NCDA
National Community Development Association

August 3, 2015

Regulations Division
Office of General Counsel
Department of Housing and Urban Development
451 7th Street, SW, Room 10276
Washington, DC 20410-7000

Re: Emergency Solutions Grant (ESG) Program, Solicitation of Comment on Specific Issues; Docket No. FR-5474-N-02

Dear Madam/Sir:

The National Community Development Association (NCDA) is pleased to submit comments on the above referenced notice on behalf of its members. NCDA represents nearly 400 local government agencies – small, mid-sized, and large jurisdictions -- which directly administer the Emergency Solutions Grant (ESG) Program, HUD's Continuum of Care funding, the Community Development Block Grant (CDBG) Program, the HOME Investment Partnerships (HOME) Program and HOPWA funding. NCDA worked with a number of members who directly administer ESG to develop the comments in the letter.

These comments are endorsed by:

- United States Conference of Mayors
- National Association of Counties
- National Association for County Community and Economic Development

We thank HUD for the opportunity to comment on this very important program, which serves our Country's most vulnerable and neediest, and appreciate the flexibility provided program recipients in certain sections of the notice. In developing the final ESG rule, we urge HUD to err on the side of greater flexibility for local governments instead of further regulations which hamper the administration and implementation of the ESG program.

Our comments are provided in order of the sections and questions asked in the notice. Please note, however, that we did not provide comments on all sections of the notice; only those of prime importance to our members.

A.REQUEST FOR COMMENTS ON DEFINITIONS

Emergency Shelter (576.2) – "Any facility, the primary purpose of which is to provide a temporary shelter for the homeless in general or for specific populations of the homeless, and which does not require occupancy to sign leases or occupancy agreements. Any project funded as an emergency shelter under a FY 2010 Emergency [Shelter] Grant may continue to be funded under ESG." **Request for comments: HUD is considering revising the definition** to address several issues, and seeks comment on the following proposed definition (italicized language added or changed from the interim rule definition). "Emergency shelter means any facility *(including any building or portion of a building)*, the primary purpose of which is to provide a temporary shelter for homeless *individuals or families* in general or for specific populations of homeless *individuals or families*. *If occupancy creates rights of* *tenancy under state or local law, the primary purpose is not temporary shelter. The use of the building as an emergency must not be inconsistent with applicable state and local law, including zoning and building codes*."

Establishing a clearer distinction between emergency shelter and transitional housing, including removing "leases or occupancy agreements" from the definition. The primary distinction between emergency shelter and transitional housing is incorporated into the statutory definitions of these terms in the McKinney-Vento Act, as follows: The purpose of an emergency shelter is to provide temporary shelter; the purpose of transitional housing is "to facilitate the movement of individuals and families experiencing homelessness to permanent housing within 24 months." HUD's proposed definition incorporates two related issues for the public to consider: In the ESG and CoC Program interim rules, HUD attempted to further clarify for recipients the distinction between the two by stating that transitional housing projects must require a lease or occupancy agreement and emergency shelters could not. HUD received many questions about what constitutes an occupancy agreement, and has since determined that this is not necessarily the best way to make this distinction. This is in part because an occupancy agreement is, simply, a document that is a contract between two parties that is not a legal lease under local landlord/tenant law (though in some communities an occupancy agreement meets the requirements of a lease). Therefore, **HUD is proposing removing the phrase "and which does not require occupants to sign leases or occupancy agreements" from the definition of emergency shelter. In its place, HUD is considering adding to the definition a requirement that each emergency shelter must be designated as such on the most recent Housing Inventory Count (HIC) for the applicable CoC for the geographic area, in order to establish a clear and consistent location to identify the status for each emergency shelter or transitional housing project each year. HUD seeks public comment on including a requirement in the definition of emergency shelter for recipients and sub-recipients to designate emergency shelter projects on the HIC; specifically the following questions:** (1) Would it be helpful to include a provision making the HIC the required place for designating whether a particular bed is considered emergency shelter or transitional housing? Or would it create an unnecessary burden, or would it make no difference since emergency shelters must be designated on the HIC already? (2) If added, should it be included in the definition of emergency shelter or elsewhere in the final rule (e.g. the emergency shelter requirements at 576.102 or documentation section at 576.500? Alternatively, should it be required elsewhere, such as in the sub-recipient agreement? (3) Finally, HUD has considered that there may be an ESG sub-recipient with an emergency shelter in an area that is either not covered by a CoC or where the CoC has not submitted a HIC, for some reason. Has this scenario occurred? Should HUD address this in the final rule?

Removing or altering the concept of "grandfathering in" projects in the interim rule. The ESG interim rule includes the following language, "Any project funded as an emergency shelter under a FY 2010 Emergency [Shelter] Grant may continue to be funded under ESG." The current language was intended to continue funding of "transitional shelters" which were included in the definition of "emergency shelter" under the Emergency Shelter Grants Program. HUD is considering whether to remove or alter, or maintain this clause in the definition, based on the changes described above which more clearly define an emergency shelter versus transitional housing. If HUD were to remove this clause, HUD recognizes that there may be some facilities currently classified as emergency shelters that would not meet the revised definition of emergency shelter as proposed, and these facilities would not meet the revised definition of emergency as proposed, and these facilities would not be eligible for continued funding under the ESG Program. **HUD seeks comment on the following questions related to this issue:** (1) if removing the "grandfathering" clause *would not* affect your project or community, what strategies have you undertaken to meet the needs without providing ESG-funded transitional shelter or transitional housing? If removing the "grandfathering" clause *would* affect your project or your community, please describe the significance of the impact, specifically the number of beds that would lose ESG funding as a result. Also, what is it about the project that makes it not temporary, or what is the purpose of the project or activities provided that make it overlap between transitional housing and emergency shelter? How could HUD change the definition of emergency shelter – specifically, the "grandfathering clause" – to ensure that beds that are truly needed as emergency shelter in the community can continue to receive ESG funds in the future?

Comments: Emergency Shelter. We urge HUD to keep the following language and grandfathering provision for shelters that received Emergency Shelter Grant funds in 2010: "Any project funded as an emergency shelter under a Fiscal Year 2010 Emergency Shelter Grant may continue to be funded under Emergency Solutions Grant." If this provision is removed, it would have a potential negative effect on homeless families living in a local shelter that is borderline emergency/transitional. This shelter otherwise meets the parameters of HUD's emergency shelter definition, but because of longer stays, has been listed as a transitional facility on the CoC HIC. We do not support using the CoC HIC as the definitive determination of whether a facility is an emergency shelter. Removing the grandfathering clause could mean the loss of over family beds in many jurisdictions.

Instrumentality of a Local Government.
Comments: This definition needs to be clarified to recognize that local public housing agencies are an instrumentality of some local governments, directly administering ESG, CDBG, HOME and other programs.

B. REQUEST FOR COMMENT ON THE AMENDMENTS TO CONSOLIDATED SUBMISSIONS FOR CPD PROGRAMS (24 CFR Part 91)

Submission of Action Plans – Timing: HUD is considering revising the Consolidated Plan regulations to prohibit Con Plan jurisdictions from submitting Action Plans to HUD before formula allocations have been announced for each fiscal year, as explained in CPD Notice 2014-015, published on October 21, 2014. However, this CPD Notice identified ways in which a jurisdiction could initiate citizen participation on its proposed plan before the jurisdiction knows its actual allocation amounts for a given year. **HUD solicits comments on whether HUD should revise the regulations governing citizen participation (91.105 and 91.115) to reflect the CPD Notice; that is, to allow a jurisdiction to conduct citizen participation on a proposed plan that does not reflect actual allocation amounts, but only if the proposed plan provides "contingency language" explaining how the jurisdiction will adjust the proposed plan to reflect actual allocation amounts once known.**

Comments: We suggest HUD not put the requirement to delay submission of the Action Plan into the regulations. This would be better served as a CPD Notice because the conditions and timing are likely to be different each year. We support allowing a jurisdiction to conduct citizen participation on a proposed plan that does not reflect actual allocation amounts, if the proposed plan provides "contingency language" explaining how the jurisdiction will adjust the proposed plan to reflect actual allocation amounts once known.

Garnering effective citizen participation takes some time to do well. Some jurisdictions used the HUD-suggested contingency language for the Annual Action Plan during the time of the 2013 sequestration period.

Requiring the contingency language explaining how the jurisdiction will adjust the proposed plan to reflect actual allocation is acceptable. Not allowing submission of a plan until allocations are received from the federal government may cause additional delays in the approval of the plan and the execution of the grant agreements, which in turn could result in timeliness and expenditure issues.

Reimbursement for Pre-Agreement Costs in the Entitlement CDBG Program (570.200(h)): In conjunction with CPD Notice 2014-015 HUD issued a waiver to certain CDBG Entitlement grantees to allow them to reimburse themselves for costs incurred as of the earlier of the grantee's program year start date or the date the Con Plan/Action Plan is received by HUD. Should HUD revise the Con Plan rule to prohibit submission of Action Plans before formula allocations have been announced, as described above, HUD would also pursue a conforming revision to the Entitlement CDBG program regulations; such a change would permanently adopt the alternative requirements provided by the waiver. **HUD seeks comment on this proposal.**

Comments: We support this waiver to allow CDBG entitlement grantees to reimburse themselves for pre-agreement costs, but need clarification on what "certain" CDBG entitlement jurisdictions mean. What CDBG entitlements meet that definition?

If the delay in submission of the Annual Action Plan is implemented, then the conforming revision allowing grantees to charge costs back to the beginning of the program year must be implemented. Many grantees rely only on the administrative funds provided by the grant. Reductions in reimbursement due to delays in allocations will create a hardship on grantees.

<u>Area-Wide Systems Coordination Requirements – Consultant and Coordination</u>: See Section II.C.12 of the Notice for more detail. This whole section outlines how ESG recipients should work with CoCs. HUD may require a MOU between the CoC and the Con Plan jurisdiction outlining how they will collaborate. Then, different definitions of collaboration. Should ESG recipients consult with the CoC?

Comments: Consultation and coordination is important. HUD needs to recognize that one size does not fit all, however. Consultation and coordination requirements need to be meaningful, but do not need to force convulated bureaucratic responses in order to meet one-size-fits-all requirements. In some communities, the Con Plan, ESG, CoC, and jurisdictional homelessness plan are all coordinated out of the same local government Community Development department and the CoC and the local homeless coalition are the same organization. CoC and ESG-funded partner agencies are already part of the homeless coalition, which serves as the CoC governing body. Coordination of all these things is a matter of daily practice. HUD's consultation and coordination requirements in the final rule need to allow for circumstances where this is already built into the local community structure.

Requirements that incorrectly assume that no consultation or coordination currently exist and then mandate a specific consultation structure can result in the replacement of something that works well locally with something that does not meet the community need. Additionally, it could result in the meaningless duplication of efforts just to satisfy a regulatory requirement. HUD's requirement that there be coordination and consultation is correct and well-founded. These rules are not being created in a vacuum, and in many cases local communities have already found a structure and process that ultimately meets the objective. The consultation and coordination requirements should allow us to demonstrate that we're accomplishing the objective, but not dictate how we should do so.

Some of NCDA's members receive their ESG funding through their state, but the critical consultation is with the local CoC, Con Plan and jurisdictional homelessness plan. States allocate ESG funds to support priorities set in the local jurisdiction and the ESG-funded agency is normally a full participant in the local CoC. Whatever the final rule says, it needs to allow communities to demonstrate how the consultation and coordination is happening, rather than create a requirement that does not fit for local circumstances.

HUD should allow jurisdictions to demonstrate how they are accomplishing the objective of coordinating ESG and CoC programs. Many jurisdictions are already accomplishing the objective of consultation and coordination. For communities that are not already accomplishing this, it might be helpful if HUD suggests ways to achieve the objectives. HUD should not, however, assume that no communities are achieving this objective and mandate a consultation structure that tries to fix something that for some communities is not broken.

HUD should not require an MOU. For jurisdictions where there is already a significant overlap in organizations that coordinate the Con Plan and the CoC, the MOU would be unnecessary and meaningless. HUD is justified in asking jurisdictions to demonstrate that coordination is taking place. HUD should not, however, force structural requirements that for some jurisdictions would serve no purpose.

<u>Housing and Homeless Needs Assessment</u>:
"Nearing the termination of rapid re-housing assistance." HUD is reconsidering the inclusion of the following element in the housing needs assessment (currently required as a narrative in the Con Plan): "Formerly homeless families and individuals who are receiving rapid re-housing assistance and are nearing the termination of that assistance." HUD originally included this element to encourage Con Plan jurisdictions to identify those households who are housed but who might be more likely to become homeless again than other households, and to focus on helping these families stay housed after their rapid re-housing assistance ends. **HUD received a comment indicating that the requirement to obtain this data is too burdensome for states, and is considering removing the requirement for both states and local governments due to the difficulty in obtaining consistent and accurate data.** Alternatively, HUD could attempt to clarify the requirement by changing it to "Formerly

homeless families and individuals who are receiving *ESG or CoC-funded* rapid re-housing assistance and are *within 30 days of the end of* that assistance." **HUD seeks comment on the following questions:** (1) Is this information useful as part of a jurisdiction's analysis of housing needs and its planning process? If so, in what ways? If not, should HUD eliminate this as a requirement in the final rule for states, local governments, or both? (2) Is there a better way for HUD to encourage jurisdictions to identify and focus efforts on the households most likely to become homeless again? HUD seeks suggestions about how the requirement could be changed to make it easier to capture this or similar information.

Comments: We urge HUD to make this section optional, depending on the number of individuals that are impacted and the circumstances. It seems like a better way would be to track the number of people who have exited a rapid re-housing program and later show up in HMIS as homeless again. Consideration of that data and looking for causes of homeless recidivism can help determine what changes or supplements to rapid re-housing assistance are needed.

Estimation of homeless data. The interim rule requires Consolidated Plan jurisdictions to include, in their Housing and Homeless Needs Assessment, the following: for each category of homeless persons specified by HUD (including chronically homeless individuals and families, families with children, veterans and their families, and unaccompanied youth), the number of persons experiencing homelessness on a given night, the number of persons who experience homelessness each year, the number of persons who lose their housing and become homeless each year, the number of persons who exit homeless each year, and the number of days that persons experience homelessness. HUD expects Con Plan jurisdictions to obtain this data from CoCs, and CoCs will be able to obtain most elements from the local HMIS and the PIT count. However, CoCs must ensure that the data reflects the boundaries of the Con Plan jurisdiction rather than the boundaries of the CoC. The HMIS Data Standards Manual at https://www.hudexchange.info/resources/documents/HMIS-Data-Standards-Manual.pdf released in 2014, establishes certain data elements to be collected in HMIS that enable jurisdictions to report on the above-required measures. However, HUD recognizes that communities are currently working towards setting up their HMIS solutions in order to fully meet these requirements, and that some of this data may only be based on estimates until the new data standards are fully implemented. When a CoC's claimed geographic area includes multiple Con Plan jurisdictions that CoC will need to disaggregate CoC-wide data for each Con Plan jurisdiction. States, territories, and local Con Plan jurisdictions with multiple CoCs need to compile relevant data from all of CoCs within their geographic area. **HUD recognizes that some Con Plan jurisdictions might have encountered challenges related to collecting data for the Homeless Needs Assessment of the Con Plan due to the overlap of CoC boundaries and Con Plan jurisdictions. HUD seeks feedback about how jurisdictions are currently providing estimates for these measures, specifically:**

What steps are CoCs currently carrying out to disaggregate CoC-wide data for the Con Plan jurisdiction, when their geographies do not align?

Comments: Disaggregation of CoC data by jurisdiction is very helpful, but should not be required. We recommend flexibility in this area and encouragement of CoC's to provide this data if it is available in HMIS. As an example, the Knoxville, TN CoC encompasses both the City of Knoxville and Knox County. Separating out HMIS data for City of Knoxville boundaries is almost certainly pointless. The vast majority of homeless services captured in the Knox HMIS are provided within the City of Knoxville. Any efforts to somehow filter out the very few activities that do not have a legitimate connection within city limits would be a waste of time, effort and resources.

What are the barriers to obtaining accurate data for these measures at the Con Plan jurisdiction level?

Comments: Barriers to obtaining accurate data would be simply the time and effort spent to try to isolate activities when the geographies do not align which could encompass *a great deal of time and effort.* More ESG administrative funds would be needed.

Are Con Plan jurisdictions using this data for planning or other purposes, and how?

Comments: Yes, Con Plan jurisdictions use the data for planning and assessment of coordinated efforts to prevent, reduce and end homelessness.

Should HUD make any additional changes to the regulation? If so, what would be most helpful?

Comments: No, HUD should not make any additional changes to the regulations.

Coordination between the Con Plan jurisdiction and CoC on Planning. Currently, the consultation provisions at 24 CFR 91.100(a)(2)(i) and 91.110(b)(1) require each Con Plan jurisdiction to consult with the applicable CoC(s) when preparing the portions of the Con Plan describing the jurisdiction or state's homeless strategy and the resources available to address the needs of homeless persons and persons at risk of homelessness. In order to develop this strategy, Con Plan jurisdictions must assess the needs and identify available resources to address those needs. **For the final rule, HUD is considering specifying that the consultation requirements include a requirement for the Con Plan jurisdiction to consult with the applicable CoC(s) on the following homeless-specific aspects of the Con Plan: the jurisdiction's homeless needs assessment, one-year goals and specific action steps for reducing and ending homelessness, and performance reports.** HUD has received questions about what acceptable consultation, participation, and collaboration consist of, between the CoCs and Con Plan for jurisdictions, and especially for states. The purpose of proposing this requirement would be to specify the requirements and ensure that Con Plan jurisdictions and CoCs are collaborating on all aspects of the plan that directly impact the homeless goals and strategies, in order to develop a more complete and cohesive strategy to end homelessness in these overlapping plans. **HUD seeks comment on this concept, specifically:**

Would this requirement facilitate or improve collaboration and coordination between CoCs and Con Plan jurisdictions on homelessness activities? If so, how? If not, why?

Comments: HUD generally assumes that for local homelessness efforts, the CoC organization and Con Plan is always the one that is driving the proverbial bus, but in many jurisdictions, their independent, local community plan to address homelessness, which is driven by local government or other local organizational structures is leading the effort. These jurisdictional plans are already written to take federal priorities into account, but to do so in a way designed to effectively meet local needs and priorities. So for many jurisdictions, the community homelessness plan sets the priority, and the ConPlan and the CoC are coordinated together with the local effort, in order to support the priorities set out in the local plan. HUD has urged communities for over a decade to create jurisdictional homelessness plans driven by local priorities and political will. In spite of that, questions and standards in both the Con Plan and CoC seem to disregard that locally oriented organizational structure in favor of pushing everything into a CoC-centric box. The effect of this, which we are opposed, is to penalize communities that create a robust, locally-driven effort in favor of communities that organize their response to homelessness around meeting the minimum requirements to be found in the CoC regulations. We urge HUD to better consider these local jurisdiction homelessness plans in the overall federal collaboration and coordination requirements.

Are the current consultation requirements in the interim rule sufficient for Con Plan jurisdictions to establish the needs and strategies for addressing homelessness in the jurisdiction?

Comments: Yes and no. The interim rule consultation requirements are sufficiently specific, but the final rule would be better if the requirements anticipated that some communities have jurisdictional homelessness plans that are supported by CoC and Con Plan, rather than the other way around.

Should HUD include this requirement, or are there other ways that HUD could, in the final rule, facilitate better coordination between CoCs and Con Plan jurisdictions to ensure that their plans establish closely aligned and complementary goals to end homelessness?

Comments: See the responses to the questions above.

<u>Process for Making Subawards</u>: HUD received comments from numerous respondents recommending that HUD require ESG recipients to describe how they will use performance data to select sub-recipients. Based on these comments, **HUD is considering including language in the final rule that would implement this suggestion, and seeks comments on what impact this would have on ESG recipients. For those recipients that currently select sub-recipients based on performance data, HUD seeks feedback about processes currently used, including any specific indicators. Additionally, HUD seeks comment on whether there are any further requirements that HUD should include related to selecting sub-recipients based on performance to help recipients implement this proposed requirement.**

Comments: Allow flexibility in this area. HUD should offer suggestions for performance criteria for grantees to consider but not require specific indicators. This should be left up to the grantee. Grantees should state which measure they will use. Many communities have developed performance criteria and use it to guide the selection process for awarding ESG funding.

<u>Written Standards for ESG Recipients</u>. See section II.C.14 of this Notice for more detail.
<u>Limiting Eligibility and Targeting ESG Assistance</u>.

Comments: We support having the flexibility to determine eligibility at the recipient level or to assign that determination to the subrecipient, when appropriate. We also support having the flexibility to determine outreach and emergency shelter policies in some combination of the CoC, recipient and subrecipients. It is the intent of the grantee to administer programs with accountability, while at the same time maintain the flexibility to provide resources and assistance effectively. In some cases including standards in the Action Plan may be the most effective way to achieve this. In others, it may be more beneficial to work with subrecipients to establish eligibility and targeting policies for a specific program.

The needs of program participants are greatly affected by things like the current housing market, resources available from other programs and current overall economic conditions. Having sufficient flexibility to structure programs to most effectively respond to these factors has an enormous effect on outcomes for program participants.

<u>HUD Approval of Action Plans</u>. HUD is considering amending the list of examples of substantially incomplete Action Plan at 91.500(b), to include plans which do not reflect a jurisdiction's actual allocation amounts for that year. HUD envisions that this would also cover situations in which a jurisdiction submits a proposed plan on which it has conducted citizen participation, which neither reflects actual allocation amounts nor contains contingency language on how the jurisdiction will adjust its plan to reflect actual amounts, and seeks comment on this proposal.

Comments: See comments under Submission of Action Plans – Timing (p. 31544)

<u>Performance Reports Related to Homelessness for ESG Recipients</u>: HUD proposes to require that ESG recipients and sub-recipients use HMIS (except those sub-recipients that are prohibited from doing so under VAWA) in Evaluation Report (CAPER), as specified by HUD, and seeks comment on this proposal.

Comments: If HUD is going to require use of HMIS to generate ESG CAPER data they should create a shell or template in HMIS to generate the required CAPER report that could then be easily transferred into IDIS. Then the CAPER data could be automatically generated from IDIS as is the case with all other projects and activities that report accomplishments. Currently, the reports generated by HMIS for the AHAR do not match up with the way the data is requested for the ESG CAPER in IDIS.

Multiple reporting requirements for subrecipients of ESG funding is onerous. However, it is not the best practice for grantees to rely on an outside entity to provide data that is ultimately reported to HUD for the CAPER. We support requiring ESG subrecipients to enter data into HMIS and use their best efforts to use this data for reporting purposes (with the exception of VAWA), however, if there are issues of unreliable data in HMIS, ESG recipients may use a back-up data source for reporting purposes.

C. REQUEST FOR COMMENT ON EMERGENCY SOLUTIONS GRANTS PROGRAM REGULATIONS (24 CFR Part 576)

Emphasis on Rapid Re-Housing: HUD has been encouraging ESG recipients to spend more of their funds on rapid re-housing, since it is often a cost-effective way to make a significant impact on homelessness in a community and help achieve the national goal of ending homelessness. HUD is considering ways to continue this policy, and **seeks feedback on what requirements and/or incentives could be established in the final rule for recipients to focus more on rapid re-housing, or whether HUD should simply continue to encourage this focus through guidance.**

HUD received several comments recommending that HUD limit the amount of funds that an ESG recipient can spend on homelessness prevention activities. However, HUD cannot place a cap on homelessness prevention activities without a statutory change. Instead, HUD seeks creative ways to encourage more rapid re-housing – possibly through the final rule. For example, if a recipient intended to spend funds on homelessness prevention, HUD could require the recipient to justify, in the Con Plan, how meeting the needs of persons at risk of homelessness is more effective at ending homelessness (without this justification, the Con Plan would be determined substantially incomplete and could not be approved). Another option could be to establish performance measures and link the local CoC application scoring to ESG recipients' achievement of those measures. Another option could be to require only the rent reasonableness standard for rapid re-housing activities, but require both the FMR and rent reasonableness standard for homelessness prevention activities. **HUD seeks comments on whether to adopt these or suggestions for other methods to increase the amount of funds recipients spend on rapid re-housing activities.**

Comments: Encourage flexibility in this area so that each local area can determine the best mix of services to meet local needs. Adding additional bureaucratic requirements to an already rule-laden program is not helpful or motivating. Reducing requirements and adding flexibility to RRH is most definitely an incentive to allocate funds to this type of program. Only requiring rent reasonableness with RRH is a positive idea. Other ideas include, increasing the FMR level up to 120% for RRH households, leaving the term "rapid" in re-housing undefined and/or increasing the length of time Housing Stability Case Management can be provided from 30 to 90 days. We recommend that HUD not add language to require the recipient to justify in the Consolidated Plan how meeting the needs of persons at risk of homelessness is more effective at ending homelessness than rapid rehousing. Having ESG funds to address prevention is an important part of the CoC strategy to address and prevent homelessness. The recipient is already required to consult with the CoC in determining how ESG funds will be allocated and in developing ESG performance standards. That process should be sufficient for assuring resources are targeted as much as possible to ending homelessness.

Some CoCs also combines local entitlement and balance of state ESG to address both rapid re-housing and prevention whereas balance of State ESG is used for rapid re-housing, allowing for a small amount of local ESG to be used for prevention. If HUD required the locality to justify in the Con Plan how using ESG for prevention is more effective at ending homelessness than rapid re-housing, this would make it hard for our CoC to combine local and state ESG to meet this array of needs at ending and preventing homelessness. Prevention should remain an allowable activity, without imposing burdensome requirements, especially in the CoCs that offer both rapid rehousing and prevention activities.

Street Outreach and Emergency Shelter Components: **Essential services under the Emergency Shelter Component.** The interim rule states that ESG funds may be used for costs of providing essential services to individuals and families in an emergency shelter. **HUD proposes to clarify who can receive essential services under the Emergency Shelter component – including in day shelters – by changing the language as follows (proposed portions italicized): "ESG funds may be used for costs of providing essential services to homeless families and individuals *as follows: (a) When provided in an emergency shelter, the services may be provided to***

persons: (i) who meet the criteria described in paragraph (1) of the homeless definition, and (ii) who are either staying in that emergency shelter, or who are sleeping on the street or another place described in paragraph (1) of the homeless definition (excluding those in transitional housing) and are referred to services by an emergency shelter, and (b) When provide in a facility that is not an emergency shelter, the services may be provided only to persons who meet the criteria described in paragraph (1) of the homeless definition (excluding those in transitional housing) and who are referred to services by an emergency shelter." This change would widen the array of essential services that can be provided to those most in need – expanding the language to allow ESG funds to be used to pay for facility-based essential services to most persons sleeping on the street. HUD would require the referral from an emergency shelter as a linkage to the Emergency Shelter component, under which the services will be provided. HUD would consider this change in order to improve service coordination and also to ensure that the services charged to the grant are necessary and appropriate to the individual or family. HUD wants to encourage, to the extent possible, that non-facility-based services are provided by mainstream programs, not ESG. **HUD seeks comment on this proposed change.**

Comments: Street Outreach and Emergency Shelter Components – Local Residency Requirements. While it is reasonable that HUD would not want to deny ESG-funded services or shelter to people who didn't have their last permanent residence in the jurisdiction, there should be some way for localities that operate shelters in overflow to be able to prioritize people coming from the local community. For examples, on one of our member CoCs, there are two cities each with a large, low-threshold emergency shelter committed to serving everyone who is in need. However, due to chronic overflow and concerns about retaining local support for the shelters, homeless persons who do not have ties to the region (ties anywhere in the CoC, not just to the local jurisdiction) may be limited to one-night stays when the shelter is in overflow. The adjacent CoCs have no low-threshold emergency shelters and turn people away when they are at capacity and for other reasons (e.g., substance abuse). Homeless people, therefore, at times travel to our CoC seeking shelter. We are concerned that if HUD adds this prohibition, then our CoC will lose access to Balance of State ESG funds for shelter if we continue to triage our shelter overflow by prioritizing homeless people from the region. We recommend allowing ESG-funded shelters that demonstrate they operate under "low-threshold principles" (e.g. don't turn people away who are not a safety risk) and are in overflow to be allowed to prioritize stays for homeless people with ties to the locality or CoC.

"Unavailable" and "Inaccessible" Services. ESG funds may only be used for certain essential services "to the extent that other appropriate [emergency health services, emergency mental health services, legal services, substance abuse treatment services] are unavailable or inaccessible within the community." HUD has received questions and comments about this requirement, specifically, what it means to be "unavailable or inaccessible." HUD had originally included this restriction in order to prioritize ESG funds for housing rather than services that should be available through mainstream systems. However, HUD recognizes that sometimes services are necessary and not provided by any other resource; in these cases, certain essential services are eligible under ESG. **HUD is not considering removing this restriction from the regulation in the final rule, but is considering changes to help communities implement the requirement and document compliance. HUD specifically seeks additional comment on:**

Whether HUD should define or set a standard for "unavailable" and "inaccessible" within the rule, and if so, what definition or standard would best help recipients and sub-recipients implement this requirement?

Comments: We urge HUD not to further define these terms. Local areas can determine a reasonable definition. Rather than defining these concepts, HUD should identify how communities must document "unavailable" or "inaccessible" services in order to pass monitoring. For example, would this requirement be met through a needs assessment, testimony by people in emergency shelters, CoC declaration, and/or narrative in the CoC application?

Whether only one term should be used, and if so, which one and why?

Comments: Inaccessible is the preferred term because people who are literally homeless may need to be engaged in different ways than traditional options. The resource may theoretically be available, but if it involves arriving at a scheduled time and to a formal location, then the resource is not truly accessible for those who are homeless.

Using the term "inaccessible," recognizes the necessary flexibility needed to effectively serve people where they are in their life.

Day shelters. While a shelter that provides temporary daytime accommodations and services can be funded as an emergency shelter under the ESG interim rule, HUD receives questions about day shelters and is therefore considering explicitly stating in the final rule that day shelters are emergency shelters, and specifying the conditions under which a day shelter may receive funding under the Emergency Shelter component, including several requirements to ensure that ESG funds are used for homeless persons most in need. **HUD is considering adding the following language at 576.102(a):** ***A day shelter may be funded as an emergency shelter under this section only if: (1) The shelter's primary purpose is to provide temporary daytime accommodations and services to individuals and families who meet paragraph 1 of the homeless definition in this section (except those in transitional housing); and (2) those persons can stay in the shelter for as many hours as it is open. ESG funds for operating costs in a day shelter may only be incurred to the extent the shelter is used for persons assisted in the shelter who meet the definition of homeless under paragraph (1) (except those in transitional housing), and essential services provided in a day shelter may only be provided to persons meeting the definition of homeless under paragraph (1) (except those in transitional housing).*** **HUD seeks comment on the following questions regarding day shelters:**

What impact would adding these requirements for day shelters have in your community? For instance, would this require any changes to emergency shelter policies or procedures in your community?

Comments: Meeting the definition of "homeless" would require documentation of homelessness be provided for each person served. In a day shelter, best practice demonstrates the need for low-barrier environments in order to increase engagement. Paperwork, including self-certifications, is a barrier to engagement and may lead to those most in need (i.e. chronically homeless, episodically homeless) to avoid these facilities. In a day shelter environment, it seems reasonable to assume those who frequent the facility would truly be homeless.

What changes, if any, would need to be made to this provision of the regulation so that your community can fund or continue to fund day shelters with ESG?

Comments: Allow day shelters to serve anyone presenting at the facility.

Are there any changes to the documentation requirements for program participants in emergency shelters that would be needed for day shelters?

Comments: Exclude day shelters from all household documentation requirements. Allow anyone presenting in a day shelter to be served through ESG funds, so the staff can focus on engagement. Then, once the household moves into an emergency shelter or housing program, verification of homelessness is reasonable.

Involuntary family separation. This requirement states that "The age of a child under age 18 must not be used as a basis for denying any family's admission to an emergency shelter that uses ESG funding or services and provides shelter to families with children under age 18." HUD is not proposing to change this provision because it is statutory. However, **HUD is considering possible regulatory changes that would help recipients and sub-recipients implement the statutory provision, and seeks ideas based on actual issues that have occurred in communities. HUD is also proposing that a shelter must serve all members of the family together if the members of the family so choose (e.g. it may not separate adult men from women and children in a family and serve them on a different floor or in a different building). HUD seeks comment on this proposal.**

Comments: What about the logistics of shelter capacity to serve large families? This section needs to remain flexible to accommodate varying levels of capacity.

Rapid Re-housing component (defining "rapid: and "as quickly as possible"). This section states, "ESG funds may be used to provide housing relocation and stabilization services as short- and /or medium-term rental assistance as necessary to help a homeless individual or family move as quickly as possible into permanent housing and achieve stability in that housing." **HUD has received questions about what "rapid" and "as quickly as possible" mean in practice, and is considering whether to establish a standard or time limit in which an individual or family could be rapidly re-housed. HUD is considering the following options:** Setting the standard at a particular number of days (possibly 7, 30, or some other time limit over 30 days) per individual; setting a standard at an average number of days for an ESG recipient; requiring communities to set a standard based on local data and systems; or continuing the current policy and not setting such a standard. **HUD seeks comments on:**

Should HUD establish a standard or time limit for rapid re-housing? Why or why not?

Comments: We do not support further limiting this definition. We recommend that HUD not establish a standard or time limit for rapid re-housing for three reasons: (1) In CoCs with a high-cost rental market it can take a few months to find housing for homeless people even with committed staff and participant effort. (2) We wouldn't want to limit access to this resource if someone has been a long stayer in a shelter, but several months into their stay is finally willing to be considered for rapid rehousing or has a change of circumstances (job) and is now a good candidate. (3) It is difficult enough to find the ideal homeless individuals for rapid rehousing who can demonstrate they could sustain housing after rapid rehousing funds end, we wouldn't want to inadvertently add more obstacles and administrative burden to offering this resource; for example, someone begins housing search then relapses but once stabilized would like to be considered for rapid rehousing assistance. Are they no longer eligible? Would we have to document why they couldn't be rapidly re-housed before?

No, a standard or time limit on rapid re-housing should not be established. Each community has unique needs and specific outcomes they are working towards. To implement additional outputs only increases the amount of paperwork and places an unfair burden on communities that have uncharacteristically low vacancy rates. What is "rapid" in one community, may be completely out of reach in another. If this must occur, allowing communities to identify their own standard of "rapid" would be a supported compromise.

If HUD should set such a standard or time limit, what would be an appropriate limit, based on local experiences with rapid re-housing?

Comments: Some communities have very low vacancy rates. A standard under three months would be a disincentive to use RRH and motivation to focus on prevention. If a standard under three months were established it may also lead to households being denied assistance or "creamed" for housing readiness because they don't secure housing, even with the help of landlord liaisons, within the time period. This policy would not be a positive addition to the rules and we urge HUD to not incorporate such a standard or time limit.

If HUD should set a standard at a particular number of days, at what point would the "clock" start – at the initial intake assessment, at the point the program participant is determined eligible and enrolled in the program or other? Should HUD define it or allow the recipient or sub-recipient to define it?

Comments: We urge HUD not to incorporate a standard in the regulations. However, if HUD did set a standard, we recommend starting the clock once the person has been enrolled in rapid rehousing and allowing at least 90 days, at the minimum, for the person to obtain housing. Allowing sub-recipients to define this period would be the preferable role since the sub-recipients encompass the diversity of the homeless system infrastructure.

What impact the proposed number of days would have on local program administration. For example, would this conflict with any local goals or other program requirements? (5) If implemented, what should the consequences be if a recipient or sub-recipient does not meet the standard?

Comments: We urge HUD not to establish a standard.

<u>Housing Relocation and Stabilization Services.</u>

<u>Late fees</u>. HUD is considering allowing late fees on the program participant's utility and rental payments (other than late fees associated with the 6 months of rental arrears, which are already allowed) and utility reconnection fees for the program participant to be included as an allowable cost under housing relocation and stabilization services, and seeks comment on this proposal.

Comments: We support additional funding flexibility such as late fees to be eligible under ESG.

<u>Court costs</u>. HUD is considering allowing, as a legal services activity under 576.105(b)(4), court costs incurred by the landlord during an eviction proceeding as an eligible ESG cost, so long as it is necessary for the program participant to pay them in order to be stabilized in their housing. HUD is considering adding this because payment of this cost may help prevent homelessness for the program participant and it may be an incentive for landlords to work with the program participant. HUD seeks comment on this proposal, specifically:

Should HUD allow a property owner's court costs to be eligible under ESG? Why or why not?

Comments: Yes, HUD should allow a property owner's court costs to be eligible under ESG. It may help to reduce family housing barriers, which leads to housing stability.

Should HUD allow ESG to be used to pay a property owner's court costs when a court orders the tenant to pay those costs?

Comments: A property owner's court costs should be an allowable cost regardless of the courts, as long as it reduces a family's housing barriers.

If HUD should allow such costs, how would recipients/sub-recipients determine and document that the costs are "necessary" to stabilize a program participant's housing? Should HUD impose any limits on the amount of such costs that may be paid with ESG funds?

Comments: Ask programs to provide a hard copy ledger detailing costs and showing that the entire cost will be deleted, should the ESG payment be made.

<u>Trash removal</u>. HUD is considering including trash removal as an eligible utility cost at 576.105(a)(5), in part to be consistent with the definition of utility used to calculate gross rent for purposes of FMY, and in part because in some places, particularly rural areas, tenants are required to pay for trash removal. HUD seeks comment on this proposal.

Comments: Yes, the more flexible the funds can be, the better.

<u>Mediation</u>. Under the interim rule, mediation cannot be used to help eligible individuals and families (including homeless youth) move back into housing they have left, when that might be the best placement for them, and the option they would choose. As such, HUD is considering adding language at 576.105(b)(3) to allow ESG funds to pay for mediation services – under both the Rapid Re-housing and Homelessness Prevention components – to help they have already moved to an emergency shelter, the streets, or another place described in paragraph (1) of the homeless definition or, for homelessness prevention, after the program participant has moved to other, temporary, housing. HUD proposes the following language (italicized language added): "ESG funds may be used to pay for mediation between the program participant and the owner or person(s) with who the program participant is living *or proposes to live, to help the program participant move into, return to, or remain in housing."* HUD seeks comment on this proposal; specifically:What impact would this rule change have? Are there other concerns HUD should be aware of regarding placing individuals and families in such housing situations?

Comments: Positive impact. The more flexible the funds can be, the better.

<u>Broker fees</u>. HUD is considering explicitly allowing ESG to pay for fees to real estate agents, or "broker fees," so long as the fee is reasonable and necessary for the household to obtain appropriate permanent housing, by including language at 576.105(b)(1), Housing Search and Placement activities.

HUD seeks comment on this proposal; specifically, is this a necessary cost in order to quickly move individuals and families to permanent housing?

Comments: This activity has never been pursued, but we can never know if it is effective until a funding source pays for it.

<u>Housing Stability Case Management</u>. HUD has received numerous questions about the language in the interim rule stating that for ESG housing stability case management, "…assistance cannot exceed 30 days during the period the program participant is seeking permanent housing…" HUD included this provision recognizing that many clients are enrolled in Rapid Re-housing while residing in shelters, but intentionally limited it, for two main reasons. First, HUD intended this restriction as an incentive to quickly re-house program participants, since any case management over 30 days would have to be paid with non-Federal funds or, if applicable, charged under the Street Outreach component or Emergency Shelter component, which are subject to an expenditure cap. Second, HUD intended that recipients/sub-recipients that provide case management to persons in shelter under the Rapid Re-housing program focus on placing these program participants into housing. HUD aims to ensure that recipients/sub-recipients are helping program participants obtain housing and not just charging essential services cost for persons in shelter to the Rapid Re-housing component in order to around the Emergency Shelter/Street Outreach cap. However, HUD recognizes that sometimes it takes longer than 30 days to rapidly re-house a program participant. In addition, one recipient noted that HUD allows the payment of storage fees for up to 3 months under the Rapid Re-housing component and requires monthly case management to be provided during that time, but only allows housing stability case management to be charged to the Rapid re-housing component for up to 30 days. Therefore, HUD seeks comment on the following questions related to this provision of the rule: For program participants who are receiving assistance under both the Emergency Shelter and Rapid Re-housing components (i.e. those staying in a shelter and receiving services to get rapidly re-housed), how are recipients/sub-recipients currently determining when to charge the case management costs to each component?

Comments: Some CoCs currently do not use ESG funds for housing stability case management and given the time it can take to rehouse people in high-cost rental markets, we recommend changing this to 90 days. In this way, if in the future those CoCs use ESG for this service, it would align with the realistic, maximum timeframe it might take someone to be rehoused.

Has the 30-day limit on charging housing stability case management to the Rapid Re-housing component had an effect on increasing the rates at which program participants find housing? If not, why not?

Comments: It has been ill-effective in areas with low vacancy rates because it is extremely challenging to meet the 30-day limit. Additional funding is having to be intermingled, which makes meeting guidelines more complicated. It is also a disincentive to using ESG funds to provide rapid re-housing programs.

If HUD were to change the limit to 90 days, what impact would this have?

Comments: Changing the limit to 90 days would be more realistic and incentivize using ESG for rapid re-housing programs. HUD is highly encouraged to delete this requirement and allow communities (or grantees) to create their own rental market driven standard around the definition of rapid re-housing.

If HUD eliminated this restriction, is there a different way to distinguish between housing stability case management and case management under the emergency shelter component, which is subject to the cap?

Comments: Combine both types of case management into one. Another suggestion is to define housing stability case management as formal client-staff time focused on housing stability. Then, general case management would be defined as informal staff management and support of shelter residents.

Credit reports. HUD is considering allowing ESG funds to be used to pay for a credit report for program participants being assisted under the Homelessness Prevention and Rapid Re-housing components, if the program participant has exhausted all opportunities to receive a free credit report in a given year and if the report is necessary to stabilize the individual or family in their current housing or quickly move them to permanent housing. HUD seeks comments from providers' experience on whether this would be a helpful addition to the rule, or whether it would not make a difference if included.

Comments: Yes, this would be very helpful and a much needed addition that would help to reduce housing barriers. Many households cannot obtain credit reports through on-line means due to the number of housing transitions throughout their life. Being able to pay for this service would be a great benefit to clients.

Short-Term and Medium-Term Rental Assistance

Rental assistance in shared housing – general. HUD proposes to clarify in the final rule that ESG funds may be used to provide rental assistance in shared housing. Except for the FMR requirements (established under 576.106(d)(1) and addressed below), all ESG requirements that apply to rental assistance would apply to rental assistance provided in shared housing. Among other things, these requirements include the following: (1) There must be a legally-binding, written lease between the owner and the program participant; (2) There must be a rental assistance agreement between the recipient or subrecipient and the owner; (3) The housing must meet ESG habitability standards; (4) The program participant must meet the eligibility requirements for either Rapid Re-housing or Homelessness Prevention assistance; (5) The rental assistance must be provided in accordance with the applicable written standards; (6) Rental assistance may not be provided to a program participant who is receiving tenant-based rental assistance, or living in a housing unit receiving project-based rental assistance or operating assistance, through other public sources; and (7) The shared housing must meet the rent reasonableness standards. HUD seeks comments on these ideas, specifically:

Whether HUD should adopt these policies for rental assistance in shared housing, and, if so, any concerns or issues that may arise in implementation?

Comments: Allowing rental assistance to be provided in shared housing is a positive inclusion into the rule. Would privately rented space or the entire unit/home need to meet habitability standards? Is only a lease allowed or can a month-to-month rental agreement suffice?

Suggestions about documentation that HUD should require in order to reduce fraud or ensure that the landlord reduce fraud or ensure that the landlord is not a "support network" that can assist the program participant without rental or financial assistance, such as a family member or friend;

Comments: Do not allow the recipient of ESG funds to receive rent assistance when living with a family member or friend.

Whether HUD should include all of the above or whether any elements should be added or deleted from the list?

Comments: The rental assistance agreement is an extra bureaucratic document that should not be required in addition to a lease. Rent reasonableness is also an unnecessary document, when the FMR is already required. It is also more difficult to determine rent reasonableness in a shared housing situation.

How could providing ESG rental assistance to individuals and families that share housing work under state or local law? How do recipients/subrecipients currently make this type of arrangement work, especially with respect to a program participant's lease, and if the other renters are not ESG program participants?

Comments: Each household is treated as a separate entity when rent assistance is being provided in a shared housing situation.

Rental assistance in shared housing – FMR. With respect to the FMR for shared housing, HUD is considering establishing the following standard: When assisting an individual or family with rental assistance in share housing, recipients and subrecipients would be required to use an adjusted FMR that is the household's pro-rata share of the FMR for the share housing unit size. For example, in the case of a single-person household who will occupy one bedroom in a 4-bedroom house, the FMR used would be the household's pro rate share of the 4-bedroom FMR (i.e. ¼ of the 4-bedroom FMR). Note that HUD's ultimate determination on this issue for the final rule will be influenced by the comments received, and the decision made, regarding the related FMR issue discussed below. HUD seeks comment on this idea, or whether there is an alternate calculation that HUD should use for determining FMR in shared housing.

Comments: Determining FMR should solely be based on the number of qualified bedrooms for the household. For example, if a household of three would qualify for a two-bedroom unit, then the FMR threshold would be two-bedroom FMR, regardless of whether they find shared housing or their own unit. This allows greater client choice, and does not disincentivize shared housing.

Rent restrictions (Fair Market Rent). The ESG interim rule states that "rental assistance cannot be provided unless the rent does not exceed the FMR established by HUD, as provided under 24 CFR part 888, and complies with HUD's standard of rent reasonableness, as established under 24 CFR 982.507." HUD received feedback expressing concern that, unlike the Housing Choice Voucher program, the ESG program uses FMR to limit the units for which rental assistance may be provided, and this does not provide enough flexibility for recipients and subrecipients to quickly find available units. Two of HUD's goals are to ensure that the units for which ESG assistance is provided will be affordable to program participants after the assistance ends, and limit the amount that may be expended on given household so that more program participants can be assisted. However, HUD is considering alternatives for changes to the final rule to provide flexibility in order to quickly find appropriate units. The options HUD is considering to include in the final rule, on which HUD seeks feedback are as follows: (1) ESG funds could be used to pay rental assistance for units where the rent is at or below the payment standard set by the PHA for the area (i.e., up to the FMR, up to 110 percent of FMR if that is the PHA's payment standard, or higher if HUD has provided a waiver to the PHA). (2) ESG funds could be used to pay rental assistance for units where the rent is above FMR, but ESG funds could only be used to pay up to the FMR amount (any amount of rent above the FMR would have to be paid by either the program participant, or the recipient/subrecipient with non-ESG funds). However, HUD is concerned that allowing program participants to pay for the cost of a unit above FMR might disadvantage those who need the ESG assistance most, since it might be easier to find units above the FMR and therefore, those who are more able to contribute to the rent would be more likely to receive ESG assistance. Therefore, HUD also seeks comments as to the extent of this risk and if there are any requirements that can be put into place to prevent this practice. (3) ESG could require only the rent reasonableness standard for rapid re-housing, but require both the FMR and rent reasonableness standard for homelessness prevention assistance. This might be one way to both increase flexibility and also encourage recipients and subrecipients to provide more rapid re-housing assistance. (4) HUD could adopt the standard used in the HOPWA program, described at 24 CFR 574.320(a), which allows recipients (or possibly subrecipients) to establish a rent standard that is no more than the published FMR used for Housing Choice Vouchers or the "HUD-approved community-wide exception rent for the unit size. However, on a unit by unit basis, the [recipient] may increase that amount by up to 10 percent for up to 20 percent of the units assisted." (5) HUD could maintain the FMR and/or rent reasonableness standards but add in some other type of flexibility – HUD seeks suggestions for additional options. Note that in all cases HUD is planning to continue to require that the unit at least meet the rent reasonableness standard. Finally, one of HUD's primary concerns is that the program participants be able to remain in the unit after the assistance ends. If HUD included one of the above options to provide more flexibility to recipients and subrecipients by paying higher rents, how could they ensure that the units would remain affordable to program participants without housing assistance? In addition, HUD is considering only allowing a recipient to pay rent over the FMR if the recipient includes its proposal to do so in the Con Plan/Action Plan. That way, the recipient would be required to obtain and assess citizen feedback as to whether additional flexibility is necessary in its area before being able to pay rents above FMR.

Comments: Yes, we highly support option #1. The FMR is too low in some markets to enable homeless households to be rapidly re-housed and too high in others which could result in paying more than necessary. Increasing the FMR limit is a desirable policy change. That said, only requiring rent reasonableness for rapid re-housing programs would be a supported rule change and should be done in tandem with an increase in the FMR. If households are allowed to pay the difference between the FMR and gross rent, the program would need to specify in the file, the justification going over the FMR level and why the household will most likely be able to remain stable in the high-cost housing after assistance ends.

Last month's rent, security deposits, and rental arrears. HUD is considering re-categorizing "last month's rent" and "security deposit" as rental assistance, rather than housing relocation and stabilization services (financial assistance), because last month's rent is counted in the maximum-allowed 24 months of assistance, which could be confusing. Last month's rent is often paid at the same time as the security deposit, so it might make sense to consider them together. If this change is made, the FMR/rent reasonableness standards and lease and rental assistance agreement requirements would apply when security deposits and last month's rent are used to move a program participant into a unit. HUD will also consider consistency with the CoC Program in making a final decision. HUD seeks comment about this proposal, specifically whether the proposal would reduce confusion and improve administrative ease or whether there are potential negative consequences, and if so, what are they?

Comments: This proposal would reduce confusion. We support the change.

HUD is considering explicitly stating that the FMR and rent reasonableness standards apply when rental arrears are being paid for a unit in which the program participant is staying, but not when the rental arrears are being paid for a unity in which the program participant no longer lives or is leaving. HUD seeks comment on this and any potential issues that could arise if HUD were to adopt this policy.

Comments: This is an unnecessary program burden. As long as the household can show that they have been able to pay rent for a reasonable period of time, then it is reasonable to think they can continue to be stable. A rent reasonableness assessment and a FMR test already needs to be completed if one month of rent assistance is paid.

Rental Assistance Agreement requirements. (1) HUD is considering listing the elements that must, at a minimum, be included in the rental assistance agreement. The following two elements are already required in the interim rule, and HUD plans to keep them in the final rule: (1) The same payment due date, grace period, and late payment penalty requirements as the program participant's lease; and (2) A provision requiring the owner to give the recipient/subrecipient a copy of any notice to the program participant to vacate the housing unit, or any complaint used under state or local law to commence an eviction action against the program participant. HUD seeks comment on which, if any, of the following new requirements to include, and seeks suggestions on any others that should be required: (1) The term of the assistance (e.g., the number of months for which it is being provided); (2) The type of assistance being provided (e.g., tenant- or project-based rental assistance, rental arrears); (3) The amount of funds to be paid by the recipient/subrecipient and the amount to be paid by the tenant; (4) The address of the property for which payments are being made; and (5) the signature and date of both the recipient/subrecipient representative and the property owner. **(2)** The interim rule states that "a recipient or subrecipient may make rental assistance payments only to an owner with whom the recipient or subrecipient has entered into a rental assistance agreement." HUD proposes to specify in the final rule that when ESG Rapid Re-housing or tenant-based, is used to assist a program participant to move into housing owned by a recipient or subrecipient, a rental assistance agreement is not required. However, under this proposal, the organization would be required to document and maintain on file the elements required to be included in a rental assistance agreement. HUD seeks comment on this proposal.

Comments: Do not include any additional requirements to the rental assistance agreement. The ESG program is already heavily burdened with rules and regulations. All of the proposed additional requirements can be found elsewhere in the file. There is no need to duplicate information and increase opportunities for non-compliance.

Using ESG funds for an unoccupied unit. HUD is considering allowing ESG recipients to choose to continue to assist a current program participant with ESG funds, in tenant- or project-based rental assistance, when a program participant is in an institution (such as a hospital or jail) during a portion of time they are receiving ESG assistance. If implemented, ESG funds could be used for up to 90 days while that program participant is in the institution. However, if the recipient/subrecipient has knowledge that the program participant will not exit the institution before 90 days, then the month in which the program participant enters the institution is the last month for which ESG funds may be used for the program participant's unit. This change would ensure consistency with the CoC Program. HUD seeks comment on this proposal.

Comments: This is a positive change, in-line with other housing assistance programs and moves the ESG rules toward a housing-first approach. Ninety-days is a reasonable amount of time.

Subleasing. Under the interim rule, subleasing – that is, the person or organization that holds the primary lease with the owner enters into a lease with an individual to rent the unit – is not allowed, for either tenant-based or project-based rental assistance. If HUD allowed subleasing in the final rule: Would this allow recipients to more effectively serve program participants?

Comments: It may open up more housing options in the community for those struggling to find housing.

Would it make a significant difference for program participant? In what ways would it help them?

Comments: Yes, it may benefit households for two reasons. One, it may open up additional housing options for them that may not have been available on their own. Two, it reduces the risks to the household because a master leasing entity usually does not evict program tenants or act in other ways that would create more housing barriers for the household. This is a particularly positive change for agencies serving people with extremely high housing barriers.

Tenant-based rental assistance. HUD has received numerous questions about whether recipients may provide ESG assistance outside their Con Plan jurisdiction, allow program participants to move outside their jurisdiction, or limit assistance to residents of the jurisdiction. HUD is considering changing the language at 576.106(h)(2) to specify the circumstances under which any of the options listed above may be carried out. HUD is considering the following revisions, and seeks comment on them: (1) Under ESG TBRA, the program participant must be able to choose the unit in which they will live, with the following specifications: (i) The recipient may allow a program participant to choose a unit outside of the recipient's jurisdictional boundaries, may limit TBRA to the recipient's jurisdictional boundaries, or, when necessary to facilitate the coordination of supportive services, may limit TBRA to a designated geographic area that encompasses, overlaps, or falls within the recipient's jurisdictional boundaries. (ii) Unless otherwise specified by the recipient, a unit of general purpose local government that administers TBRA as a subrecipient may allow a program participant to choose a unit outside of the local government's jurisdictional boundaries, or when necessary to facilitate the coordination of supportive services, may limit TBRA to a designated geographical area – such as the CoC's geographic area – that encompasses, overlaps, or falls within the recipient's jurisdictional boundaries. (iii) Unless prohibited by the recipient, a private nonprofit organization that administers TBRA as a subrecipient may allow a program participant to choose a unit outside of the recipient's jurisdictional boundaries or, when necessary to facilitate the coordination or provision of services may limit TBRA to a designated geographic area – such as the CoC's geographic area or a smaller area within the recipient's jurisdiction – that encompasses, overlaps, or falls within the recipient's jurisdictional boundaries. (2) The amount or type of assistance cannot be conditioned on the program participant moving outside the jurisdiction's boundaries (that is, a recipient or subrecipient may not require that a program participant move outside the jurisdiction in order to receive the rental assistance). HUD is considering establishing a requirement, in the final rule, that recipients must not deny ESG Rapid re-housing assistance to homeless individuals and families based on whether or not their last permanent residence was in the recipient's jurisdiction. That is, if a person is homeless on the streets or in an emergency shelter in a jurisdiction and is seeking ESG-funded Rapid re-housing assistance, they must be able to be assessed for, and, if eligible, receive ESG Rapid re-housing assistance, regardless of whether their last residence was inside or outside of the jurisdiction. HUD seeks comment on this idea, and feedback about any issues that this might raise with the implementation of ESG or communities' efforts to end homelessness.

Comments: Having the opportunity to assist households outside of the jurisdictional boundaries is a welcomed opportunity. We support allowing a nonprofit sub-recipient administering TBRA to allow program participants to move outside of the recipient's jurisdictional boundaries. Given the high cost of housing in some regions, homeless participants need as much flexibility as possible in locating a rental unit. We agree that TBRA should not be conditioned in any way on requiring the participant to move outside the jurisdiction's boundaries. If an ESG recipient can demonstrate that its rapid re-housing program is offering TBRA to people from the streets and from low-threshold emergency shelters (e.g. people are not denied access unless they're a safety risk), and there is much greater demand for TBRA than supply, then the recipient should be able to allow for prioritizing of people with a last permanent residence in the jurisdiction (or at least in the CoC).

Matching Requirements.

Comments: Encourage maximum flexibility to meet the 1-1 matched required for ESG.

Obligation, Expenditure, and Payment Requirements. Subrecipient agreements. HUD is considering establishing, in the final rule, minimum elements that must be included in any subrecipient agreement. HUD seeks comments on whether it would be most helpful to include the minimum required elements for a subrecipient agreement in the regulation (e.g. to improve ease of recipients for monitoring their subrecipients and/or reduce burden for recipients), or whether to instead issue guidance, such as a sample subrecipient agreement.

Comments: We support the issuance of a sample subrecipient agreement, but do not support mandatory elements in the rule.

Area-Wide Systems Coordination Requirements – Consultation and Coordination.
ESG Recipient Consultation with Continuums of Care. HUD has received many questions about how ESG recipients should consult with the CoC(s) to meet the current requirements effectively. Based on these questions, HUD seeks general comment on the following questions to inform the inclusion of any additional consultation requirements in the final rule. Should HUD specify standards for consultation for different types or sizes of jurisdictions?

Comments: No, HUD should not specify standards for consultation nor require an MOU between the CoC and the Consolidated Plan jurisdiction detailing how they will collaborate.

Defining "consultation," "coordinating," and "integrating." Should definitions of "consultation," "coordination," and "integrating" be included in HUD's regulations at 24 CFR part 91 and/or 24 CFR part 576? What should the definitions include?

Comments: These terms do not need to be defined further.

Improving collaboration between ESG recipients and CoCs. HUD is considering a change to the CoC Program interim rule that would require all CoC boards to include a member from at least one ESG program recipient's staff located within the CoC's geographic area. HUD asks for suggestions on how ESG recipients can be involved in the CoC at one of the core decision-making levels.

Comments. We support inclusion of ESG program recipients on the local CoC's board.

Area-Wide Systems Coordination Requirements – Written Standards for ESG Recipients.
When subrecipients receive ESG funds from multiple recipients. An ESG recipient or subrecipient could be subject to differing, or even conflicting, written standards. What have recipients and subrecipients done to resolve any conflicts or prevent confusion? Has this been a significant issue?

Comments: This has not been a significant issue. If a conflict arises, we recommend the subrecipient bring it to the attention of the jurisdiction and request changes to remove or ameliorate the conflict. Let the local/state areas work this out on their own.

Asset policy. Under the former HPRP, HUD recommended that grantees and subgrantees develop policies to evaluate a household's assets, as part of considering the full array of "resources and support networks" available to a program participant. Under the ESG written standards, HUD is considering requiring recipients to develop such a policy regarding the treatment of assets, in order to more consistently and completely assess the household's resources. HUD seeks comment on local experiences with this under HPRP and whether adding this as a requirement in the written standards would help provide consistency in assessing resources and assets during the initial evaluation and reevaluations for ESG assistance.

Comments: We support continuation of allowing local communities to determine their own standards related to assets. Due to scarcity of rent assistance and shelter resources, households are very likely to have already liquidated their assets prior to receiving assistance.

A declaration of household assets is only as reliable as the client's understanding and willingness to disclose information. We support having the flexibility to determine locally the need and utility of an asset policy in carrying out prevention and rapid re-housing programs.

Written standards for subrecipients of local governments. In order to provide a greater amount of local flexibility in limiting and prioritizing eligibility for ESG assistance, HUD is considering allowing ESG recipients that are local governments and territories to pass the requirement to establish written standards down to their subrecipients, similar to the regulation for states.

Comments: We support allowing local governments the option to pass through the requirement to establish written standards to subrecipients. We support policies that allow for the flexibility needed to address needs within local contexts.

Shelter and Housing Standards. HUD received significant feedback and comment about the "habitability standards," and seeks comment on the following:

Housing and Relocation Stabilization Services only (Homelessness Prevention assistance to remain in unit). HUD is considering removing the requirement that a unit must meet habitability standards for permanent housing when homelessness prevention assistance (services only) is used to help a program participant remain in the unit.

Comments: We recommend removing the requirement that a unit meet minimum habitability standards when prevention assistance is used for services only. Given the staff time to inspect units, and the limited ESG funds available, it is a significant burden to do inspections when the prevention services may be very time limited.

Housing Quality Standards. HUD is considering explicitly allowing a certification that a particular permanent housing unit meets HQS to qualify as meeting the minimum standards for permanent housing under ESG.

Comments: This proposal is supported, particularly by agencies regularly using HQS to meet the requirements of other HUD programs. This allows the programs to streamline requirements.

Conflicts of Interest.

For rapid re-housing only. HUD is considering this provision altogether. That is, HUD could allow recipients/subrecipients to rapidly rehouse "category 1" homeless program participants into housing that they or their parent/subsidiary organization owns, because in some cases, these providers might be some of the most well-suited in the community to provide the assistance that persons being rapidly re-housed need. Are there any potential issues with this? Should HUD leave the requirement in place as-is, to prevent potential steering or conflicts of interest.

Comments: It would be ideal if ESG subrecipients had the option to rent subrecipient-owned housing to participants who are paying the rent with ESG rapid re-housing funds. It would be good to have this option given the difficulty of using ESG rapid rehousing in high housing cost markets. Is there a way that HUD could allow for this option based on certain criteria? For example, such criteria might include: documentation that the subrecipient is charging below-market rent and the ESG participant has agreed to this option instead of using the funds to be rehoused elsewhere.

Thank you for the opportunity to provide comments on this notice. Please feel free to me at vwatson@ncdaonline.org or at 540-656-9552 with any questions on this letter.

Sincerely,
Vicki Watson
Executive Director
NCDA