

**This final rule is pending publication in the Federal Register.  
The published rule will establish the effective date of this rule.**

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

**24 CFR Parts 91, 576, 582, and 583**

**[Docket No. FR-5333-F-02]  
RIN 2506-AC26**

**Homeless Emergency Assistance and Rapid Transition to Housing:  
Defining “Homeless”**

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

**ACTION:** Final rule.

**SUMMARY:** The Homeless Emergency Assistance and Rapid Transition to Housing Act of 2009 (HEARTH Act), enacted into law on May 20, 2009, consolidates three of the separate homeless assistance programs administered by HUD under the McKinney-Vento Homeless Assistance Act into a single grant program, revises the Emergency Shelter Grants program and renames the program the Emergency Solutions Grants program, and creates the Rural Housing Stability program to replace the Rural Homelessness Grant program. The HEARTH Act also codifies in law the Continuum of Care planning process, long a part of HUD’s application process to assist homeless persons by providing greater coordination in responding to their needs.

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

**DATES:** Effective Date: [INSERT DATE THAT IS 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]

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

**SUPPLEMENTARY INFORMATION:**

**I. Background— HEARTH Act**

An Act to Prevent Mortgage Foreclosures and Enhance Mortgage Credit Availability was signed into law on May 20, 2009 (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 Homeless Emergency Assistance and Rapid Transition to Housing Act of 2009 (HEARTH Act). The HEARTH Act consolidates and amends three separate homeless assistance programs carried out under title IV of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11371 et seq.) (McKinney-Vento Act) into a single grant program that is designed to improve administrative efficiency and enhance response coordination and effectiveness in addressing the needs of homeless persons. The single Continuum of Care program established by the HEARTH Act consolidates the following programs: the Supportive Housing Program, the Shelter Plus Care program, and the Moderate Rehabilitation/Single Room Occupancy program. The former Emergency Shelter Grant program is renamed the Emergency Solutions Grant program and revised to broaden existing emergency shelter and homelessness prevention

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

## **II. The April 2010 Proposed Rule**

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

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

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

This final rule is being published contemporaneously with the interim rule for the Emergency Solutions Grants (ESG) program, which establishes the regulations for the ESG program in 24 CFR part 576 and makes corresponding amendments to HUD's Consolidated Plan regulations in 24 CFR part 91. To complement the ESG interim rule, this final rule revises the

definition of “homeless” in both 24 CFR parts 91 and 576 and adds recordkeeping requirements to part 576. While the proposed rule also included definitions for “developmental disability” and “homeless individual with a disability,” those definitions are not being adopted by this final rule. Part 576 does not use those terms, and the Consolidated Plan regulations in 24 CFR part 91 covers more than HUD’s homeless assistance programs.

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

### **III. Overview of the Final Rule – Key Clarifications**

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

are defined as homeless under other federal statutes who do not otherwise qualify as homeless under this definition; and (4) individuals and families who are fleeing, or are attempting to flee, domestic violence, dating violence, sexual assault, stalking, or other dangerous or life-threatening conditions that relate to violence against the individual or a family member. Throughout this preamble, all references to a number “category of homeless” refer to this list.

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

“Shelter” includes “Emergency Shelter” but not “Transitional Housing.” The HEARTH Act defines an individual or family who resided in shelter or a place not meant for human habitation and who is exiting an institution where he or she temporarily resided as “homeless.” In this final rule, HUD clarifies that “shelter” means “emergency shelter” but not “transitional housing” for the purposes of qualifying as homeless under this provision

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

Inclusion of the “other federal statutes” with definitions of homelessness under which unaccompanied youth and families with children and youth could alternatively qualify as homeless under category 3 of the homeless definition. The final rule includes references to other federal statutes with definitions of “homeless” under which unaccompanied youth and families with children and youth could alternatively qualify as homeless under category 3 of the definition of “homeless.” These statutes are the Runaway and Homeless Youth Act (42 U.S.C. 5701 et seq.), the Head Start Act (42 U.S.C. 9831 et seq.), subtitle N of the Violence Against Women Act of 1994 (42 U.S.C. 14043e et seq.) (VAWA), section 330 of the Public Health Service Act (42 U.S.C. 254b), the Food and Nutrition Act of 2008 (7 U.S.C. 2011 et seq.), section 17 of the Child Nutrition Act of 1966 (42 U.S.C. 1786), and subtitle B of title VII of the McKinney-Vento Act (42 U.S.C. 11431 et seq.). This list represents the entire universe of statutes with definitions under which an unaccompanied youth or a family with children and youth can qualify as homeless under this category. While there may be other federal statutes with definitions of “homeless,” this list is intended to include only those that encompass children and youth.

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

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

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

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

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

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

Verification of homeless status by providers serving individuals and families fleeing, or attempting to flee, domestic violence, dating violence, sexual assault, and stalking that are not victim service providers. The final rule imposes additional verification requirements for oral statements by individuals or families who are fleeing, or attempting to flee, domestic violence, dating violence, sexual assault, and stalking who are seeking or receiving shelter or services from providers who are not victim service providers, as defined in section 401(32) of the McKinney-Vento Act, as amended by the HEARTH Act. Specifically, the individual or head of household must certify that he or she has not identified a subsequent residence and lacks the resources or support networks, e.g., family, friends, faith-based, or other social networks, needed to obtain



housing, and, where the safety of the individual or family would not be jeopardized, the domestic violence, dating violence, sexual assault, stalking, or other dangerous or life-threatening condition must be verified by a written observation by the intake worker or a written referral from a housing or service provider, social worker, health-care provider, law enforcement agency, legal assistance provider, pastoral counselor, or any other organization from whom the individual has sought assistance for domestic violence, dating violence, sexual assault, or stalking. The written referral or observation need only include the minimum amount of information necessary to document that the individual or family is fleeing, or attempting to flee, domestic violence, dating violence, sexual assault, and stalking. HUD does not expect that the written referral contain specific details about the incidence(s) of violence that occurred prior to the victim fleeing, or attempting to flee.

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

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

#### **IV. Discussion of the Public Comments**

##### **A. The Comments, Generally**

The public comment period on the proposed rule closed on June 21, 2010, and HUD received 201 public comments. HUD received public comments from a variety of sources including: private citizens; nonprofit organizations; advocacy groups; Continuums of Care; and government, community, and affordable housing organizations. General concerns about this rule most frequently expressed by commenters were: (1) vulnerable populations (e.g., individuals who are "couch surfing" and individuals and families in substandard housing) continue to be excluded from the definition of "homeless" used by HUD to administer its programs; and (2) the recordkeeping requirements are too burdensome.

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