A of the IRC, has an accounting system and a voluntary board, and practices nondiscrimination in the provision of assistance. A private nonprofit organization does not include a governmental organization, such as a public housing agency or housing finance agency.

Program participant. The definition for “program participant” covers the three categories of beneficiaries eligible to receive assistance under this program. Those categories of beneficiaries are individuals and families who are: (1) homeless (as defined by the Emergency Solutions Grants rule at 76 FR 75954), (2) at risk

of homelessness (as defined by the Defining Homelessness rule at 76 FR 75994), or (3) in the worst housing situations (as proposed below in 24 CFR 579.3).

Recipient. “Recipient” is defined as an applicant that signs a grant agreement with HUD. Unless otherwise stated, subrecipients are required to comply with all requirements that apply to recipients.

Rural area and rural community. “Rural area” and “rural community” are defined in terms of the geographical equivalent of a “county.” The HEARTH Act authorizes grants to eligible recipients under this program to carry out activities in “rural areas.” Section 491(k)(2) of the McKinney-Vento Act defines the terms “rural area” and “rural community,” as: any area or community, respectively, no part of which is within an area designated as a standard metropolitan statistical area by the Office of Management and Budget; any area or community, respectively, that is (i) within an area designated as a metropolitan statistical area or considered as part of a metropolitan statistical area; and (ii) located in a county where at least 75 percent of the population is rural; or any area or community, respectively, located in a State that has population density of less than 30 persons per square mile (as reported in the most recent decennial census), and of which at least 1.25 percent of the total acreage of such State is under Federal jurisdiction, provided that no metropolitan city (as such term is defined in section 5302 of this title) in such State is the sole beneficiary of the grant amounts awarded under this section.

However, HUD determined that it is necessary to further define these terms in order to clarify the geographic areas eligible to receive assistance under this program, and to make the administration of the program more feasible.

HUD concluded that defining the terms “rural area” and “rural community” as rural “counties” would achieve these goals. Using the definition in the McKinney-Vento Act and substituting “county” for “area” and “community” allows HUD to more efficiently administer the program because HUD geographic codes are based on metropolitan cities, urban counties, and nonurban counties. The definition allows for a clear and consistent geographic area to be used, and eliminates ambiguities regarding what areas could qualify for assistance under the program. Further, HUD determined that this definition is consistent with Congressional intent in

that it ensures the feasible administration of the program while also ensuring that assistance is provided to rural areas. More importantly, this approach would not unfairly limit participation in the program. Using this definition, HUD’s Office of Policy Development and Research found that more than 2,000 counties or county equivalents in the United States would qualify as “rural.” HUD’s Office of Policy Development and Research will run a report of eligible counties each year, which HUD will use to establish the list of eligible applicants annually.

Worst housing situation. The term “worst housing situation” is defined to mean housing that has serious health and safety defects and at least one major system that has failed or is failing. HUD construes this category as meaning those individuals and families in housing situations that are in dire need of assistance due to the physical condition of their homes. Individuals and families eligible for assistance because they are in the worst housing situations may be renting, or may be households that are residing in their own participant-owned housing, as further described in this rule.

Application (Subpart B)

This subpart sets forth the requirements for applicants that are eligible to apply for assistance under the RHSP to serve rural counties and outlines the grant application process, including requirements related to the submission of an abbreviated consolidated plan.

Eligible Applicants (§ 579.100)

Section 491(e) of the McKinney-Vento Act provides that organizations eligible to receive a RHSP grant are private nonprofit entities, and county and local governments. Because recipients under this program will be serving rural counties that meet the definition of a rural area, which HUD proposed to define as the same as a rural county, § 579.100 would require that the eligible applicant must either be a county government or a designee of the county government that agrees to represent the county. Units of local governments and private nonprofit entities may be selected as the designee by the county, based upon a written designation, and would be required to support the needs of the county.

Section 579.100 would provide that only one applicant per county may apply for program funds. HUD proposes to impose this limitation because HUD intends to award one lump sum award to an approved county, or its designee, with one grant per county. By awarding

one grant per county, HUD will be able to impact a greater number of rural counties and more efficiently use its funds. This will impact a greater number of rural counties because each county will be limited to a certain dollar amount. Creating a ceiling for each county allows more counties to receive funding. Limiting a county to one application would ensure that HUD funds are used more efficiently because a county would be required to carefully determine its needs and articulate in the application how the funding will best serve those needs. The county, or its designee, may choose subrecipients to carry out the approved activities in the grant, once awarded.

Every county government must submit an abbreviated consolidated plan that is applicable to the RHSP, in accordance with 24 CFR 91.235. However, a county government that is a CDBG entitlement community under 24 CFR 570, subpart D, or that is expected to be a participating jurisdiction in the HOME program under 24 CFR part 92 and has established a consolidated plan for its county, may submit the consolidated plan instead of an abbreviated consolidated plan. An abbreviated consolidated plan includes information that would be required by a grant application; including an assessment of housing and homeless needs, obstacles to meeting underserved need, available resources, and planned activities. Other information that may be required in the plan are the funding priorities, how awarded funds will be used to address identified needs, and the goals and measurable objectives that will be initiated and completed within the time period covered by the plan. HUD is adopting this requirement as part of the application process in order to ensure that reasonable planning efforts specific to the county benefiting from grant funds have been made. The required elements would be further identified in a NOFA.

Section 579.100 also addresses exclusions that apply to the application process for the RHSP. Sections 491(a) and 491(m) of the McKinney-Vento Act provide that funds awarded under the RHSP are in lieu of grants awarded under subtitle C, which is the Continuum of Care (CoC) program; funds awarded to a county shall only be awarded under either the CoC program or the RHSP. Section 579.100 would implement this requirement by establishing that a county may apply for funds under either the CoC program or the RHSP, but not both.

To apply for funds, a rural county that has previously been claimed by a CoC must withdraw from that CoC and

cannot be included in the CoC's application for funds. This also means that the county's preliminary pro rata need (PPRN) amount cannot be included in the CoC's Final Pro Rata Need, even if the PPRN was included in previous years. If at least one CoC-funded project is currently operating within the county, the county, either directly or through a designee such as a private nonprofit organization, would be ineligible to apply for funds under the RHSP program until that grant has expired, been reallocated, or transferred to a new recipient in a different jurisdiction within the CoC.

Further, this exclusion would apply to the county as well as all metropolitan cities located within the county. For example, Clark County, Nevada, meets the qualifying criteria as a rural county because it is located in a State that has population density of less than 30 persons per square mile and of which at least 1.25 percent of the total acreage of such State is under Federal jurisdiction. Las Vegas, North Las Vegas, and Henderson are all metropolitan cities located within Clark County that have unique geo codes and could be claimed as separate entities under the CoC. However, if Clark County chose to apply for funds through the RHSP in a given year, Clark County, Las Vegas, North Las Vegas, and Henderson would all be required to withdraw from the CoC. If a project is currently operating in any of those areas, Clark County would not be eligible to apply for RHSP funds in a given year.

The purpose of awarding RHSP funds in lieu of CoC funds is not to encourage counties that are active within a CoC to disengage from a process that is working. Instead, the RHSP is intended to reach those counties that may or may not have been claimed by a CoC in the past, and the counties' needs have not been met through that program. Rural counties that withdraw from a CoC in order to apply for RHSP funds are encouraged to continue coordination and collaboration efforts when appropriate. However, recipients of funds under the RHSP are not eligible to receive funding under the CoC program nor can funds from the two programs be combined in any other way.

Application Process (§ 579.102)

Funds awarded under RHSP will be awarded through an annual application process in response to issuance of a NOFA. HUD will issue a list of counties eligible to apply for funds in a particular fiscal year. HUD's NOFA will outline the selection criteria specified in section 491(g) of the McKinney-Vento Act, as

well as other criteria that HUD may deem necessary in a given year.

Formula calculation. One criterion for selection of applicants is the need for RHSP funds as determined by the formula established under section 427(b)(2) of the McKinney-Vento Act. The formula establishes PPRN amounts that reflect the needs of geographic areas.

Section 579.102 defines PPRN as the dollar expression of the relative need assigned to metropolitan cities, urban counties, and all other counties, determined by HUD in accordance with HUD's regulations for the CoC program at 24 CFR 578.17.¹ The formula uses nationally available data, including the following factors as used in the CDBG formula and Emergency Solutions Grant formula on poverty, housing overcrowding, population, age of housing, and growth lag.

To determine a rural county's PPRN, HUD will calculate the sum of the PPRN amount for the rural county as well as any metropolitan cities therein. HUD will announce the PPRN amounts prior to issuance of the NOFA on its Web site. The cumulative PPRN amount for the rural county will be the basis for determining the maximum award amount for which the county may apply. The maximum award amount for which an eligible county may apply will be provided in the NOFA. Applicants are encouraged to use this information to determine whether to apply for funding under the RHSP.

Subsidy Layering (§ 579.104)

Applicants must conform to the subsidy layering requirements, in section 102 of the Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3545), and the regulations in 24 CFR part 4, subpart A. Subsidy layering occurs when a project receives funds from more than one governmental jurisdiction. A subsidy layering analysis is required to assure that Federal resources are not duplicative or wasteful. In accordance with the statutory requirement, § 579.104 provides for applicants to submit information regarding other governmental assistance to help HUD determine whether excessive public assistance is being provided to an interim project or activities by combining (layering) assistance under this program with other governmental housing assistance from Federal, State,

¹ HUD has proposed to codify the regulations for the CoC program in a new part 578 in HUD's regulations in title 24 of the Code of Federal Regulations. Section 578.17 addresses the calculation of the PPRN.

or local agencies, including assistance such as tax concessions or tax credits.

Environmental Review (§ 579.106)

HUD will perform an environmental review for each property as required under HUD's regulations in 24 CFR part 50. All recipients of RHSP funding must supply all available, relevant information necessary to HUD and carry out mitigating measures required by HUD. The recipient, its project partners, and their contractors may not perform any eligible activity for a project under the RHSP, 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.

Eligible Activities (Subpart C)

Subpart C addresses the eligible activities under RHSP. Section 430 of the McKinney-Vento imposes a requirement for a 25 percent match; however the requirement is applied to the project as a whole, rather than by individual activities.

Types of Assistance (§ 579.200)

Grant assistance is available for rent, mortgage, and utility assistance; relocation assistance, short-term emergency lodging; new construction; acquisition; rehabilitation; leasing; rental assistance; operating costs, rehabilitation and repairs to make premises habitable; supportive services; use of Federal inventory property; capacity building; data collection costs, and administrative costs. Section 579.200 provides the eligible uses of grant assistance under subpart C, but HUD will issue notices and policy guidance to elaborate, through examples and frequently asked questions on specific activities that are eligible for RHSP funding. Structures used to provide housing or supportive services may also be used for other purposes, but RHSP assistance will be available only in proportion to the use of the structure for supportive housing or supportive services.

Rent, Mortgage, and Utility Assistance (§ 579.202)

The McKinney-Vento Act authorizes the provision of rent, mortgage, and utility assistance after 2 months of nonpayment, in order to prevent eviction, foreclosure, or loss of utility service as an eligible activity. The 2 months of nonpayment period required under § 579.202 is established by section 491(b)(1)(A) of the McKinney-Vento Act. Under § 579.202, this assistance can be provided to a program participant for a period of up to 12

months, including payments for arrears. The 12-month period is separate for each activity, so a household could receive a cumulative amount of 12 months of both rent and utility assistance. This 12-month time period was established as a reasonable period of time to stabilize individuals and families at risk of homelessness. Following the 12-month period of assistance, program participants who still need assistance may qualify for rental assistance for transitional or permanent rental housing.

Relocation Assistance (§ 579.204)

Section 579.204 provides that security deposits, rent for the first month at a new location, and relocation assistance are costs eligible for funding. Relocation assistance under § 579.204 differs from moving services under § 579.222(b)(12) because relocation assistance allows funds to be used to move a participant out of the county for employment, education, or family reunification purposes, whereas moving services are limited to moving costs of moves within the rural county.

The intent of this activity is not to provide assistance to recipients to encourage persons to move out of a county. Instead, HUD recognizes that many of these communities lack job opportunities and other resources that would otherwise enable eligible program participants to improve their ability to afford stable housing. Accordingly, recipients must also ensure that, upon relocation, program participants have access to supportive services that may be necessary to continue the program participant's movement towards self-sufficiency. Recipients may assist program participants with expenses associated with moving outside of the county when one of the following criteria applies: Employment has been secured, an educational opportunity has been offered, or the program participant would be able to reunite with family members, but the program participant lacks the resources to move on their own. Recipients may not provide relocation assistance unless employment, an educational opportunity, or family reunification can be verified.

Short-Term Emergency Lodging (§ 579.206)

Section 579.206 provides that recipients may provide short-term emergency lodging to program participants in either hotels, motels, or an existing emergency shelter. HUD defines "short-term" for this activity as 3 months to maintain consistency with

the other homeless assistance and homeless prevention programs under this title of the McKinney-Vento Act. However, recipients may extend this assistance on a month-to-month basis when, upon re-assessment at the end of the 3 month period, it is determined that additional assistance is required because there are no other housing resources available to the program participant, and the program participant is still considered either at risk of homelessness or in a worst housing situation. When a program participant is first assessed, if it is determined that more long-term housing would be necessary, a recipient must make all efforts to secure permanent housing before serving the program participant under this activity.

HUD notes that under no circumstances should program funds be used to replace or substitute existing resources of a facility to pay for beds that are already in place. Instead, funds under this activity may be used only to increase the capacity of the shelter by adding new, temporary beds that will be removed once the household being served leaves. It should also be noted that program funds should only be used to increase the number of beds in an existing shelter when doing so does not violate any local codes or laws.

Section 579.206 provides an exception to the limit on duration, and program participants may request that HUD apply the exception. Specifically, § 579.206 provides that an exception to the limit on duration may be available when there are more than 25 percent of program participants receiving short-term emergency lodging beyond the 3 month limit, but the recipient must submit a request to HUD apply the exception. The request must describe the conditions that justify an exception, including an assessment of alternative housing sources and the particular needs of the program participants.

New Construction (§ 579.208)

Section 491(b)(1)(D) of the McKinney-Vento Act also authorizes the new construction of housing units to provide transitional or permanent housing as an eligible activity. New construction is available to assist participants that are either homeless or at risk of homelessness, but is not available to those in the worst housing situations. Under § 579.208, recipients are required to demonstrate that costs of new construction of a building or structure are substantially less than the costs of rehabilitation of an existing building or structure or to demonstrate that there is a lack of available appropriate units that could be rehabilitated at a cost less than

new construction. The intent of this requirement is to ensure that funds are used in an effective manner and are not expended on new construction unless the recipient demonstrates that doing so is financially feasible.

Eligible new construction costs include the site improvement costs, staff and overhead costs, and related reasonable and necessary soft costs such as architectural, engineering, or professional services; permitting; and environmental review requirements under 24 CFR part 50. The eligible costs are intended to cover the costs for planning the new construction, as well as the actual costs of construction. However, new construction funds may not be used to fund leased property.

Acquisition (§ 579.210)

Section 579.210 provides that funds may be used to pay up to 100 percent of the costs of acquisition of real property to provide supportive services, or transitional or permanent rental housing, for program participants who are homeless or at risk of homelessness, but is not available to those in the worst housing situations. Eligible costs include staff and overhead costs and related reasonable and necessary soft costs, such as architectural, engineering, or professional services; permitting; and environmental review requirement costs under 24 CFR part 50.

Rehabilitation (§ 579.212)

Section 579.212 provides that funds may be used to pay up to 100 percent of the costs of rehabilitation of structures to provide supportive services or transitional or permanent rental housing for program participants who are homeless or at risk of homelessness, but is not available to those in the worst housing situations. Eligible costs include, cost-effective energy measure installation, State and local government health and safety standard compliance costs, staff and overhead costs, and related reasonable and necessary soft costs, but exclude rehabilitation costs on leased property.

Leasing (§ 579.214)

Section 579.214 provides that funds may be used to pay for 100 percent of the costs of leasing a property, or portions of a property, to provide individuals and families who are homeless or at risk of homelessness with transitional housing, permanent housing, or supportive services. While recipients generally may not use funds to lease units or structures owned by the recipient, subrecipients, parent organizations, related organizations, or partnerships in which the recipient is a

member, HUD may grant an exception if the recipient demonstrates that doing so is in the best interest of the program, that leasing charges to be paid by grant funds are reasonable, and that it has written policies and procedures in place governing recusals and disputes between landlords and tenants.

Funds used for leasing may be used to pay rent reasonable in relation to rent being charged for comparable space in the area, not to exceed HUD-determined fair market rents; utilities such as gas, electricity, and water; security deposits; and an advance of first and last months' rents.

In addition, recipients and subrecipients are not required to make program participants pay an occupancy charge. If occupancy charges are imposed, the amounts charged may not exceed the highest of 30 percent of a family's monthly adjusted income, 10 percent of a family's monthly income, or the portion of welfare assistance from a public agency specifically designated for housing costs. Consistent with the Continuum of Care program, this proposed rule provides that income must be calculated in accordance with HUD's regulations in 24 CFR 5.609, which address annual income, and 24 CFR 5.611(a), which address adjusted income. Section 579.214 specifies that recipients and subrecipients may not charge program fees for housing or supportive services in excess of the income limitations set forth in the aforementioned regulations. Further, recipients must avoid leasing buildings that do not comply with Federal physical accessibility requirements.

Rental Assistance (§ 579.216)

Section 579.216 provides that rental assistance is an eligible cost for permanent and transitional housing, and this rule clarifies that short-term, medium-term, and long-term rental assistance are eligible costs under the RHSP. Short-term includes rental assistance up to 3 months; medium-term includes rental assistance for 3 to 24 months; and long-term includes rental assistance for longer than 24 months of rent. The durations for short-term, medium-term, and long-term rental assistance were established to maintain consistency with the other homeless assistance and homeless prevention programs under this title of the McKinney-Vento Act. This section also provides that rental assistance may include tenant-based or project-based rental assistance. Eligible rental assistance costs also include security deposits, in an amount not to exceed 2 months of rent, and rental application fees.

Tenant-based rental assistance allows the program participant (individuals or families) to choose rental housing of an appropriate size in which to reside.

Section 579.216 would limit this retention to within the county boundaries. Under § 579.216, 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. 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 § 579.216, HUD clarifies 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 would require 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 services 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.

Documentation of reasonable belief of further domestic violence, dating violence, sexual assault, or stalking may be done by 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 requested assistance; medical or dental records; 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 from the perpetrator. Because of the particular safety concerns surrounding victims of domestic violence, the proposed rule would provide 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 proposed rule contains other policies for moving program participants receiving any type of assistance under this rule, including tenant-based rental assistance, within the rural county 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 in exceptional circumstances. HUD has established these provisions to provide an exception and to address the challenges that are associated with such a move.

Project-based rental assistance provides grants for rental assistance to recipients who will make payments to the owner of an existing structure, where the owner agrees to lease subsidized units to program participants.

Under the proposed RHSP regulations, HUD would only provide rental assistance for a unit if the rent is reasonable in relation to rents being charged for comparable unassisted units, considering the location, size, type, quality, amenities, facilities, management, and maintenance of each unit, and not exceeding rents currently charged by the same owner for comparable unassisted units.

Section 579.216 specifies that if a unit that is assisted under this program is vacated prior to the expiration of a lease, assistance for the unit may continue for a maximum period of 30 days from the end of the month in which the unit is vacated unless the unit is occupied by another person in the meantime. Assistance may resume once the unit is occupied by an eligible program participant. To be consistent with the Continuum of Care program rule and longstanding policy with the Shelter Plus Care program, in particular, periods of stay in institutions that are less than a period of 90 days for each occurrence are not considered vacancies for purposes of this section of the rule. This section retains available rental

assistance for program participants who enter institutions for short periods of time.

Operating Costs (§ 579.218)

Under § 579.218, recipients may use grant funds to pay the costs of day-to-day operation of transitional and permanent rental housing. Recipients may not use grant funds to pay for the operating costs of a project that is receiving funds under this program for rental assistance at the same time. Grant funds may not be used for operating costs of emergency shelters and of supportive service-only facilities because operating costs for such facilities are not authorized for this program under the McKinney-Vento Act, as amended by the HEARTH Act.

Rehabilitation and Repairs of Participant-Owned Housing (§ 579.220)

Section 491(b)(1)(I) of the McKinney-Vento Act provides that funds may be used for rehabilitation and repairs to make premises habitable. As rehabilitation and operating costs for rental housing are already eligible under other activities, § 579.220 clarifies that this activity is intended to assist those eligible individuals and families who are in the worst housing situations, which is defined as housing that has serious health and safety defects and has at least one major system that has failed or is failing, including: structural support, roofing, cladding, weatherproofing, plumbing, electrical, heating, ventilation, and air conditioning. Eligible costs include costs of repairing, rehabilitating, or replacing major systems that have failed or are failing, and such repairs must meet all applicable laws, ordinances, and codes for the county.

HUD recognizes the importance of preserving existing housing stock as well as increasing new permanent housing opportunities. In many rural counties, the existing housing stock is old and often uninhabitable. To ensure that this activity is only used to assist households living in the worst housing situations, as defined, § 579.220 further clarifies that in order to receive assistance through this activity, a household must have a total household income at 50 percent area median income (AMI) or below. A household must also own the housing and must reside in it as their primary place of residence.

Section 579.220 also specifies that a program participant that receives assistance under this activity would be required to enter into a written repayment agreement with the recipients or subrecipient that requires

the program participant to remain in the residence for a period of no less than 3 years. Should the program participants move prior to the 3-year period, they may be required to repay the amount of grant funds used for the improvements, in accordance with the repayment agreement. The purpose of this requirement is to ensure that grant funds are not misused and that funds used for this activity will benefit program participants for a period of at least 3 years.

Supportive Services (§ 579.222)

Section 491(b)(1)(J) of the McKinney-Vento Act allows for funds to be used to pay for the development and delivery of comprehensive and coordinated supportive services that use and supplement, as needed, community networks of services. Under § 579.222, the supportive service activities listed in the statute are clarified, defined, and in some cases, consolidated where appropriate. 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, as they are for other program participants. The supportive service activities named as eligible costs in the proposed rule are budgeting, case management, child care, education services, emergency food and clothing, employment assistance and job training, health related services, housing search and counseling services, referrals to legal services, life skills training, mental health services, moving services, outreach services, substance abuse treatment services, and transportation. Specifically, the following supportive service activities do not appear in the proposed RHSP regulations in the supportive services section: victim services, entitlement assistance, and referrals to veterans' services. Each of these activities is covered under the case management activity and therefore does not need to be listed separately. It should also be noted, that the eligible costs of each supportive service activity are not all-inclusive. Instead, under § 579.222, the activities are intended to be examples of the types of services that will be eligible. Further guidance on these costs will be issued in notices or guidance materials.

Use of Federal Inventory Property (§ 579.224)

Section 579.224 addresses using former Federally-owned property, obtained through two property

disposition programs, in connection with this program. Title V of the McKinney-Vento Act makes excess and surplus Federal real property available to State and local governments and private nonprofit organizations at no cost for use to assist the homeless. The Single Family Property Disposition Program (section 204(g) of the National Housing Act, 12 U.S.C. 1710(g)) makes properties acquired by the Federal Housing Administration (FHA) through foreclosure of an insured or Secretary-held mortgage or loan under the National Housing Act available to government entities and nonprofit organizations at a discount through a lottery system. Section 579.224 would make eligible costs that HUD has determined are not covered in other sections of subpart C and are unique to using property formerly owned by the Federal Government and made available through one of the two programs listed in the McKinney-Vento Act.

Specific Solicitation of Comment.

HUD is especially interested in receiving comments from entities with experience developing property obtained through these disposition programs as to other unique costs encountered when using this former Federally owned property to assist homeless persons.

Capacity Building (§ 579.226)

Section 491(b)(2) of the McKinney-Vento Act allows for up to 20 percent of grant funds to be used to pay for capacity building activities. Under § 579.226, capacity building activities are defined as those activities that assist recipient personnel to maintain or improve the skills necessary to strengthen the capability of recipients to deliver housing and supportive services to program participants and to administer grants under this program. Eligible capacity building activities may include costs such as salaries, wages, other employee compensation and benefits, employee education, training, travel, and staff retention.

Data Collection Costs (§ 579.228)

Section 579.228 proposes the data collection requirements of the RHSP. The data collection system can be through an existing Homeless Management Information System (HMIS) or a comparable data collection system. The data collection system, whether an HMIS or a comparable data collection system, must still conform with HUD's data collection requirements as established by notice. Data collection costs of participating in a HMIS are eligible, but a recipient is not required to create and implement a

new HMIS. However, recipients will be required to choose an existing HMIS, in a CoC in the recipient's State that voluntarily accepts the recipient's participation in which to participate and contribute data. Where a recipient or subrecipient cannot obtain approval from a CoC to contribute data to an existing HMIS, a recipient or subrecipient may use program funds to pay the cost of establishing their own comparable data collection system that meets minimum standards established by HUD in Notice. Eligible costs of contributing data to an HMIS include purchasing or leasing computer hardware, purchasing software, purchasing equipment, obtaining technical support, leasing office space, and paying other costs of operating HMIS, including salaries, travel, and participation fees. If a recipient or subrecipient elects to use HMIS, victim service providers will not enter their data into the HMIS but must still collect data in a comparable database and be able to provide the aggregated data to the recipient for the purpose of reporting.

In addition, under § 579.228, during the grant period, all recipients must participate in or plan for and conduct a point-in-time count of sheltered and unsheltered homeless persons within the county within the last 10 days of January, or as otherwise determined by HUD. Recipients may choose to participate with an adjacent Continuum of Care for their point-in-time process in order to take advantage of an adjacent Continuum of Care's planning and evaluation process. Recipients must also conduct an annual housing inventory survey and report their data in accordance with a manner prescribed by HUD, during the grant period. Actual costs of conducting the count and the survey are allowable administrative costs. Recipients may also choose to participate with an adjacent Continuum of Care for their housing inventory count process in order to take advantage of an adjacent Continuum of Care's planning and evaluation process. If recipients are participating in an adjacent Continuum of Care's point-in-time count and the recipient wants to participate with a Continuum of Care to conduct its housing inventory count, it must participate with the same Continuum of Care for both the point-in-time and the housing inventory count.

Administrative Costs (§ 579.230)

Section 579.230 authorizes the use of funds for administrative costs. Recipients will be permitted to use up to 7.5 percent of funds awarded for

administrative costs. If the recipient is using a subrecipient to operate a project, the recipient must provide at least 50 percent of administrative funds to the subrecipient(s). It is HUD's experience that subrecipients historically incur costs at the same rate as recipients and therefore should receive funds. Administrative costs are costs that are associated with carrying out the grant, such as accounting for the use of funds, preparing an abbreviated consolidated plan, and preparing reports related to the grant. These are not capacity building activities as these costs are specific to administering the grant. HUD has determined that the 7.5 percent cap is reasonable because it ensures that recipients have some flexibility to use grant funds to pay for costs incurred as a result of administering a grant under this program.

Indirect Costs (§ 579.232)

Section 579.232 provides that program funds may be used to pay indirect costs in accordance with Office of Management and Budget (OMB) Circulars A-87 or A-122, as applicable. These circulars are referred to as grant management circulars. Circular A-87 is entitled "Cost Principles for States, Local, and Indian Tribal Governments." Circular A-122 is entitled "Cost Principles for Non-Profit Organizations." The provisions of these cost principle circulars are codified in the government wide regulations found at 2 CFR part 225, and 2 CFR part 230, respectively.

Grant Selection and Award Process (Subpart D)

Subpart D sets forth the selection criteria that HUD will use to make awards under this program. It also outlines the funding priorities that HUD will give when making awards, and describes the grant award process.

Selection Criteria (§ 579.300)

Section 579.300 provides that HUD will award funds to recipients through a national competition based on seven selection criteria, including the participation of potential program beneficiaries of the grant in assessing the need for, and importance of, the grant in the county; the degree to which the grant addresses the worst housing situations present in the county; the degree of collaboration with others in the county to meet the goals described in § 579.1; the performance of the applicant in improving housing situations, taking account of the severity of the barriers of individuals and families served by the applicant; for applicants that have previously received

funding under this part, the extent in which the county has successfully demonstrated high levels of performance since such funding began, as determined by HUD; the need for such funds, as determined by the formula established under section 427(b)(2) of the McKinney-Vento Act; and any other relevant criteria as determined by HUD.

Selection Priorities (§ 579.302)

HUD will make selection of awards according to section 491(c) of the McKinney-Vento Act. The McKinney-Vento Act sets forth that not less than 50 percent of the total funds awarded shall be for recipients serving communities with populations of less than 10,000. As discussed earlier in this preamble, the RHSP regulations define "rural area" and "rural community" as a "county." Therefore, the total population of an eligible county would have to be less than 10,000 in order to benefit from this funding priority. Further, within this set-aside, priority must be given to recipients serving counties with populations of less than 5,000. An eligible county would need to have a total population of less than 5,000 in order to benefit from this funding priority.

The McKinney-Vento Act also requires that priority be given to eligible recipients serving communities not currently receiving significant Federal assistance under the McKinney-Vento Act. Section 579.302 interprets this as giving priority to eligible counties that are not currently receiving *any* grants under 24 CFR part 576 (the regulations for the Emergency Solutions Grant program) and part 578 (the regulations for the Continuum of Care program). This is consistent with HUD's desire to use this program to reach those rural counties that may not be receiving assistance under the Emergency Solutions Grants program and the Continuum of Care program.

Finally, the McKinney-Vento Act limits the total percentage of program funds awarded in a fiscal year to recipients within a single State to 10 percent of the total funds awarded under this program.

Grant Award Process (§ 579.304)

Section 579.304 provides that a recipient of a conditionally awarded grant must satisfy all requirements for obligation of funds or HUD will withdraw its offer of the award. However, HUD may execute a grant agreement before the recipient meets all conditions precedent but the funds may only be spent on capacity building, supportive services to sites not operated

by the recipient or subrecipient, or HMIS eligible costs, until the conditions are met. If an applicant expends funds for capacity building, supportive services to sites not operated by the recipient or subrecipient, or HMIS and fails to subsequently meet the conditions precedent for the other activities, HUD may recapture the applicant's grant funds. The recipient's requirements for obligation of funds are satisfied through the initial provision of housing and services to eligible program participants and/or executing a contract with a subrecipient to provide housing and services under the grant.

Consistent with section 491(l) of the McKinney-Vento Act, recipients will have 2 years to obligate the grant funds. A recipient's grant funds awarded in a recipient's fiscal year that remain unobligated at the end of the recipient's fiscal year shall remain available to the recipient, for the purposes for which the funds were awarded, for the recipient's next fiscal year. All grant funds must be obligated by the recipient by the end of the recipient's second fiscal year. Any funds that remain unobligated after the recipient's second fiscal year will be recaptured by HUD. All funds must be spent by recipients by the end of the grant term. A conditional grant must document match requirements, comply with environmental review under § 579.106, document financial feasibility, and correct any and all issues and conditions that may have been attached to the grant award. Recipients of grant funds must comply with the timeliness standards established in § 579.414.

HUD would require the recipient to enter into the agreement described in § 579.304. Under this agreement, the grant recipient must agree to ensure that the operation of the project will be in accordance with the McKinney-Vento Act and the requirements of this program. In addition, the grant recipient must monitor and report the progress of the grant to HUD. The grant recipient must comply with requirements of section 491(d)(6) of the McKinney-Vento Act, maintain confidentiality of program participants, monitor compliance, and submit performance reports to HUD annually.

Program Requirements (Subpart E)

Subpart E sets forth the program requirements applicable to RHSP. All recipients of RHSP funding must comply with the program regulations under this subpart and the requirements of the NOFA issued annually by HUD.

Assessment of Program Participant Eligibility and Needs (§ 579.400)

Section 579.400 would require recipients and subrecipients to conduct an initial evaluation to determine a program participant's eligibility for participation in the program, and to determine the amount and types of assistance available to the participant. HUD proposes to adopt this requirement to ensure that recipients and subrecipients only provide assistance to eligible families. In order to ensure fair and consistent standards for determining the amount and types of assistance made available to program participants, § 579.400 would also require recipients to have written standards for the provision of assistance, which must address any limits on the amount of assistance that may be received by a program participant, in addition to standards for determining and prioritizing assistance to eligible individuals and families.

To assess the annual income of the program participants, HUD proposes that recipients follow the standards outlined in 24 CFR 5.609, with one exception. HUD will not include in its annual income determination the value of a program participant's principal residence when providing rehabilitation or repair for that housing. This exception would allow HUD to afford maximum flexibility for rural communities in addressing homelessness and worst case housing needs in underserved communities. The RHSP is unique because it allows funds to be used to repair homes. It would not be logical to count assets, including housing, when that is the very reason the participant is requesting the funding.

Matching (§ 579.402)

Section 430 of the McKinney-Vento Act imposes a minimum of 25 percent cash or in-kind match on all eligible funding costs except leasing. Section 579.402 would also exclude data collection and administrative costs from this requirement. For in-kind match, the government-wide grant requirements of HUD's regulations in 24 CFR 84.23 (for nonprofit organizations) and 85.24 (for governments) apply. The 25 percent match requirement is calculated on the total grant amount. All match funds must be spent on eligible activities under this program. Match funds from cash resources must be provided to the project by the recipient, the Federal government, State and local government, or private resources. A recipient may use funds from any source, including any other Federal

sources (excluding RHSP funding), as well as State, local, and private sources, provided that funds from the source are not statutorily prohibited to be used as a match. For match funds from in-kind contributions, before grant execution, services to be provided by a third party must be documented by a memorandum of understanding (MOU) or a memorandum of agreement (MOA) between the recipient or subrecipient and the third party who will provide the services.

General Operation (§ 579.404)

Section 579.404 would provide that recipients of grant funds must provide housing or services that comply with all applicable State and local housing codes, Federal physical accessibility requirements, licensing requirements, and any other requirements in the project's jurisdiction. For leasing, rental assistance, and operating costs, if a unit fails the housing quality standards (HQS) inspection, the owner must correct all failed items within 30 days from the date of the lease agreement to receive assistance under this part. In addition, § 579.404 would clarify that recipients must abide by housing quality standards and suitable dwelling standards. Recipients must also assess supportive services on an ongoing basis and abide by confidentiality standards.

Calculating Occupancy Charges and Rent (§ 579.406)

Section 579.406 would provide that occupancy charges collected from program participants are considered program income under the RHSP regulations and must be retained by the recipient and added to funds committed by HUD to fulfill project and program objectives under this part. Additionally, the amount of rental assistance awarded will be based on the number and size of units proposed by the applicant to be assisted over the grant period.

Limitation on Transitional Housing (§ 579.408)

Section 579.408 specifies that program participants may remain in transitional housing for a period longer than 24 months if permanent housing cannot be located, or if the participant requires additional time to prepare for independent living. This would allow program participants in these circumstances to continue to receive assistance while they seek permanent housing. HUD reserves the authority to discontinue assistance to transitional housing projects where more than half of program participants remain in a project for a period longer than 24 months.

Term of Commitment; Repayment of Grants; Prevention of Undue Benefits (§ 579.410)

Section 579.410 would require that recipients and subrecipients receiving grant funds for acquisition, rehabilitation, or new construction for rental housing or a facility must operate the housing, or provide supportive services in accordance with programmatic requirements, for a term of at least 15 years. When applying for funds, applicants seeking funding for acquisition, rehabilitation, or new construction of permanent housing must also provide a sustainability plan that outlines how a proposed project will continue to operate after the expiration of the grant term. Section 579.410 would also establish repayment requirements when recipients fail to comply with these requirements.

While grant terms under this program will expire, HUD has determined that it is in the best interest of the program to ensure that recipients develop a plan to continue to operate an assisted project in accordance with the requirements of this part for a period of time beyond the expiration of a grant period. Where funds are used for acquisition, rehabilitation, or new construction, HUD expects recipients to ensure the continued operation or support of projects, for the benefit of program participants, beyond the grant period.

Displacement, Relocation, and Acquisition (§ 579.412)

Section 579.412 would provide that recipients and subrecipients must assure that they have taken all reasonable steps to minimize the displacement of persons as a result of housing assisted under this part. This section provides a definition of "displaced person" and provides that a displaced person must be provided relocation assistance in accordance with the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) (42 U.S.C. 4601–4655) and implementing regulations at 49 CFR part 24. This section further provides that a displaced person must be advised of his or her rights under the Fair Housing Act and, if the comparable replacement dwelling used to establish the amount of replacement housing payment to be provided to a minority person is located in an area of minority concentration, the minority person must be given, if possible, referrals to decent, safe, and sanitary replacement dwellings not located in such areas that are within their financial means. (See 49 CFR 24.205(c)(2)(i)(D)). This section also

addresses the process of initiating negotiations where the displacement is a result of privately undertaken rehabilitation, demolition, or acquisition of real property. This section also provides that a person may appeal a determination by the recipient or subrecipient regarding whether a person qualifies as a displaced person.

Timeliness Standards (§ 579.414)

Under § 579.414, recipients would be required to adhere to all timeliness standards pertaining to obligation of funds. All funds must be obligated by the end of a recipient's second fiscal year. HUD reserves the authority to withdraw grant awards if an applicant fails to correct all issues, or comply with conditions attached to an award, within a certain period of time.

Limitations on Use of Funds (§ 579.416)

Section 579.416 would provide that no assistance provided under the RHSP or by any State or local government funds used to supplement this assistance will be awarded for, or may be used to replace State or local funds previously used, or designated for use, to assist persons who are homeless, at risk of homelessness, or in the worst housing situations. This limitation is consistent with the Continuum of Care program and prevents RHSP funds from supplanting existing funds. Additionally, this regulatory section would provide that recipients and subrecipients may not charge fees to program participants.

The limitation on the 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 completing 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), 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 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, within a reasonable time after the date of the objection, shall 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.

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, in this rule, HUD has proposed revisions to 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 religious content,” that offers greater clarity to the limitations placed on faith-based organizations when using Federal funds for their supportive services.

Executive Order 13559 also 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 after the date of the objection, refer the beneficiary to an alternative provider. HUD has proposed language in the rule to reflect the option of referral to an alternative provider. As to how this option specifically will be implemented in rural America, HUD anticipates that based on public comment, as well as forthcoming OMB guidance and the recommendations of the Working Group, HUD will be able to fully address and implement this provision at the final rule stage.

Termination of Assistance to Participants (§ 579.418)

Section 579.418 would provide that a recipient may terminate assistance to a program participant who violates program requirements or conditions of occupancy. The recipient must provide a formal process that affords program participants due process of law. As recipients develop their formal due process policies they should consider the specific conditions and needs of the project’s target subpopulation and develop policies and procedures accordingly. Recipients may resume assistance to a participant whose assistance has been terminated.

For example, recipients that target persons fleeing or attempting to flee domestic violence, dating violence, sexual assault, or stalking should consider the unique needs of this subpopulation, including safety risks that might arise as a result of terminating assistance and what violations are serious enough to warrant such risks. Additionally, recipients should consider including in the formal due process policies a requirement that recipients make the appropriate referrals or take other measures to ensure the safety of the program participants who are being terminated from the program.

Recipients that are providing permanent housing for hard-to-house populations of homeless persons (e.g., persons with multiple disabling conditions) must exercise judgment and examine all circumstances in determining whether termination is appropriate. Under § 579.418, HUD has determined that a participant’s assistance should be terminated only in the most severe cases.

Conflicts of Interest (§ 579.420)

Section 579.420 addresses organizational and individual conflicts of interest. With respect to organizational conflicts of interest, this section would provide that the provision of any type or amount of assistance under the RHSP may not be conditioned on an individual’s or family’s acceptance or occupancy of housing owned by the recipient, subrecipient, or a parent or subsidiary of the subrecipient. This section further provides that no subrecipient, or parent or subsidiary of a subrecipient, may, with respect to individuals or families occupying housing that the subrecipient, or any parent or subsidiary of the subrecipient, owns, carry out the intake assessment. With respect to individual conflicts of interest, this section provides that for the procurement of goods and services, the

recipient and its subrecipients must comply with the codes of conduct and conflict of interest requirements under 24 CFR 85.36 (for governments) and 24 CFR 84.42 (for private nonprofit organizations), and sets out the requirements for all other transactions and activities.

Program Income (§ 579.422)

Section 579.422 defines program income as income received by the recipient or subrecipient directly from a grant-supported activity or earned as a result of the grant agreement. Program income would be allowable to further eligible project and RHSP activities.

Applicability of Other Federal Requirements (§ 579.424)

Section 579.424 would provide the cross-cutting Federal requirements to which recipients and subrecipients of RHSP funding must comply. These requirements would include compliance with such Federal requirements as the Coastal Barriers Resources Act, applicable OMB Circulars, Lead-Based Paint regulations, audit requirements, and nondiscrimination and civil rights requirements. This section also would provide that all recipients of RHSP funds must abide by the limitation of use of the funds, such as use of funds for required religious activities.

Grant Administration (Subpart F)

Data Collection Requirements (§ 579.500)

Section 579.500 would provide that recipients of RHSP funding must collect and report data using methods used by HUD. These methods shall include, at a minimum, participation in an HMIS, a point-in-time count, and an annual housing inventory count. These data collection methods are not required by the McKinney-Vento Act, however they have proven successful in HUD’s other homeless assistance programs. Although RHSP is not exclusively targeting homeless persons, these tools can be used to count all program participants. HUD will issue guidance for recipients on how to implement these methods in their counties.

Technical Assistance (§ 579.502)

The purpose of technical assistance provided under the RHSP is to increase the effectiveness with which eligible recipients develop projects that effectively assist program participants; improve their capacity to prepare funding applications; and gain access to other Federal resources that may be used to assist individuals and families who are homeless, at risk of homelessness, or are in the worst

housing situations in rural areas. As appropriate, HUD will provide technical assistance through a variety of methods to assist recipients with complying with requirements under this program.

Recordkeeping Requirements (§ 579.504)

Section 579.504 would require each recipient receiving RHSP funds to provide timely reports to HUD. Each recipient would be required to adhere to recordkeeping requirements outlined under § 579.504. These requirements include maintaining financial records, documenting eligibility status, and maintaining records concerning other Federal requirements.

Grant Changes (§ 579.506)

Section 579.506 would provide that recipients of RHSP funds may not make any significant changes to the use of the funds without prior HUD approval, evidenced by a grant amendment signed by HUD and the recipient. Significant changes would include a shift in a single year of more than ten percent of the total amount awarded under the grant for one approved eligible activity to another activity. Approval of shifting funds between activities and changing subpopulations must be necessary to better serve eligible persons within the geographic area and ensure that the priorities established under the NOFA in which the grant was originally awarded continue to be met. In addition, to be approved, a change to the grant agreement must also be consistent with the recipient's HUD-approved consolidated plan or abbreviated consolidated plan. If an amendment would adversely impact the score the application received on any selection criterion used in the year in which the grant was awarded, HUD will disapprove the amendment. Any other changes to an approved grant must be fully documented in the recipient's or subrecipient's records.

Enforcement (§ 579.508)

Through § 579.50, HUD proposes to adopt enforcement procedures and an array of remedial actions and sanctions that draw from the requirements at 24 CFR 85.43 (Enforcement) and other HUD program regulations. HUD believes that these procedures afford recipients and subrecipients due process while also protecting against the misuse of Federal funds.

Closeout (§ 579.510)

Section 579.510 would provide that grants must be closed out at the end of their grant term. This regulatory section specifies the actions that must be taken

after the closeout, including recipient submission of financial, final performance, or other reports required by HUD within 90 days of the end of the grant term. HUD will prepare a closeout agreement in consultation with the recipient that will govern the terms of the closeout. Any unused funds must be deobligated and returned to HUD.

III. Findings and Certifications

Regulatory Review—Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

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 OMB in accordance with the requirements of the order. This rule was determined to be a "significant regulatory action" as defined in section 3(f) of the Executive Order (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 rule proposes to establish the regulations for the Rural Housing Stability Assistance program. These proposed regulations are intended to work towards the goal of eliminating homelessness in rural communities, by providing the requirements for the new Rural Housing Stability Assistance program, which focuses on improving homeless assistance and prevention in rural areas. The funds awarded under the program would go towards rehousing and improving the housing situations of individuals and families who are homeless or in the worst housing situations in the geographic area, stabilizing the housing of individuals and families who are at risk of becoming homeless, and improving the ability of the lowest-income residents of the community to afford stable housing.

In addition to establishing the regulatory framework for the new Rural Housing Stability Assistance program, this rule also proposes to establish a definition for chronically homeless that

includes a definition of homeless occasion that HUD believes better targets persons with the longest histories of homelessness and therefore the highest level of need. The definition of homeless occasion also allows for limited resources to be more effectively targeted, and considers stays in institutions of 90 days or less to be part of an episode of homelessness. The goal of ending chronic homelessness is not only a goal of HUD but of the Administration. On April 5, 2012, the U.S. Interagency Council on Homelessness met to review progress and challenges toward the goal of ending chronic homelessness. As reported at that meeting, based on HUD's 2011 Point-in-Time estimates for chronic homelessness, there has been a 2.4 percent decline in the number of persons experiencing chronic homelessness. The USICH acknowledged that the accuracy of the count is limited by the difficulty of determining chronic homelessness. The USICH report, based on recent research on chronic homelessness in the city of Philadelphia, suggests that between 60 and 70 percent of all persons experiencing chronic homelessness meet the definition via episodes as opposed to being homeless continuously for one year or longer.²

Congress appropriated a total of \$1,593,000,000 for the Continuum of Care and Rural Housing Stability Assistance programs. (See Consolidated and Further Continuing Appropriations Act, 2012, Public Law 112-55, approved November 18, 2011). As noted earlier, the overwhelming majority of such funding is allocated to the Continuum of Care program as it is an established program.

The RHSP proposed regulations are based on and consistent with the regulations that are familiar to recipients that receive funding under other McKinney-Vento Act programs, thereby limiting burden associated with start-up administration of a new program. As provided under the "Reporting and Recordkeeping Burden" below, HUD has estimated the total annual hours for all grantees to comply with the reporting and recordkeeping requirements of the RHSP as 202,677 hours. HUD submits that the limited burden is due to the fact that HUD is providing RHSP requirements with which HUD's homeless assistance grantees are already familiar.

The docket file is available for public inspection in the Regulations Division, Office of the General Counsel, Room

² See http://www.usich.gov/population/chronic/in_focus/.

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 (this is a toll-free number).

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 FONSI is available for public inspection between the hours of 8 a.m. and 5 p.m., eastern time, 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 (this is a toll-free number).

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 proposed 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 Rural Housing Stability Assistance program, as provided by the HEARTH Act amendments to the McKinney-Vento Act. The program is a voluntary grant program. The proposed regulations established by this rule track closely with the statutory requirements, which HUD has no discretion to alter, and, where HUD is provided discretion to establish requirements administratively, HUD has modeled the RHSP regulations on the regulations of the other HEARTH Act programs, to the extent consistent with the statutory requirements governing the Rural Housing Stability Assistance program. By modeling regulations on the regulations of the other HEARTH Act programs, HUD proposed to establish requirements, practices and procedures with which grantees are familiar, thereby minimizing time to become knowledgeable with the RHSP program. Additionally, as is the case with all the HEARTH Act programs, funding is provided under the RHSP for administrative costs, which minimizes impact for all grantees. Given the regulatory framework established for this program, based on statute and other

HEARTH Act regulations, 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 would 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 (1) imposes substantial direct compliance costs on State and local governments and is not required by statute, or (2) preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This proposed rule does not have federalism implications and does not impose substantial direct compliance costs on State and local governments nor preempt State law within the meaning of the Executive Order.

Paperwork Reduction Act

The information collection requirements contained in this proposed rule have been submitted to the 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 proposed 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
§ 579.102(a) Application process	230	1	230	75	17,250
§ 579.104 Subsidy layering	230	1	230	1	230
§ 579.106 Environmental review	135	1	135	2	270
§ 579.208(b) New construction cost comparison	5	1	5	1.0	5
§ 579.214 Signed leases/occupancy agreements	1,302	2	2,604	1.0	2,604
§ 579.216(e) Calculating rental assistance amount	155	16	2,480	0.75	1,860
§ 579.216(f) Calculating rent reasonableness	651	65	42,315	0.75	31,736
§ 579.216(k) Signed leases	155	1	155	1.0	155
§ 579.220 Income determination for rehabilitation and repairs of participant-owned housing	655	65	42,315	0.75	31,736
§ 579.222 Supportive services needs assessment	6,927	1	6,927	1.5	10,390
§ 579.228(c) and (d) Point-in-time and housing inventory count participation	230	1	230	50	11,500
§ 579.304 Grant agreement preparation and execution	50	1	50	5.0	250
§ 579.400(b) Establish written standards for amount and types of assistance	230	1	230	3.0	690

REPORTING AND RECORDKEEPING BURDEN—Continued

Information collection	Number of respondents	Response frequency (average)	Total annual responses	Burden hours per response	Total annual hours
§ 579.402 Documenting match	230	1	230	1.0	230
§ 579.404(a) State and local requirements—housing codes	5	1	5	3.0	15
§ 579.404(b) Property standards	1,302	2	2,604	1.0	2,604
§ 579.406(b) Calculating occupancy charges	456	46	59,317	0.75	44,488
§ 579.406(c) Calculating income	651	65	42,315	0.75	31,736
§ 579.406(d) Calculating resident rent	155	16	2,480	0.75	1,860
§ 579.418 Termination of assistance to participants	30	1	30	4.0	120
§ 579.424(g)(3) Affirmatively marketing housing and supportive services	230	4	920	0.5	460
§ 579.504(b) Documenting homelessness	309	1	309	0.25	77
§ 579.504(c) Documenting at risk of homelessness	4,751	1	4,751	0.25	1,188
§ 579.504(d) Documenting worst housing situation	1,866	1	1,866	0.25	467
§ 579.504(f) Documenting imminent threat of harm	17	1	17	0.5	9
§ 579.504(g) Documenting program participant records	6,927	6	41,562	0.25	10,391
§ 579.504(k) Documenting faith-based activities	346	1	346	1.0	346
§ 579.506 Grant changes	5	1	5	2.0	10
Total					202,677

Total Estimated Burden Hours

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

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

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

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

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology, for example, 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 proposed rule by name and docket number (FR-5573-P-01) and must be sent to: HUD Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503, Email:

oira_submissions@omb.eop.gov, 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 579

Grant programs—housing and community development, rural housing, Homeless, Reporting and recordkeeping requirements.

Accordingly, for the reasons stated in the preamble, HUD proposes to add 24 CFR part 579 to read as follows:

PART 579—RURAL HOUSING STABILITY ASSISTANCE PROGRAM**Subpart A—General**

Sec.

- 579.1 Purpose and scope.
579.3 Definitions.

Subpart B—Application

- 579.100 Eligible applicants.
579.102 Application process.
579.104 Subsidy layering.
579.106 Environmental review.

Subpart C—Eligible Activities

- 579.200 Types and uses of assistance.

- 579.202 Rent, mortgage, and utility assistance.
579.204 Relocation assistance.
579.206 Short-term emergency lodging.
579.208 New construction.
579.210 Acquisition.
579.212 Rehabilitation.
579.214 Leasing.
579.216 Rental assistance.
579.218 Operating costs.
579.220 Rehabilitation and repairs of participant-owned housing.
579.222 Supportive services.
579.224 Use of Federal inventory property.
579.226 Capacity building.
579.228 Data collection costs.
579.230 Administrative costs.
579.232 Indirect costs.

Subpart D—Grant Award Process

- 579.300 Selection process.
579.302 Selection priorities.
579.304 Grant award process.

Subpart E—Program Requirements

- 579.400 Assessment of program participant eligibility and needs.
579.402 Match.
579.404 General operation.
579.406 Calculating occupancy charges and rent.
579.408 Limitation of stay in transitional housing.
579.410 Term of commitment; Repayment of grants; Prevention of undue benefits.
579.412 Displacement, relocation, and acquisition.
579.414 Timeliness standards.
579.416 Limitation on use of funds.
579.418 Termination of assistance to participants.
579.420 Conflicts of interest.
579.422 Program income.
579.424 Applicability of other Federal requirements.

Subpart F—Grant Administration

- 579.500 Data collection requirements.
579.502 Technical assistance.
579.504 Recordkeeping requirements.
579.506 Grant changes.

579.508 Enforcement.

579.510 Closeout.

Authority: 42 U.S.C. 3535(d) and 11408 *et seq.*

Subpart A—General

§ 579.1 Purpose and scope.

(a) *In general.* This part establishes the regulations that govern assistance provided under the Rural Housing Stability Assistance Program, authorized by subtitle G of title IV of the McKinney-Vento Homeless Assistance Act (the McKinney-Vento Act) (42 U.S.C. 11408). The Rural Housing Stability Assistance Program is designed to rehouse or improve the housing situations of individuals and families who are homeless or in the worst housing situations in the county receiving funds under this program, stabilize the housing of individuals and families who are at risk of homelessness, and improve the ability of the lowest-income residents of the county to afford stable housing. Funds awarded under this part are in lieu of funds awarded under the Continuum of Care program, for which the regulations are found in 24 CFR part 578. Recipients of funds under the Rural Housing Stability Assistance Program are not eligible to receive funding under the Continuum of Care program nor can funds from the two programs be combined in any other way.

§ 579.3 Definitions.

Abbreviated Consolidated Plan means an assessment of housing and homeless needs, resources, and planned activities. An abbreviated plan must contain sufficient information about:

- (1) Needs;
- (2) Strategies to:
 - (i) Provide safe and decent housing; and
 - (ii) Assist homeless persons, persons at risk of homelessness, and persons living in the worst housing situations by increasing the affordable housing stock and the availability of permanent housing;
- (3) Resources that will be used to address identified needs; and
- (4) Planned activities to address the needs to cover the type and amount of assistance anticipated to be funded by HUD, in accordance with 24 CFR 91.235.

At risk of homelessness means an individual or family defined as being at risk of homelessness in 24 CFR 576.2.

Chronically homeless means:

- (1) An individual who:
 - (i) Is homeless and lives in a place not meant for human habitation, a safe haven, or in an emergency shelter; and

- (ii) Has been homeless and living or residing in a place not meant for human habitation, a safe haven, or in an emergency shelter continuously for at least one year or on at least four separate occasions in the last 3 years, where the cumulative total of the four occasions is at least one year. Stays in institutions of 90 days or less will not constitute a break in homelessness, but rather such stays are included in the cumulative total; 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 this definition, including a family whose composition has fluctuated while the head of household has been homeless.

Consolidated plan means the HUD-approved plan developed in accordance with 24 CFR 91.

Continuum of Care and *Continuum* mean the group organized to carry out the responsibilities set forth in HUD's Continuum of Care program regulations in 24 CFR part 578. These organizations can include 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 their families, and homeless and formerly homeless persons and families to the extent these groups are represented within the geographic area and are available to participate.

County and county equivalent means organized local governments authorized in State constitutions and statutes and established to provide general

government; including those governments designated as boroughs in Alaska, as parishes in Louisiana, and as counties in other States.

Emergency shelter is defined in 24 CFR part 576.

Fair Market Rent (FMR) means the fair market rents determined by HUD and published in the **Federal Register** annually by HUD in accordance with HUD's FMR regulations in 24 CFR part 888.

Homeless, homeless individual, and homeless person are defined in 24 CFR 576.2.

Homeless Management Information System (HMIS) means the information system designated by a Continuum of Care to comply with HUD's data collection, management, and reporting standards and used to collect client-level data and data on the provision of housing and services to program participants.

Permanent housing means community-based housing without a designated length of stay, and includes permanent supportive housing and permanent housing without supportive services. 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.

Point-in-time count means the 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, in accordance with 24 CFR 578.7.

Preliminary Pro Rata Need Amount means the dollar expression of the relative need assigned to metropolitan cities, urban counties, and all other counties determined by HUD in accordance with the calculation of preliminary pro rata need amount in HUD's Continuum of Care regulations in 24 CFR 578.17.

Private nonprofit organization means a private nonprofit organization which is a secular or religious organization described in section 501(c) of the Internal Revenue Code (IRC) of 1986 (26 U.S.C. 501(c)), that is exempt from taxation under subtitle A of the IRC, has an accounting system and a voluntary board, and practices nondiscrimination in the provision of assistance. A private nonprofit organization does not include a governmental organization, such as a public housing agency or housing finance agency.

Program means the Rural Housing Stability Assistance Program established under this part.

Program participant means individuals and families who are

assisted with Rural Housing Stability Assistance Program funds.

Recipient means an applicant that signs a grant agreement with HUD to use Rural Housing Stability Assistance Program funds.

Rural area and rural community mean any county that:

(1) Has no part of it within an area designated as a standard metropolitan statistical area by the Office of Management and Budget (OMB); or

(2) Is within an area designated as a metropolitan statistical area or considered as part of a metropolitan statistical area and at least 75 percent of its population is located on U.S. Census blocks classified as nonurban; or

(3) Is located in a State that has population density of less than 30 persons per square mile (as reported in the most recent decennial census), and of which at least 1.25 percent of the total acreage of such State is under Federal jurisdiction, provided that no metropolitan city in such State is the sole beneficiary of the grant amounts awarded under this part. A metropolitan city means a city that was classified as a metropolitan city under section 102(a) of the Housing and Community Development Act of 1974 (42 U.S.C. 5302(a)) for the fiscal year immediately preceding the fiscal year for which Emergency Solutions Grants program funds are made available.

Subrecipient means a unit of general purpose local government or private nonprofit organization to which a recipient makes available Rural Housing Stability Assistance Program funds.

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.

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.

Worst housing situation means housing that has:

(1) Serious health and safety defects, such as life-threatening deficiencies; and

(2) At least one major system that has failed or is failing including: structural

support, roofing, cladding, weatherproofing (e.g., windows, doors, siding, gutters), plumbing, electrical, heating, ventilation, and air conditioning.

Subpart B—Application

§ 579.100 Eligible applicants.

(a) *County beneficiary.* Program funds are intended to benefit eligible counties that meet the definition of a rural county, as defined in § 579.3.

(b) *Who may apply.* Organizations eligible to apply for funds are:

(1) Counties;

(2) Private nonprofit organizations, as defined in § 579.3, designated by the county; and

(3) Units of local government designated by the county.

(c) *Applicant limit.* Only one applicant per county may apply.

(d) *Exclusions.* Funds awarded under the Rural Housing Stability Assistance Program are in lieu of funds awarded under the Continuum of Care program for which the regulations are found in 24 CFR part 578. No county in which a project funded by the Continuum of Care program is administered may receive an award under the Rural Housing Stability Assistance Program, either directly or through a designee. To be eligible for funds under this part, the Preliminary Pro Rata Need (PPRN) amounts associated with the rural county and all metropolitan cities therein may only be claimed in an application for funds under this part. The rural county and all metropolitan cities therein, will be required to exclude all PPRN amounts from any application submitted under 24 CFR part 578.

§ 579.102 Application process.

(a) *Notice.* For each Federal fiscal year, HUD will announce:

(1) A list of counties eligible to apply;

(2) The PPRN amounts assigned to metropolitan cities, urban counties, and all other counties in accordance with 24 CFR 578.17.

(3) A notice of funding availability (NOFA) in accordance with the requirements of the HUD Reform Act regulations in 24 CFR part 4 setting forth the application requirements, including:

(i) The time and manner in which applicants must submit applications;

(ii) A description of the target population(s), including a plan for serving populations throughout the county;

(iii) A description of the types of assistance to be provided;

(iv) An assurance that the assistance to be provided is closely related to the

identified needs of the target population(s);

(v) A description of the existing assistance available to the target population(s), including Federal, State, and local programs, and a description of the manner in which the organization will coordinate with and expand existing assistance or provide assistance not available in the immediate area;

(vi) An agreement by the applicant that it will collect data on the activities conducted by the applicant, including assistance provided, number and characteristics of persons served, and causes of homelessness for persons served;

(vii) A description of how individuals and families who are homeless or who have the lowest incomes in the county will be involved by the applicant through employment, volunteer services, and otherwise, in providing, operating, and rehabilitating housing assistance under this program and in providing services assisted under this program and services for occupants of housing assisted under this program;

(viii) A description of consultations that took place within the county to ascertain the priorities and goals for using the funding under this section, including the involvement of potential beneficiaries of the project;

(ix) A description of the extent and nature of homelessness and of the worst housing situations in the county;

(x) A description for how the applicant plans to continue to support housing assistance initiated with program funds at the conclusion of the grant term; and

(xi) Other requirements set forth in the NOFA.

(b) *Special case; abbreviated consolidated plan.* (1) Each applicant must submit the county's consolidated plan or establish an abbreviated consolidated plan if the county does not have its own consolidated plan.

(i) A county in which it, or its designee, is a recipient of grant funds under this program must submit an abbreviated consolidated plan that is applicable to the program, and that meets the requirements of HUD's Consolidated Plan regulations in 24 CFR 91.235. HUD will not award grants to recipients seeking to serve a rural county unless the county submits an abbreviated consolidated plan on or before the time of application.

(ii) The county must identify and describe any areas within the county with concentrations of racial/ethnic minorities, stating how it defines the term "area of minority concentration" for this purpose. Where the state in which the county is located has already

defined “area of minority of concentration,” the county may adopt that definition in its abbreviated consolidated plan. The locations and degree of these concentrations must be identified, either in a narrative or on one or more maps.

(iii) The county must make reasonable efforts to consult with public and private social service agencies regarding the needs to be served with the funding sought from HUD. The county must contact the State to consult on the needs of the county. Counties must conduct a citizen participation process as provided in section 107 of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12707).

(iv) For the purpose of applications for this program, the citizen participation requirements of 24 CFR 91.105 do not apply.

§ 579.104 Subsidy layering.

(a) Applicants to this program must comply with HUD subsidy layering requirements in section 102 of the Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3545) and the regulations in 24 CFR part 4, subpart A.

(b) 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 a 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.

§ 579.106 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 any environmental review required by 24 CFR part 50 for each property. 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.

Subpart C—Eligible Activities

§ 579.200 Types and uses of assistance.

(a) *Grant assistance.* Assistance is available for eligible activities, as further described in this subpart to assist program participants. Eligible activities are:

- (1) Rent, mortgage, and utility assistance;
- (2) Relocation assistance;
- (3) Short-term emergency lodging;
- (4) New construction;
- (5) Acquisition;
- (6) Rehabilitation;
- (7) Leasing;
- (8) Rental assistance;
- (9) Operating costs;
- (10) Rehabilitation and repairs of participant-owned housing;
- (11) Supportive services;
- (12) Use of Federal inventory property;
- (13) Capacity building;
- (14) Data collection costs; and
- (15) Administrative costs.

(b) *Multiple purposes.* Buildings and other structures used to provide housing, supportive housing, or supportive services 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 housing, 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 the space is used for eligible activities compared to ineligible activities.

§ 579.202 Rent, mortgage, and utility assistance.

(a) *Use.* Grant funds may be used to provide rental, mortgage, or utility payments on behalf of program participants who are currently living in a housing unit that they own or rent, to prevent eviction, foreclosure, or loss of utility service after two months of nonpayment. Funds may be used to pay arrears.

(b) *Duration.* Program participants may receive a maximum of 12 months of cumulative assistance, including arrears payments, for:

(1) Rental payments or mortgage payments, including property taxes associated with mortgage payments; and

(2) Utility payments, including gas, electric, heat, primary telephone, sewage/water.

(c) *Subsequent rental assistance.*

Following this period of assistance, if eligible, participants may receive rental assistance under § 579.216 for transitional or permanent housing.

§ 579.204 Relocation assistance.

(a) *Use.* Grant funds may be used to provide assistance to program participants who are moving to a housing unit located outside of the county receiving funds under this part.

Relocation assistance includes:

- (1) Security deposits;
- (2) Utility deposits;
- (3) Rent for the first month of residence at a new location;
- (4) Moving services; and
- (5) Housing information services.

(b) *Eligibility.* Program participants are eligible for relocation assistance if they have identified a location outside of the county where they have acquired new employment, been accepted to an educational institution, or will be reunited with family members. Program participants must provide credible evidence, as defined in § 579.504, of an identified subsequent residence and a justification for relocation.

§ 579.206 Short-term emergency lodging.

(a) *Use.* Grant funds may be used to provide short-term emergency lodging to program participants in either motels or shelters. Short-term emergency lodging includes:

- (1) Lodging costs in motels or hotels for eligible program participants; and
- (2) Pro-rata share of the costs of housing program participants in existing shelters.

(b) *Limitation on funds used in shelters.* Funds used in shelters shall be limited to actual costs of creating new and temporary beds being made available to assist program participants under this part and not to permanently increase the capacity of the shelter.

Where existing shelter beds are unoccupied and available for eligible program participants, no program funds shall be used to place program participants in those beds. Where program funds are used to temporarily increase the capacity of a shelter, local occupancy code requirements must continue to be followed.

(c) *Lodging program participants receiving participant-owned rehabilitation and repairs.* Funds under this activity may be used to assist households in the worst housing

situations whose housing is being assisted under § 579.220, while the housing unit is being repaired and or rehabilitated.

(d) *Duration.* Program participants eligible for short-term emergency lodging are to receive a maximum of 3 months of assistance. When program participants are unable to relocate to a more permanent housing situation within 3 months because there is no other housing available, the recipient may extend the short-term emergency lodging for program participants. For program participants who are eligible to exceed the three-month limit, the recipient must determine that the program participants are still at risk of homelessness or in the worst housing situations at the end of the 3 month period.

(e) *Exception to durational limit.* When there are more than 25 percent of program participants receiving short-term emergency lodging beyond the 3 month limit, the recipient must submit a request to HUD for an exception. The request must describe the conditions that justify an exception, including an assessment of alternative housing sources and the particular needs of the program participants.

(f) *Last resort.* Program funds shall only be used for this activity when no other alternatives exist. A recipient should not make this activity a significant part of its abbreviated consolidated plan, where applicable.

§ 579.208 New construction.

(a) *Use.* Grant funds may be used to pay up to 100 percent of the cost of new construction to provide transitional or permanent rental housing to individuals and families who are homeless or at risk of homelessness, including the new construction of a building or other structure, 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.

(b) *Cost comparison.* If grant funds are used for new construction, the applicant must demonstrate that the costs of new construction of a building or structure 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.

(c) *Eligible costs.* Grant funds may be used to pay for eligible costs, including but not limited to:

(1) *Development hard costs.* These costs include the actual cost of

constructing housing, as described in this section.

(2) *Site improvement costs.* These costs may include the construction of on-site roads and the development and installation of sewer and water lines necessary to the development of the building or structure, including off-site connections from the property line to the adjacent street. Such costs also include clearance, demolition, and removal of buildings and improvements, including movement of structures to other sites and related reasonable and necessary site preparation costs.

(3) *Staff and overhead costs.* Staff and overhead costs directly related to carrying out eligible activities under this section.

(4) *Related reasonable and necessary soft costs.* Related reasonable and necessary soft costs, including but not limited to:

(i) Architectural, engineering, or related professional services required to prepare plans, drawings, specifications, or work write-ups;

(ii) Costs of required permits;

(iii) Costs to provide information services such as affirmative marketing and fair housing information; and

(iv) Costs incurred in order to comply with the environmental review requirements under 24 CFR part 50.

(d) *Ineligible costs.* Grant funds may not be used for new construction on leased property.

§ 579.210 Acquisition.

(a) *Use.* Grant funds may be used to pay up to 100 percent of the cost of acquisition of real property selected for transitional or permanent rental housing, other than emergency shelter, for individuals and families who are homeless or at risk of homelessness, or for the provision of supportive services as defined in § 579.222.

(b) *Eligible costs.* Grant funds may be used to pay for eligible costs, including but not limited to:

(1) Staff and overhead costs directly related to carrying out eligible activities under this section.

(2) Related reasonable and necessary soft costs, including but not limited to:

(i) Architectural, engineering, or related professional services required to prepare plans, drawings, specifications, or work write-ups;

(ii) Costs of required permits; and

(iii) Costs incurred in order to comply with the environmental review requirements under HUD's environmental regulations in 24 CFR part 50.

§ 579.212 Rehabilitation.

(a) *Use.* Grant funds may be used to pay 100 percent of the cost of

rehabilitation of structures to provide transitional or permanent rental housing or supportive services to individuals and families who are homeless or at risk of homelessness.

(b) *Eligible costs.* Grant funds may be used to pay for eligible costs, including but not limited to:

(1) Installation of cost-effective energy measures.

(2) Bringing an existing structure into compliance with State and local government health and safety standards.

(3) Staff and overhead costs directly related to carrying out eligible activities under this section.

(4) Related reasonable and necessary soft costs, including:

(i) Architectural, engineering, or related professional services required to prepare plans, drawings, specifications, or work write-ups;

(ii) Costs of required permits; and

(iii) Costs incurred in order to comply with the environmental review requirements under 24 CFR part 50.

(c) *Ineligible costs.* Grant funds may not be used for rehabilitation of leased property.

§ 579.214 Leasing.

(a) *Use.* (1) Grant funds may be used to pay 100 percent of the costs of leasing a structure or structures, or portions thereof, to provide program participants transitional or permanent rental housing or supportive services. 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 the leasing of these structures is in the best interest of the program;

(ii) Supporting documentation showing that the rent paid with grant funds is 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 by the recipient must be reasonable in relation to rent being charged in the area for comparable space. In addition, the rent paid by the recipient may not exceed rents currently being charged for comparable space.

(2) *Leasing individual units.* When grants are used to pay rent for

individual housing units, the rent paid by the recipient 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 HUD determined fair market rents.

(3) *Utilities.* If electricity, gas, and water are provided by the landlord under the lease, these utilities may be paid from leasing funds. If utilities are paid separately from grant funds, these utilities 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 months' rent.* Recipients and subrecipients may use grant funds to pay security deposits, in an amount not to exceed two 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.* Occupancy agreements and subleases are required as specified in § 579.406(a).

(c) *Calculation of occupancy charges.* Occupancy charges and rent from program participants must be calculated as provided in § 579.406.

(e) *Program income.* Occupancy charges collected from program participants are program income and may be used as provided under § 579.422.

§ 579.216 Rental assistance.

(a) *Use.* (1) Grant funds may be used for rental assistance for program participants. Rental assistance cannot be provided to a program participant who is already receiving tenant-based rental assistance, or living in a housing unit receiving project-based rental assistance or operating assistance, through other Federal, State or local sources.

(i) The rental assistance may be short-term, up to 3 months; medium-term, for 3 to 24 months of assistance; or long-term, for longer than 24 months of assistance. Short- and medium-term rent are subject to written standards, as provided in § 579.400(b).

(ii) The rental assistance may be tenant-based or project-based rental assistance, 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.

(3) Grant funds may be used for the payment of reasonable rental application fees.

(b) *Rental assistance administrator.* Rental assistance must be administered by recipients or subrecipients under this program.

(c) *Tenant-based rental assistance—(1) Benefits of tenant-based rental assistance.* Tenant-based rental assistance is rental assistance in which program participants choose rental 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 receiving rental assistance in permanent housing 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 must live in a specific structure for their entire period of participation in transitional housing.

(2) *Fleeing domestic violence.* Program participants who have complied with all program requirements during their residence and who have been victims 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, through the term of assistance, and move to a different county if they move out of the assisted unit to protect their health and safety.

(d) *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 the rental assistance if they move from a subsidized unit.

(e) *Amount.* The amount of rental assistance awarded 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 of units proposed by the recipient by the area's FMR of each unit on the date the application is submitted to HUD, by the term of the grant.

(f) *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.

(g) *Vacancies.* If a unit assisted under this part 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.

(h) *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. This one-time cost limit is not in addition to a deduction to the security deposit, if provided, but rather includes any deductions made from the security deposit.

(i) *Resident rent.* Rent must be calculated as provided in § 579.406. Rents collected from program participants are program income and may be used as provided under § 579.422.

(j) *Leases—(1) Initial lease.* 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.

§ 579.218 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, owned or leased by the recipient or subrecipient.

(b) *Eligible costs.* (1) The maintenance and repair of housing;

(2) Property taxes and property insurance, where the property taxes and property insurance incurred in a structure must be charged based on the pro rata share of services incurred in the day-to-day operation of housing under this activity;

(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;

(5) Electricity, gas, and water;

(6) Furniture; and

(7) Equipment.

(c) *Ineligible costs.* Operating funds may not be used for rental assistance or leasing in the same building or other structure. Operating funds may not be used for the operating costs of emergency shelters and supportive service only facilities. Operating 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.

§ 579.220 Rehabilitation and repairs of participant-owned housing.

(a) *Use.* Grant funds may be used to provide repairs and rehabilitation to participant-owned housing for participants who are in the worst housing situations, with an income level at 50 percent area median income (AMI) or below, and who are seeking to repair or rehabilitate housing that:

(1) The participant resides in as their principal place of residence; and

(2) The housing has serious health and safety defects including life-threatening deficiencies and has at least one major system that has failed or is failing as determined by a certified professional.

(b) *Eligible costs.* Eligible costs are the costs of repairing, rehabilitating, or replacing major systems that have failed or are failing. Housing that is rehabilitated with program funds must meet all applicable local codes, rehabilitation standards, ordinances, and zoning ordinances at the time of project completion. The county must have written standards for rehabilitation that ensure that participant-owned housing assisted under this activity is decent, safe, and sanitary. In the absence of a local code, the rehabilitation must meet, as applicable, one of three model codes: Uniform Building Code (ICBO), National Building Code (BOCA), Standard (Southern) Building Code (SBCCI); or the Council of American Building Officials (CABO) one- or two-family

code; or the Minimum Property Standards (MPS) in 24 CFR 200.925 or 200.926.

(c) *Residency requirement after assistance is provided.* Program participants who receive assistance under this section must enter into a written repayment agreement with the recipient or subrecipient that states that the program participant agrees to remain in the residence following rehabilitation and repairs for a period of 3 years following the completion of the repairs and rehabilitation. Program participants who leave the premises prior to the fulfillment of the 3 year residency requirement may be required to reimburse the recipient up to the full amount of assistance that was provided for the repair or rehabilitation in accordance with the terms of this repayment agreement.

§ 579.222 Supportive services.

(a) *In general.* (1) Grant funds may be used to pay for the development and delivery of comprehensive and coordinated supportive services that use and supplement, as needed, community networks of services, or as may be necessary to assist program participants to obtain and maintain housing.

(2) Recipients and subrecipients shall conduct an assessment of the service needs of the program participants at least annually and must adjust services accordingly. The costs of the assessment are eligible costs.

(i) If the services are being provided by the recipient or subrecipient directly, eligible costs are the costs of the labor, supplies, and materials directly associated with providing the services to program participants.

(ii) The salary and benefit packages of the recipient and subrecipient staff who directly deliver the services constitute an eligible cost.

(iii) Staff training and the costs of obtaining professional licenses or certifications are not eligible supportive services costs.

(iv) 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. The supportive services costs incurred in a supportive service facility must be charged based on the pro rata share of services incurred in the supportive service facility.

(3) *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.

(4) *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.

(b) *Eligible costs—(1) Budgeting.* The costs of assisting program participants to manage their financial resources in order to stabilize and maintain housing are eligible costs. Budgeting activities include services that provide critical skills related to household budgeting, money management, credit counseling, accessing a free personal credit report, and resolving personal credit issues.

(2) *Case management.* The cost 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) Obtaining Federal, State, and local benefits;

(iv) Monitoring and evaluating program participant progress;

(v) Providing information and referrals to other providers, including referrals to Veterans' services;

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

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

(3) *Child care.* The costs of establishing and operating child care, and providing child care vouchers, for children from program participant households with children, including providing meals and snacks, and comprehensive and coordinated sets of appropriate developmental activities, are eligible costs. The child care center must be licensed by the jurisdiction in which it operates in order for its costs

to be eligible. To be eligible for child care, a child must be:

- (i) Under the age of 13, unless the child is disabled; or
- (ii) Under the age of 18 if the child is disabled.

(4) *Education services.* The costs of improving knowledge and basic educational skills are eligible costs.

(i) Services include instruction or training in consumer education, health education, substance abuse prevention, community protection and safety education, 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.

(5) *Emergency food and clothing.* The cost of providing meals or groceries and suitable clothing to program participants are eligible costs.

Emergency clothing refers to clothing suitable for persons to be modestly covered and appropriate for the weather in the recipient jurisdiction, including coats and blankets where needed.

(6) *Employment assistance and job training.* The costs of services or activities provided to assist individuals in securing employment; acquiring or learning skills that promote opportunities for employment, advancement, and increased earning potential; and in retaining a job, including the acquisition of vocational licenses and/or certificates. Learning skills include those skills that can be used to secure and retain a job, including the acquisition of vocational licenses and/or certificates. The cost of providing reasonable stipends to program participants to participate in employment assistance and job training programs is an eligible cost. Services that assist individuals in securing employment consist of:

- (i) Employment screening, assessment, or testing;
- (ii) Structured job skills and job seeking skills;
- (iii) Special training and tutoring, including literacy training and prevocational training;
- (iv) Books, supplies and instructional material;
- (v) Counseling or job coaching;
- (vi) Referral to community resources;
- (vii) Reasonable registration fees for job placement agencies; and
- (viii) Reasonable registration fees to attend job career fairs and conventions that are relevant to the participants' needs.

(7) *Health related services.* The costs of in-home or out-of-home services or

activities that provide direct treatments or are designed to assist individuals and families to attain and maintain a favorable condition of health and are provided by licensed medical professionals are eligible costs.

Component services and activities include the cost of:

(i) Providing an analysis or assessment of a program participant's health problems and the development of a treatment plan;

(ii) Assisting program participants to identify and understand their health needs;

(iii) Providing directly or assisting program participants to locate, provide or secure, and understand their health needs;

(iv) Providing directly or assisting program participants to obtain appropriate medical treatment, preventive medical care, and health maintenance services, including in-home health services and emergency medical services;

(v) Appropriate medication and follow-up services as needed; and

(vi) Preventive and noncosmetic dental care.

(8) *Housing search and counseling services.* The costs of assisting eligible program participants to locate, obtain, and retain suitable housing are eligible costs.

(i) Component services or activities include tenant counseling; assisting individuals and families to understand leases; securing utilities; and making moving arrangements.

(ii) Other eligible costs:

(A) Mediation with property owners and landlords on behalf of eligible program participants; and

(B) The payment of rental application fees.

(iii) Costs of renegotiating mortgage or loan terms for current homeowners are not eligible costs.

(9) *Legal services.* Eligible costs are the costs of referral to legal services, for advice and representation in matters that interfere with a program participant's ability to obtain and retain housing. Eligible costs of referral to legal services include staff costs to assess participants' needs for legal assistance, costs associated with holding a legal clinic and inviting pro bono attorneys to assess participants' needs and then refer them to an appropriate service venue, and costs associated with state and local bar associations that offer attorney referral services to initially assess participants and refer them to an appropriate legal service provider. 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.

(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 use, and homelessness are eligible costs.

(i) These services must be necessary to assist the individual to function independently in the community.

(ii) Component life skills training are household management of time and household responsibilities, conflict management, shopping for food and 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 and are provided by licensed professionals.

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

(ii) Component services include 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) *Moving services.* Reasonable one-time moving costs are eligible and include truck rental, hiring a moving company, or short-term storage fees. Short-term storage fees are permitted for either a maximum of 3 months or until the program participant moves into housing, whichever is shorter.

(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 costs.

(i) Eligible costs include the transportation and cell phone costs incurred by outreach workers in the performance of these activities.

(ii) Component activities and services consist of:

- (A) Initial assessment;
- (B) Crisis counseling;

(C) Addressing urgent physical needs such as providing meals, blankets, clothes or toiletries;

(D) Actively connecting and providing people with information and referrals to homeless and mainstream programs; and

(E) Advertising housing and services eligible under this program to all persons who may qualify for admission to the housing or services project.

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

(i) Eligible treatment consists of client intake and assessment, and outpatient treatment for up to 30 days. Group and individual counseling and drug testing are eligible costs.

(ii) Inpatient detoxification and other inpatient drug or alcohol treatment are ineligible.

(15) *Transportation.* (i) Generally, the recipient may provide temporary transportation services directly to program participants if the recipient determines such assistance is necessary; however, the preferred method of direct provision of transportation services is the provision of tokens, vouchers, or other appropriate instruments so that program participants may use available public transportation options.

(ii) Eligible costs consist of:

(A) A 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;

(B) Mileage allowance for service workers to visit program participants and to carry out housing quality inspections;

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

(D) The costs recipient staff incurs to accompany or assist program participants to utilize public transportation; and

(E) If public transportation options are not sufficient within a county, 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:

(1) 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) or a reasonable estimate of the current market value if no Blue Book value is available;

(2) Payments for car repairs or maintenance must be paid by the recipient directly to the third party that repairs or maintains the car; and

(3) The recipients 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.

§ 579.224 Use of Federal inventory property.

(a) In addition to the eligible activities listed elsewhere in subpart C and as provided in paragraph (b) of this section, certain costs related to the recipient's or subrecipient's use of excess or surplus Federal real property made available under title V of the McKinney-Vento Act or real property made available under section 204(g) of the National Housing Act (12 U.S.C. 1710(g)) to house homeless persons are eligible costs.

(b) With respect to the activities described in paragraph (a) of this section, the following costs are eligible:

(1) The costs of preparing and submitting applications to obtain ownership of the real property;

(2) The costs of bringing the real property into compliance with local building codes, with bringing public water, sanitation, sewers, and utilities to the property; and

(3) The costs of creating or improving access to the real property from public roads.

§ 579.226 Capacity building.

(a) *In general.* Capacity building activities are those activities that assist recipient personnel to maintain or improve the skills necessary to strengthen the capability of recipients to deliver housing and supportive services to program participants and to administer grants under this program. Eligible capacity building activities may include costs such as salaries, wages, other employee compensation and benefits, employee education, training, and travel.

(b) *Staff retention.* Available funds may also be used for staff retention activities such as financial incentives to staff; paying for continuing education opportunities; cross-training within an organization; staff training and professional licensing or certification; and other professional development activities of persons employed by

agencies providing housing and supportive services under this part.

(c) *Limit.* No more than 20 percent of the total amount awarded to, or on behalf of, a county under this part may be used for capacity building activities.

§ 579.228 Data collection costs.

(a) *Eligible costs.* (1) The recipient or subrecipient may use program funds to pay the costs of contributing data to an HMIS designated by a Continuum of Care. Recipients or subrecipients may also use program funds to pay the costs of establishing their own comparable data collection system where the recipient or subrecipient cannot obtain approval from a Continuum of Care to contribute data to its existing HMIS.

Eligible costs include:

(i) Purchasing or leasing computer hardware;

(ii) Purchasing software or software licenses;

(iii) Purchasing or leasing equipment, including telephones, faxes, 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 data 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 Act;

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

(x) Paying participation fees charged by the HMIS Lead. The HMIS Lead is the entity designated by the Continuum of Care to operate the area's HMIS.

(2) If the recipient or subrecipient is a victim services provider, as defined in section 401(32) of the McKinney-Vento Act, or a legal services provider, it may use program funds to establish and operate a comparable database that collects client-level data over time (i.e., longitudinal data) and generates unduplicated aggregate reports based on the data. Information entered into a comparable database must not be entered directly into or provided to an HMIS.

(b) *General restrictions.* Activities funded under this section must comply

with HUD's standards on participation, data collection, and reporting under a local HMIS.

(c) *Point-in-time count participation.* All recipients must participate in or plan for and conduct a point-in-time count of sheltered and unsheltered homeless persons within the county within the last 10 days of January, unless HUD authorized an exception for good cause during the grant period.

(1) *Manner of point-in-time count.* The point-in-time count must be conducted in the manner prescribed by HUD. Recipients may participate in the point-in-time count of an adjacent Continuum of Care, including the planning, implementation, and evaluation of the count, if the adjacent Continuum of Care is willing to include the recipients in their point-in-time process.

(2) *Exception time frame.* If an exception to conducting the point-in-time count within the last 10 days of January is authorized, recipients must conduct the count between December 1 and March 31.

(3) *Good cause for exception.* Good cause for an exception includes:

(i) A longstanding tradition for performing such a count at a date between December 1 and March 31; and

(ii) Unanticipated inclement weather (i.e., snowstorm, hurricane, tornado) and other natural disasters.

(4) *Actual costs.* Actual costs of conducting or participating in the count of an adjacent Continuum of Care are allowable administrative costs.

(d) *Housing inventory count participation.* (1) During the grant period, recipients must perform an annual housing inventory survey and report their data in accordance with a manner prescribed by HUD.

(2) *Participation with an adjacent Continuum of Care.* Recipients may participate with an adjacent Continuum of Care to conduct their housing inventory count, if the adjacent Continuum of Care is willing to include the recipients in their housing inventory count process. If recipients are participating in an adjacent Continuum of Care's point-in-time count and the recipient wants to participate with a Continuum of Care to conduct its housing inventory count, it must participate with the same Continuum of Care for both the point-in-time and the housing inventory count.

(3) Actual costs of conducting this survey, including participation with an adjacent Continuum of Care, are allowable administrative costs.

§ 579.230 Administrative costs.

(a) *In general.* No more than 7.5 percent of the total grant awarded under this part may be used for the purpose of paying costs of administering assistance. If the recipient is using a subrecipient to operate a project, the amount of administrative costs shared must be reasonable under the circumstances.

(b) *Eligible administrative costs.* (1) Administrative costs include the costs of accounting for the use of grant funds, costs of preparing an abbreviated consolidated plan, preparing reports for submission to HUD, audits, and the cost of staff performing these activities. Costs may also include training for staff who will administer the program or case managers who will serve program participants, as long as this training is directly related to McKinney-Vento Act programs.

(2) Administrative costs do not include the costs of carrying out eligible activities.

(3) Administrative costs are not capacity building activities.

§ 579.232 Indirect costs.

(a) *In general.* Program funds may be used to pay indirect costs in accordance with OMB Circulars A-87 or A-122, as applicable. Circular A-87 is entitled "Cost Principles for States, Local, and Indian Tribal Governments." Circular A-122 is entitled "Cost Principles for Non-Profit Organizations." The provisions of these cost principle circulars are codified in the governmentwide regulations found at 2 CFR part 225, and 2 CFR part 230, respectively.

(b) *Allocation.* Indirect costs may be allocated to each eligible activity, as 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.

Subpart D—Grant Selection and Award Process

§ 579.300 Selection process.

(a) *Selection criteria.* The selection criteria include:

(1) The participation of program participants in assessing the need for, and importance of, the grant in the county;

(2) The degree to which the grant addresses the worst housing situations present in the county;

(3) The degree of collaboration with others in the county to meet the goals described in § 579.1;

(4) The performance of the applicant in improving housing situations, taking into account the severity of the barriers of individuals and families served by the applicant;

(5) For applicants that have previously received funding under this part, the extent to which the county has successfully demonstrated improvement in meeting the needs of program participants through the administration of its previous grants under this part, as determined by HUD;

(6) The need for such funds, as determined by the formula established under section 427(b)(2) of the McKinney-Vento Act; and

(7) Any other relevant criteria as determined by HUD.

(b) *Selection decision.* HUD will award funds to recipients through a national competition based on selection criteria as defined in paragraph (a) of this section.

§ 579.302 Selection priorities.

(a) *In general.* HUD will, at a minimum, make selections of awards according to the following selection priorities:

(1) *Set-aside for counties with populations of less than 10,000.* Of the total funds HUD awards under this program for a fiscal year, HUD will award a minimum of 50 percent of the total award funds to applicants applying to serve counties that have county populations of less than 10,000.

(2) *Priority within the set-aside.* Within the set-aside for counties with populations of less than 10,000, HUD will give priority to applicants applying to serve counties with county populations of less than 5,000.

(3) *Counties without significant Federal assistance.* In awarding grants for this program for a fiscal year, including the grants awarded in accordance with paragraph (a) of this section, HUD will give priority to applicants applying to serve counties that are not currently receiving Federal assistance under the Emergency Solutions Grants program, for which the regulations are found in 24 CFR part 576, or under the Continuum of Care program, for which the regulations are found in 24 CFR part 578.

(4) *State limit.* In awarding Rural Housing Stability Assistance Program grants for a fiscal year, HUD will not award to eligible applicants in a single State an aggregate sum of more than 10 percent of the total award amount for the program.

§ 579.304 Grant award process.

(a) *Notification of selection.* HUD will notify applicants selected for awards of any conditions imposed on the award. Conditions must be satisfied before HUD will execute a grant agreement with the applicant.

(b) *Conditions precedent to grant execution.* HUD will withdraw the award if the applicant does not meet all requirements for obligation of the funds, including:

- (1) Documenting evidence of meeting match requirements;
- (2) Conducting environmental review;
- (3) Documenting financial feasibility; and
- (4) Correcting all issues and conditions attached to the grant award within 12 months of the announcement of the award.

(c) *Exception.* HUD may execute a grant agreement with the applicant before all the conditions in paragraph (b) of this section are satisfied, subject to the condition that the applicant may only use grant funds obligated for one or all of the following eligible costs: capacity building, supportive services provided at sites not operated by the recipient or subrecipient, or HMIS eligible costs. If an applicant expends funds for capacity building, supportive services to sites not operated by the recipient or subrecipient, or HMIS and fails to subsequently meet the conditions precedent for the other activities HUD may recapture the applicant's grant funds.

(d) *Obligation deadline.* All grant funds must be obligated by the recipient by the end of the recipient's second fiscal year. Any funds that remain unobligated after the recipient's second fiscal year must be recaptured by HUD. All funds must be spent by recipients by the end of the grant term.

(e) *Required agreements.* Recipients will be required to sign a grant agreement in which the recipient agrees to:

- (1) Ensure the operation of the grant in accordance with the provisions of the McKinney-Vento Act and all requirements under this part;
- (2) Monitor and report the programmatic and financial progress of the grant to HUD;
- (3) Ensure, to the maximum extent practicable, that low- and very-low income individuals and families, including those individuals and families experiencing or at risk of homelessness or in the worst housing situations, 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 as required by section 491(d)(6) of the McKinney-Vento Act;
- (4) Require a certification from each subrecipient in which the subrecipient certifies to:

(i) Maintain the confidentiality of records pertaining to any individual or family who was provided family violence prevention or treatment services through the project;

(ii) Maintain the confidentiality of the address or location of any family violence shelter project assisted under this part, except with written authorization of the person responsible for the operation of such project;

(iii) 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 McKinney-Vento Act (42 U.S.C. 11431 *et seq.*) 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, 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 McKinney-Vento Act (42 U.S.C. 11431 *et seq.*); and

(v) Provide information, such as data and reports, as required by HUD;

(5) Monitor and report the provision of matching funds to HUD;

(6) Take the educational needs of children into account when families are placed in housing and 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;

(7) Make known that use of the facilities, assistance, and services is available to all on a nondiscriminatory basis;

(8) Monitor subrecipients at least annually; and

(9) Comply with such other terms and conditions as HUD may establish.

Subpart E—Program Requirements

§ 579.400 Assessment of program participant eligibility and needs.

(a) *In general.* The recipient or its subrecipient must conduct an initial evaluation and, when required by HUD, periodic reevaluations to determine the eligibility of each family or individual and to determine the amount and types of assistance each family or individual needs to regain stability in permanent housing.

(b) *Written standards for determining the amount and types of assistance.* (1) The recipient must have written

standards for the provision of assistance under this part and must consistently apply those standards for all program participants.

(2) At a minimum, these written standards must include:

(i) Standards for determining and prioritizing which eligible families and individuals will receive assistance; and

(ii) The limits on the assistance that each program participant may receive.

(c) *Annual income.* When determining the annual income of an individual or family, the recipient or subrecipient must use the standard for calculating annual income under 24 CFR 5.609, except that the value of the program participant's principal residence should be excluded from the calculation of the Net Family Assets when providing rehabilitation and repairs to participant-owned housing.

§ 579.402 Match.

(a) *In general.* The recipient or subrecipient must match all grant funds, except for leasing funds, data collection costs, and administrative costs, with no less than 25 percent of funds or in-kind contributions from other sources.

(b) *Cash resources.* (1) Cash match must be for the costs of activities that are eligible under subpart C of this part.

(2) Cash match must be cash resources provided to the project by one or more of the following:

- (i) The recipient;
- (ii) The Federal Government;
- (iii) State and local governments; or
- (iv) Private resources.

(c) *Sources.* A recipient may use funds from any source, including any other Federal sources (excluding Rural Housing Stability Assistance Program funding), 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.

(d) *Noncash contributions.* (1) In-kind contributions must be used to provide services that are eligible under subpart C of this part.

(2) The requirements of 24 CFR 84.23, pertaining to cost sharing or matching for nonprofit organizations, and 24 CFR 85.24, pertaining to cost sharing or matching for State, local, and Federally recognized Indian tribal governments, apply.

(3) Before grant execution, services to be provided by a third party must be documented by a memorandum of understanding (MOU) or a

memorandum of agreement (MOA) 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 or MOA 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.

§ 579.404 General operation.

(a) *State and local requirements.* Each recipient and subrecipient of assistance under this part must provide housing or services that comply with all applicable State and local housing codes, licensing requirements, and any other requirements imposed on the provision of housing or services by the jurisdiction in which the project is located.

(b) *Property standards.* Except for such variations as are proposed by the recipient and approved by HUD, all funds used for housing except for rehabilitation of participant-owned housing, must meet the following requirements:

(1) *New construction, acquisition and rehabilitation.* All housing assisted under this part must meet State or local building code. In the absence of such code, the construction must be in compliance with one of the three model codes (Uniform Building Code (ICBO) National Building Code (BOCA), Standard (Southern) Building Code (SBCCI)); or the Council of American Building Officials (CABO), or the Minimum Property Standards (MPS) in 24 CFR 200.925 or 200.926.

(2) *Leasing, Rental Assistance, and Operating Costs.* (i) Housing assisted under this part must meet the applicable housing quality standards (HQS) under HUD's Housing Choice Voucher regulations in 24 CFR 982.401, except that 24 CFR 982.401(j) does not apply, and instead part 35, subparts A, B, K, M, and R of this title apply. For congregate facilities, such as group homes, 24 CFR 982.609 applies.

(ii) Before any assistance will be provided on behalf of a participant, the recipient, or subrecipient, must physically inspect each unit to assure that each 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 lease agreement and the recipient verifies that all deficiencies have been corrected.

(iii) Recipients must also inspect all units at least annually during the grant period to ensure that the units continue to meet HQS.

(3) *Physical accessibility requirements.* Recipients must comply with the Federal accessibility requirements of the Fair Housing Act, Section 504 of the Rehabilitation Act, and titles II and III of the Americans with Disabilities Act, as applicable.

(c) *Payment of grant.* (1) The grant amount awarded is intended to serve the program participants over the entire grant period. An applicant's grant request is an estimate of the amount needed to provide the activities outlined in the grant application. Recipients must make draws at least quarterly from the grant funds to pay the actual costs of eligible activities for program participants.

(2) A recipient must serve at least as many participants as shown in its approved application for assistance.

(d) *Ongoing assessment of supportive services.* Each recipient of assistance under this part must conduct an ongoing assessment of the supportive services required by the program participants of the grant, the availability of such services, and the coordination of services needed to ensure long-term housing stability and make adjustments as appropriate.

§ 579.406 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.

(c) *Income calculation.* 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 program participant's income during the year, the program participant may request an interim reexamination, and the occupancy charge will be adjusted accordingly.

(d) *Resident rent—(1) Amount of rent.* 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)).

(i) When determining the rent of a person occupying an intermediate care facility assisted under title XIX of the Social Security Act, the gross income of this person is the same as a person being assisted under title XVI of the Social Security Act.

(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 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 rental payment.

§ 579.408 Limitation on transitional housing.

An eligible 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 eligible individuals or families remain in that project longer than 24 months.

§ 579.410 Term of commitment; Repayment of grants; Prevention of undue benefits.

(a) *Duration of grants.* Grant terms will be established through the annual NOFA.

(b) *In general.* All recipients and subrecipients receiving grant funds for acquisition, rehabilitation, or new construction for rental housing or a facility must agree to operate the housing or provide supportive services in accordance with this part, for a term of at least 15 years from the date of initial occupancy or date of initial service provision. Recipients and subrecipients must execute and record a HUD-approved Declaration of Restrictive Covenants before receiving payment of grant funds.

(c) *Sustainability plan.* All recipients receiving grant funds to provide housing must comply with the sustainability plan that was submitted as part of the approved application that described how the project will continue to operate when the grant term terminates.

(d) *Repayment of grant funds.* If the housing 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. 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.

(e) *Prevention of undue benefits.* Except as provided in paragraph (f) 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.

(f) *Exception.* A recipient or subrecipient for all activities other than repairs or rehabilitation to participant-owned property will not be required to comply with the terms and conditions prescribed under paragraphs (d) and (e) 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; or

(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.

§ 579.412 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 with Rural Housing Stability Assistance Program funds. "Project," as used in this section, means any activity or series of activities assisted with program funds received or anticipated in any phase of an undertaking.

(b) *Temporary relocation.* Owner-occupants that must temporarily relocate as a result of rehabilitation or demolition for a project are not covered by this paragraph (b), but may be eligible for short-term emergency lodging assistance under § 579.206(c) and other assistance under this part. Temporary relocation, as discussed in this section, differs from relocation assistance under § 579.204 which allows relocation assistance as an eligible activity where a program participant is being moved permanently from the county based on the request of the program participant for at least one of the reasons specified in § 579.204(b). No other person may be required to relocate temporarily for a project except consistent with paragraph (c)(2)(ii) of this section, if the person is a residential tenant or program participant, and in accordance with 49 CFR part 24, Appendix A, § 24.2(a)(9)(ii)(D). No residential tenant may be temporarily relocated if the residential tenant cannot be offered a decent, safe, and sanitary dwelling unit in the same building or complex upon project completion under reasonable terms and conditions. Any residential tenant who has been temporarily relocated for a period beyond one year must be offered

relocation assistance and payments consistent with paragraph (c) of this section. Such residential tenants may be given the opportunity to choose to continue to remain temporarily relocated for an agreed-to period (based on new information about when they can return to the displacement unit or another unit in the same building or complex), choose to permanently relocate to the unit which has been their temporary unit, and/or choose to permanently relocate elsewhere with assistance for displaced persons described in paragraph (c) of this section. The length of occupancy requirements in § 579.408 may prevent a person from returning to the property upon project completion. (See paragraph (c)(2)(iii)(D) of this section). Persons, other than owner-occupants, temporarily relocated in accordance with the policies described in this paragraph (b) must be provided:

(1) 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 unit and any increase in monthly rent/occupancy charges, and utility costs; and

(2) Appropriate advisory services, including reasonable advance written notice of:

(i) The date and approximate duration of the temporary relocation;

(ii) The location of the suitable unit to be made available for the temporary period (if the person is a residential tenant, the suitable unit must be a decent, safe, and sanitary dwelling);

(iii) The reasonable terms and conditions under which the person will be able to lease and/or occupy a suitable unit in the building or complex upon project completion (if the person is a residential tenant, the suitable unit must be a decent, safe, and sanitary dwelling); and

(iv) The provisions of paragraph (b)(1) 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 Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA), as amended, 42 U.S.C. 4601–4655, 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 assisted with Rural Housing Stability Assistance Program funds. This includes any permanent, involuntary move for a project, including any permanent move from the real property that is made:

(A) After the recipient (or subrecipient, as applicable) issues a notice to move permanently from the property, if the move occurs after the recipient (or subrecipient, as applicable) submits an application for assistance to HUD (or the recipient, as applicable) that is later approved and funded;

(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 existing lease, if the move occurs after the date of submission of a request for financial assistance by the property owner (or person in control of the site) that is later approved for the requested activity;

(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 residential tenant or program participant occupying the property, provided that the person is not an owner-occupant, as provided in paragraph (c)(2)(ii) of this section:

(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 that is made by a program participant occupying the property, as provided in paragraph (c)(2)(i)(D) of this section if any one of the following three situations occurs:

(A) The residential tenant or program participant moves after execution of the

agreement covering the acquisition, rehabilitation, or demolition of the property for the project and either is not eligible to return upon project completion or the move occurs before the residential tenant or program participant is provided written notice offering 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 for a residential tenant must include a lease (or occupancy agreement, as applicable) consistent with program requirements, including a monthly rent or occupancy charge and monthly utility costs that do not exceed the maximum amounts established in § 579.216; or

(B) The residential tenant or 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 residential tenant or program participant is not offered payment for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation;

(2) The residential tenant or 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 residential tenant or 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 residential tenant or program participant is not offered reimbursement for all reasonable out-of-pocket expenses incurred in connection with the move;

(2) The residential tenant or 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 Federal, State, and local requirements (see § 579.418); and 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 must move as a direct result of the length of occupancy restriction under § 579.408; or

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

(iv) At any time, the recipient may request 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 acquisition, 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 Rural Housing Stability Assistance Program 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.

§ 579.414 Timeliness standards.

(a) *In general.* Any funds that remain unobligated after the second fiscal year must be recaptured by HUD. Grant terms, and associated grant operations, cannot extend beyond the availability of funds.

(b) *Payment.* A recipient that receives funds through this part must:

(1) Pay funds to subrecipients in accordance with 24 CFR 85.21 and 24 CFR 84.22; and

(2) Draw down funds at least once per quarter of the program year after eligible activities commence to pay eligible costs.

(c) *Withdrawal of awards.* HUD will withdraw the award if the applicant does not correct all issues and conditions attached to the grant award within 12 months of the announcement of the award.

§ 579.416 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) will be awarded, or may be used, to replace State or local funds previously used, or designated for use, to assist persons who are homeless, at-risk of homelessness, or in the worst housing situations.

(b) *Program fees.* Recipients and subrecipients may not charge program participants program fees.

(c) *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 Rural Housing Stability Assistance Program. Neither the Federal Government nor a State or local government receiving funds under the Rural Housing Stability Assistance 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, religious belief, refusal to hold a religious belief, or refusal to attend or participate in a religious practice.

(2) *Separation of explicitly religious activities.* Recipients and subrecipients

of Rural Housing Stability Assistance Program 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 Rural Housing Stability Assistance 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 in 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 Rural Housing Stability Assistance 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 Rural Housing Stability Assistance 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, 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 efforts to refer such participants to alternative providers in accordance with the requirements of § 579.504(k). 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 Rural Housing Stability Assistance Program. Sanctuaries, chapels, or other rooms that a Rural Housing Stability Assistance Program-funded religious congregation uses as its principal place of worship, however, are ineligible for Rural Housing Stability Assistance 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.

§ 579.418 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 to due process of law and should consider the target population of the program. 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 program 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 housing with supportive services 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.

§ 579.420 Conflicts of interest.

(a) *Organizational conflicts of interest.* The provision of any type or amount of assistance under this part may not be conditioned on an individual's or family's acceptance or occupancy of housing that the recipient, subrecipient, or a parent or subsidiary of the subrecipient, owns. No subrecipient, or parent or subsidiary of a subrecipient, may, with respect to individuals or families occupying housing that the subrecipient, or any parent or subsidiary of the subrecipient, owns, carry out the intake assessment.

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

(1) *Conflicts prohibited.* No person described in paragraph (b)(2) of this section who exercises or has exercised any functions or responsibilities with respect to activities assisted under this

part, or who is in a position to participate in a decisionmaking 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 family or business ties, during his or her tenure or during the one-year period following his or her tenure.

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

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

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

(A) Disclosure of the nature of the conflict, accompanied by an 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 nonprofit, that the conflict has been disclosed in accordance with their written code of conduct or other conflict of interest policy; and

(B) An opinion from the recipient's attorney that the interest for which the exception is sought would not violate State or local law.

(ii) *Factors to be considered for exceptions.* In determining whether to grant a requested exception after the recipient has satisfactorily met the threshold requirements under paragraph (b)(3)(i) of this section, HUD must conclude that the exception will serve to further the purposes of this 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 decisionmaking process with respect to the specific activity in question;

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

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

(F) Any other relevant considerations.

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

§ 579.422 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, and 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 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.

§ 579.424 Applicability of other Federal requirements.

(a) *In general.* 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:

(1) *Flood Disaster Protection Act.* The Flood Disaster Protection Act of 1973 (42 U.S.C. 4001–4128) prohibits the approval of applications for assistance for acquisition or construction (including rehabilitation) for supportive housing located in an area identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards, unless:

(i) The community in which the area is situated is participating in the

National Flood Insurance Program (see 44 CFR parts 59 through 79), or less than a year has passed since FEMA notification regarding such hazards; and

(ii) Flood insurance is obtained as a condition of approval of the application.

(2) *National Flood Insurance Program*. Applicants with supportive housing located in an area identified by FEMA as having special flood hazards and receiving assistance for acquisition or construction (including rehabilitation) are responsible for assuring that flood insurance under the National Flood Insurance Program is obtained and maintained.

(3) *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 § 6002, these agencies and persons must:

(i) 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;

(ii) Procure solid waste management services in a manner that maximizes energy and resource recovery; and

(iii) Must have established an affirmative procurement program for the procurement of recovered materials identified in the EPA guidelines.

(4) *Transparency Act Reporting*. In accordance with section 872 of the Duncan Hunter Defense Appropriations Act of 2009, including additional requirements published by the Office of Management and Budget (OMB), recipients are required to report subawards made either as pass-through awards, subrecipient awards, or vendor awards in the Federal governmentwide Web site www.fsr.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 issues to the Federal Agencies on September 14, 2010 (75 FR 55669).

(b) *Coastal Barrier Resources Act*. 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.

(c) *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 provision 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 (OMB Circular A-21) apply to nonprofit recipients and subrecipients, except where inconsistent with the provision of this part.

(d) *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 of this title apply to activities under this program.

(e) *Audit*. Recipients and subrecipients must comply with the audit requirements of OMB Circular A-133, "Audits of States, Local Governments, and Non-profit Organizations."

(f) *Davis-Bacon Act*. The provisions of the Davis-Bacon Act (40 U.S.C. 3141 *et seq.*) do not apply to this program.

(g) *Fair Housing and Equal Opportunity*. (1) *Nondiscrimination and equal opportunity requirements*. The nondiscrimination and equal opportunity requirements set forth in 24 CFR 5.105(a) are applicable.

(2) *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 rural county and meets one of the following:

(i) The housing may be limited to one sex where it 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.

(ii) The housing may be limited to a specific subpopulation as 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).

(iii) The housing may be limited to families with children.

(iv) 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.

(v) 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.

(vi) 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).

(vii) 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.

(3) *Affirmatively furthering fair housing*. A recipient must implement its programs in a manner that affirmatively furthers fair housing, which means that the recipient must:

(i) 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;

(ii) 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 Abbreviated Consolidated Plan or Consolidated Plan; and

(iii) Provide program participants with information on rights and remedies available under applicable Federal, State and local fair housing and civil rights laws.

(4) *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 their program's housing and supportive services are provided in the most integrated setting appropriate to the needs of persons with disabilities.

(5) *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.

(6) *Section 3.* Recipients and subrecipients must comply with Section 3 of the Housing and Urban Development Act of 1968 and its implementing regulations at 24 CFR part 135, as applicable. Section 3 requires that, to the greatest extent feasible, training, employment, contracting, and other economic opportunities will be directed to low- and very-low income persons in the area in which projects are located.

(h) *Equal participation of religious organizations in HUD programs and activities.* Requirements regarding the equal participation of religious organizations at 24 CFR 5.109 apply to programs and activities funded under this part.

Subpart F—Grant Administration

§ 579.500 Data collection requirements.

(a) *Purpose.* Recipients and subrecipients of funds under this program will be required to collect and report data using methods determined by HUD. Recipients and subrecipients may collect data in a Homeless Management Information System (HMIS) or comparable data collection system that conforms to HUD's HMIS

data collection requirements as established by Notice, including a system that collects client-level data over time (i.e., longitudinal data) and generates unduplicated aggregate reports based on the data. Data collection requirements include, but are not limited to:

(1) *Participation in Homeless Management Information Systems (HMIS) or a Comparable Data Collection System.* Recipients and subrecipients electing to participate in an HMIS are required to designate an HMIS currently being operated by a Continuum of Care within the State and to contribute data to the HMIS. Recipients and subrecipients will be permitted to use program funds to pay the costs of maintaining, managing, and contributing data as set forth in § 579.228. Recipients and subrecipients should make reasonable efforts to contact a Continuum of Care to determine whether to contribute data to its existing HMIS, or whether to establish a comparable data collection system that complies with the data collection requirements of this program, and allows the collection and reporting of required data to HUD. If a recipient or subrecipient elects to use HMIS, victim service providers will not enter their data into the HMIS but must still collect data in a comparable database and be able to provide the aggregated data to the recipient for the purpose of reporting.

(2) *Point-in-time count participation.* All recipients must participate in or plan for and conduct a point-in-time count of sheltered and unsheltered homeless persons within the county within the last 10 days of January in accordance with § 579.228, or as otherwise determined by HUD, during the grant period.

(3) *Housing inventory count participation.* All recipients must perform an annual housing inventory survey and report their data to HUD, or as otherwise determined by HUD, during the grant period.

(b) [Reserved]

§ 579.502 Technical assistance.

(a) *Purpose.* The purpose of the program's technical assistance is to increase the effectiveness with which eligible recipients develop projects that effectively assist individuals and families that are homeless, at risk of homelessness, or are in the worst housing situations; improve recipients' capacity to prepare funding applications; and increase recipients' ability to gain access to other Federal resources that may be used to assist individuals and families that are

homeless, at risk of homelessness, or are in the worst housing situations in rural counties.

(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, and training and webinars and their related costs.

§ 579.504 Recordkeeping requirements.

(a) *In general.* The recipient and its subrecipients must establish and maintain standard operating procedures for ensuring that 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.

(b) *Homeless status.* Acceptable evidence of the homeless status is set forth in 24 CFR 576.500(b).

(c) *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. Acceptable evidence is found in 24 CFR 576.500(c).

(d) *Worst housing situation.* Source documents from a certified professional, such as a licensed building inspector, verifying that one or more of the major systems in the house are failing and that it poses a health or safety risk to the family. Documentation of the source's licensure or certification must also be maintained.

(e) *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:

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

(2) Source documents (e.g., 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; or

(3) To the extent source documents are unobtainable, a written statement by the relevant third party (e.g., employer, government benefits administrator) or 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

(4) To the extent source documents and third party verification are unobtainable, the written certification by the program participant of the amount of income the program participant reasonably expected to receive over the three-month period following the evaluation.

(f) *Records of reasonable belief of imminent threat of harm.* For each program participant who moved to a different county due to imminent threat of further domestic violence, dating violence, sexual assault, or stalking under § 579.216, each recipient or subrecipient of assistance under this part must retain:

(1) 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.

(2) Documentation of the reasonable belief of imminent threat of 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. 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 reports 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 by the head of household.

(g) *Program participant records.* In addition to evidence of "homeless" status, "at risk of homelessness" status,

or "worst housing situation" status, as applicable, the recipient or subrecipient must keep records for each program participant that document:

(1) The services and assistance provided to that program participant, including, as applicable, the security deposit, rental assistance, and utility payments made on behalf of the program participant;

(2) Compliance with the applicable requirements for providing those services and assistance to that program participant under the eligible activities provisions at § 579.202 through § 579.230, and the provision on determining eligibility and amount and type of assistance at § 579.200; and

(3) In the case of program participants in the worst housing situations that received assistance in the form of repairs and rehabilitation to participant-owned housing, records demonstrating that the program participants are complying with the 3-year residency requirement. Participants or subrecipients are also required to maintain copies of the repayment agreements on file that these program participants are required to enter under § 579.220.

(h) *Subsidy layering.* The recipient must keep records indicating other sources of governmental assistance that the applicant has received, or reasonably expects to receive, in accordance with § 579.104.

(i) *Match.* The recipient and subrecipient must keep copies of the Memorandums of Understanding or Memorandums of Agreement with third parties and records of the source and use of contributions made to satisfy the matching requirement in § 579.402. The records must show how the value placed on third-party noncash contributions was derived. To the extent feasible, volunteer services must be supported by the same methods that the organization uses to support the allocation of regular personnel costs.

(j) *Conflicts of interest.* The recipient and its subrecipients must keep records to show compliance with the organizational conflicts of interest requirements in § 579.420, a copy of the personal conflicts of interest policy developed and implemented to comply with the requirements in § 579.420, and records supporting exceptions to the personal conflicts of interest prohibitions.

(k) *Faith-based activities.* The recipient and its subrecipients must document their compliance with the faith-based activities requirements under § 579.416(c), as applicable.

(l) *Other Federal requirements.* The recipient and its subrecipients must

document their compliance with the Federal requirements in § 579.424, as applicable, including:

(1) Participants in the programs administered by the Department shall furnish to the Department such data concerning the race, color, religion, sex, national origin, age, handicap, and family characteristics of persons and households who are applicants for, program participants in, or beneficiaries of those programs, as the Secretary may determine to be necessary or appropriate to enable him or her to carry out his or her responsibilities under the authorities referred to in 24 CFR 121.1.

(2) Copies of their marketing, outreach, and other materials used to inform eligible persons of the program to document compliance with the requirements in § 579.424(g)(3).

(3) Records demonstrating compliance with the administrative requirements in 24 CFR part 85 (for governments) and 24 CFR part 84 (for nonprofit organizations).

(4) Records demonstrating compliance with the environmental review requirements in this part, including flood insurance requirements.

(5) Records demonstrating compliance with the lead-based paint requirements in this part.

(6) Records demonstrating compliance with the debarment and suspension requirements under 2 CFR part 180 and 2 CFR part 2424.

(7) Records concerning intergovernmental review, as applicable, as required by this part.

(8) Certifications and disclosure forms required under the lobbying and disclosure requirements in 24 CFR part 87.

(m) *Credible evidence for relocation assistance.* (1) Recipients and subrecipients must maintain sufficient documentation of program participants' eligibility for relocation assistance.

(2) Program participants seeking relocation assistance in the event of a permanent move out of the assisting county, under § 579.204, must provide the recipient or subrecipients credible evidence to document and justify their move as a result of one of the following:

- (i) Securing employment;
- (ii) Enrollment in school/educational opportunities; or
- (iii) Family reunification.

(3) Credible evidence is an oral or written statement documenting employment, enrollment in school/educational opportunities, and/or family reunification. The credible evidence must also contain a plan for how program participants will maintain self-sufficiency.

(n) *Financial records.* (1) The recipient must retain supporting documentation for all costs charged to the Rural Housing Stability Assistance Program grant in accordance with 24 CFR 85.20 and 24 CFR 84.21, including records demonstrating that any pre-award costs charged to the recipient's grant meet the requirements of this part and are reimbursable.

(2) The recipient and its subrecipients must keep documentation showing that Rural Housing Stability Assistance Program grant funds were spent on allowable costs in accordance with the requirements for eligible activities under § 579.202 through § 579.230 and the cost principles in OMB Circulars A-87 (2 CFR part 225) and A-122 (2 CFR part 230).

(3) The recipient and its subrecipients must retain records of the receipt and use of program income.

(o) *Subrecipients and contractors.* (1) The recipient must retain copies of all solicitations of and agreements with subrecipients, records of all payment requests by and dates of payments made to subrecipients, documentation of subrecipient monitoring schedules, all monitoring performed, and all sanctions imposed on subrecipients, as applicable.

(2) The recipient and its subrecipients must retain copies of all procurement contracts and documentation of compliance with the procurement requirements in 24 CFR 85.36 and 24 CFR 84.40-84.48.

(3) The recipient's subrecipients must comply with the recordkeeping requirements specified by the recipient and HUD notice or regulations.

(p) *Property standards.* Records (e.g., inspection reports) demonstrating that each project assisted with funds under this program meets the applicable property standards and building codes at project completion.

(q) *Construction records.* The recipients and its subrecipients must maintain records of all construction plans, drawings, renderings, and specifications outlining estimated project costs and expenses.

(r) *Rehabilitation records.* The recipients and its subrecipients must maintain records demonstrating compliance with all Federal, State, and local laws, including property standards and lead-based paint requirements.

(s) *Data Collection.* As specified in § 579.500, data on all persons served and all activities assisted under this program must be collected in HMIS or a comparable data collection system. The recipient must keep records of the participation in HMIS or the comparable data collection system by all programs of the recipient and its subrecipients.

(t) *Other records specified by HUD.* The recipient and subrecipients must keep other records specified by HUD.

(u) *Confidentiality.* (1) The recipient and its subrecipients must develop and implement procedures to ensure:

(i) All records containing personally identifying information, as defined in HUD's standards for participation, data collection, and reporting in a local HMIS or data collection system, of any individual or family who applies for and/or receives assistance under this program will be kept secure and confidential;

(ii) The address or location of any domestic violence, dating violence, sexual assault, or stalking shelter project assisted under this program will not be made public, except with written authorization of the person responsible for the operation of the shelter; and

(iii) The address or location of any housing of a program participant will not be made public, except as provided under a preexisting privacy policy of the recipient or subrecipient and consistent with State and local laws regarding privacy and obligations of confidentiality.

(2) The confidentiality procedures of the recipient and its subrecipients must be in writing and must be maintained in accordance with this section.

(v) *Period of record retention.* All records pertaining to each fiscal year of program 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 program 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 program funds are first obligated for the acquisition, new construction, and rehabilitation.

(w) *Access to records.*-(1) *Federal Government rights.* Notwithstanding the confidentiality procedures established under paragraph (s) 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, have the right of access to all books, documents, papers, or other records of the recipient and its subrecipients that are pertinent to the program grant, in order to make

audits, examinations, excerpts, and transcripts. This right of access is not limited to the required retention period but lasts as long as the records are retained.

(2) *Public rights.* The recipient must provide citizens, public agencies, and other interested parties with reasonable access (consistent with State and local laws regarding privacy and obligations of confidentiality and the confidentiality requirements in this part) to records regarding any uses of program funds the recipient received during the preceding 5 years.

(x) *Obligation.* The recipient must retain records to indicate the obligation of its funds within the requisite 2-year obligation period.

§ 579.506 Grant changes.

(a) *HUD approval for significant changes.* Recipients and subrecipients may not make any significant programmatic or budget changes without prior HUD approval, evidenced by an amendment to the grant agreement that has been signed by HUD and the recipient. Significant changes include a shift in a single year of more than 10 percent of the total amount awarded under the grant for one approved, eligible activity to another activity, and a change of subpopulations. To be approved, the recipient must be able to demonstrate that the change is necessary to better serve eligible persons within the geographic area and is consistent with the recipient's approved consolidated plan or abbreviated consolidated plan. If an amendment would adversely impact the score the application received on any selection criterion used in the year in which the grant was awarded, HUD will disapprove the amendment.

(b) *Documentation of changes not requiring a grant amendment.* Any changes to an approved grant other than changes outlined in paragraph (a) of this section must be fully documented in the recipient's or subrecipient's records.

§ 579.508 Enforcement.

(a) *Performance reviews.* (1) HUD will review the performance of each recipient in carrying out its responsibilities under this part whenever determined necessary by HUD, but at least annually. In conducting performance reviews, HUD will rely primarily on information obtained from the records and reports from the recipient and, when appropriate, its subrecipients, as well as information from on-site monitoring, and from audit reports. Where applicable, HUD may also consider relevant information pertaining to the

recipient's performance gained from other sources, including citizen comments, complaint determinations, and litigation. Reviews to determine compliance with specific requirements of this part will be conducted as necessary, with or without prior notice to the recipient.

(2) If HUD determines preliminarily that the recipient or one of its subrecipients has not complied with 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 all program requirements. HUD may change the method of payment to require the recipient to obtain HUD's prior approval each time the recipient requests payment of grant 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 will notify the recipient of its determination of noncompliance and the reasons for that determination. Upon such notification, 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; mitigate, to the extent possible, its adverse effects or consequences; and prevent its recurrence.

(1) HUD may instruct the recipient to submit and comply with proposals for action to correct, mitigate, and prevent noncompliance with program requirements, including:

(i) Preparing and following a schedule of actions for carrying out activities

affected by the noncompliance, including schedules, timetables, and milestones necessary to implement the affected activities;

(ii) Establishing and following a management plan that assigns responsibilities for carrying out the remedial actions;

(iii) Canceling activities likely to be affected by the noncompliance, before expending program funds for the activities;

(iv) Suspending disbursement of program funds for some or all activities;

(v) Reducing or terminating the remaining grant of a subrecipient and reallocating those funds to other subrecipients; and

(vi) Making matching contributions before or as draws are made from the recipient's Rural Housing Stability Assistance Program 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.

(4) 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.

(5) HUD may require the recipient to reimburse its line of credit in an amount equal to the funds used for the affected activities.

(6) HUD may reduce or terminate the remaining grant of a recipient.

(7) HUD may take other remedies that are legally available.

§ 579.510 Closeout.

(a) *In general.* Grants will be closed out in accordance with the requirements of 24 CFR parts 84 and 85, as applicable, 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 operating year, and as HUD deems necessary.

(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 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 program funds available for closeout costs and contingent liabilities;

(ii) Use of real property assisted with program funds in accordance with the affordability and use requirement;

(iii) Use of personal property purchased with 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) of this section. The agreement shall provide that findings of noncompliance may be taken into account by HUD as unsatisfactory performance of the recipient, in consideration of any future grant award under this part.

Dated: February 28, 2013.

Mark Johnston,

Deputy Assistant Secretary for Special Needs Programs.

[FR Doc. 2013-06521 Filed 3-26-13; 8:45 am]

BILLING CODE 4210-67-P