

National Alliance to End Homelessness Comments on HUD's Interim CoC Rule

Regulations Division
Office of General Counsel
451 7th Street SW., Room 10276
Department of Housing and Urban Development
Washington, DC 20410-0500

Re: 24 CFR Part 578 [Docket No. FR-5476-I-01] RIN 2506-AC29 Homeless Emergency Assistance and Rapid Transition to Housing: Continuum of Care Program

The National Alliance to End Homelessness believes that the interim regulations, in general, capture the opportunity presented by the HEARTH Act to move the HUD-funded homeless assistance system further in a solutions-oriented direction.

The HEARTH Act is marked by four basic transformations:

- From a focus on individual programs to a focus on local systems;
- From a focus on activities to a focus on outcomes;
- From a focus on shelter to a focus on housing and prevention; and
- From a focus on transitioning to a focus on rapidly re-housing then stabilizing.

In many large and small ways, this interim regulation helps to strengthen the push in these important directions. The result will be a system that respects the hopes of homeless people and the communities they live in – that episodes homelessness become a brief and rare experience in every community in our country.

There are specific areas where the interim rule can be improved by the elimination of ambiguity or by allowing practices that make programs more effective. These are set out below.

Specific comments:

§578.3 -- Definitions

At risk of homelessness – The experience with homelessness prevention programs funded by HPRP was that greater effectiveness occurred when resources were targeted toward those with the greatest need. At the very least, providers should be asked to try to select for services those people who they have strong reason to believe will actually end up in shelters or in places not intended for human habitation if they do not receive assistance. The definition in the regulations largely tracks the statutory language. It will be important for HUD to stress the targeting message as the Continuum of Care is implemented.

Centralized or coordinated assessment system – This is an important piece of the move toward a system that provides the right intervention for each individual or family. In implementing this system, it will be important to have a balance between rigor and the immediacy of people's needs. The term "comprehensive" in the regulation, applied to the assessment, should not be read to require an arduous process that will delay the delivery of needed emergency services or shelter to homeless families. The term "standardized," applied to the screening tool, should not be read to require a research basis that is beyond what has been accomplished for any existing screening tool.

Information needed to develop a case plan or work toward housing stability is not necessary for the initial coordinated assessment and is best asked later by a caseworker or other professional. The Alliance urges HUD to encourage communities to develop assessment criteria based on evidence that the criteria are needed to steer the program participant to the correct housing intervention. These assessments should involve only as many questions as necessary to determine the appropriate intervention.

Unsheltered homelessness needs to be regarded as a dangerous emergency for individuals experiencing it. Assistance should never be denied to a program participant because coordinated or centralized intake is unavailable. We strongly recommend that HUD require that when there is a coordinated assessment process, if the intake location(s) is closed at any point in time, alternative locations or methods (such as a 24-hour 2-1-1 hotline) for assessment or temporary placement must be made available. People must be able to access emergency services even when the assessment is unavailable or impractical. This is particularly critical for people fleeing domestic violence.

Centralized intake can be strengthened if it is coordinated with other mainstream systems. People exiting prisons, for example, may need housing assistance, and the corrections system may be able to bring additional resources to the table to serve clients. HUD should make it clear that coordinated intake can be used to manage both homeless and non-homeless resources that can be used for homeless or at-risk people. Similarly, we urge HUD to clearly state that the coordinated or centralized assessment process may be operated and managed by mainstream systems or entities. For example, some communities have found that TANF agencies, rather than homeless systems, are best equipped to manage and conduct coordinated assessment for families with children.

The Alliance also believes that coordinated assessment processes should make it easier for all people in crisis to access shelter, not more challenging. Communities that develop one coordinated assessment system should allow domestic violence providers to retain the ability to immediately admit survivors into their domestic violence emergency shelter programs. This can be accomplished by allowing those who are traditionally the first point of contact in the community (a domestic violence hotline provider or emergency shelter program) to serve as an entry point for the coordinated assessment process. Other protocols might be developed to ensure that domestic violence emergency shelter providers working in a community with a single coordinated assessment system are able to quickly meet the needs of survivors fleeing violence. It is critical that those fleeing domestic violence have quick, easy, and safe access to the crisis specialized emergency shelter services they need.

Regarding survivors of domestic violence, the issue of coordinated assessment raises a number of concerns. For women who have recently fled an abusive relationship, homelessness is a particularly dangerous situation, and an effective, secure coordinated assessment system is particularly important. Without an effective assessment system, some will go to programs that expect more than they can handle, leading to a return to homelessness; while others will go to more intensive and expensive programs than they require, leading to longer lines of people who get no help and often face a choice between languishing in shelter, living in a place not intended for human habitation, or returning to the abusive relationship. On the other hand, there is a concern that any system that puts personal information about people fleeing domestic violence in the hands of more people could lead to breakdowns in confidentiality and additional violence if adequate safeguards are not in place.

The National Alliance to End Homelessness supports the current interim rule that allows victim service providers to opt out of the homeless coordinated assessment system but does require that those who do so establish a separate, comparable coordinated system.

Local Continuums of Care and victim service providers should be strongly encouraged to develop one coordinated assessment system that meets the needs of all homeless people in the community including survivors of domestic violence. Such a system should include strong measures to protect confidentiality. We believe that the development of one system is the best mechanism to ensure that all individuals and families in communities have access to the most appropriate housing and service response to end their homelessness - whether that is a survivor who seeks help from the homeless service system who would be better served by an agency with expertise in serving survivors or survivors in domestic violence programs who would benefit from access to rapid re-housing and other housing resources.

While the Alliance believes that victim service providers' active participation in the local homeless coordinated assessment system is ideal, we also believe it should be optional, not mandatory. Instead, HUD should develop resources and tools, including trainings, designed to help local communities develop one integrated coordinated assessment system that promotes the safety and well-being of survivors. Promoting local collaboration across homeless service systems and domestic violence providers holds great promise in improving the services people receive from either system. We believe such collaboration will yield greater dividends when it is done with the full commitment of domestic violence providers and participation is not coerced.

Chronically homeless – The decision to leave out any reference to length of episodes or time between episodes, while understandable given uncertainties, leaves an unfortunate gap in the regulations. Chronic homelessness has been developed as a concept useful to identify people who are unlikely to remain housed without the most intensive (and expensive) intervention, i.e. permanent supportive housing. The “four episodes in three years” standard, without clearer standards on what constitutes an episode or where one episode ends and another begins, creates the possibility that people whose homelessness could be ended more quickly and cost-effectively with less intensive interventions will instead be channeled into scarce permanent supportive housing. The Alliance urges HUD to continue working toward a more precise definition that is more likely to align with the need for permanent supportive housing.

Continuum of Care – The Alliance appreciates the broad range of interests reflected in this definition.

Permanent housing – The primary weakness remaining in the interim rule is that it strictly adheres to certain micro-level policies regarding permanent housing that are probably appropriate for models like Section 8 or Public Housing, but that cause problems when applied to rapid re-housing and other models that employ a Housing First philosophy. Along with §578.51(b) below, the requirement of a one-year lease is particularly problematic in this regard. This requirement is out of keeping with standard practices in many communities regarding privately owned rental housing. It has the potential to create three problems. First, it excludes housing situations where standard practice by landlords is to rent for shorter terms. This is common in many communities. In programs such as Section 8, where HUD funds to subsidize rent are committed for a year, it may be easier to convince landlords to make exceptions to these policies, but with short-term rent subsidies this is unlikely, thus limiting the housing choice available to homeless people who are using these programs. Second, this requirement has great potential to preclude appropriate and desirable group living situations where some individuals would not usually be in a direct leasing relationship with the property owner. Third, there are many situations

where a person leaving homelessness would prefer and be better off not locking himself or herself into a full-year lease. If, for example, a person in a rapid re-housing program finds a job that is a long distance from the housing, a move might be appropriate. In general, many around the country who operate under a Housing First philosophy find that many people's situations, desires and interests change dramatically once they move from the street into an apartment, and the good programs maintain the flexibility to change the housing situation accordingly.

In the final rule, HUD should consider allowing program participants to receive financial assistance or partial rental assistance even if they are not the primary tenant, and/or if their rental agreement is for a period less than one year. HUD should also clarify that recipients and subrecipients can work to add the program participant to the existing lease and can also use their case management resources to ensure the doubled up situation remains stable.

Transitional Housing – The requirement of a lease or occupancy agreement is more realistic here, since transitional housing will be carried out in the context of a program. The one-month term provides the flexibility that is needed. The Alliance appreciates the specification in the interim regulation that the purpose of transitional housing is to facilitate movement into permanent housing.

§578.5 (b) and (c) – With the requirements regarding a Board for the Continuum of Care, the interim rule goes further than previously in specifying a particular manner in which the community should organize itself to make decisions regarding this program. This is likely to conflict with existing workable and effective arrangements in many communities. Over the course of the period when Congress considered legislation that ultimately led to the HEARTH Act, there was a consistent movement away from regulating the details of communities' decision making processes. The Alliance recommends that, in issuing the final rule, HUD strongly consider minimizing regulation of process consistent with legal requirements and transparency of local decision making. In particular, existing arrangements that are functioning well should be allowed to continue. The decision to provide additional time to communities to comply with this requirement is important and should be replicated in other areas, as will be mentioned below.

§578.7 Responsibilities of the Continuum of Care – In general, the Alliance appreciates the openness of the local process to the entire community, as well as the encouragement to develop written policies. The establishment of performance targets is important, and the Alliance strongly supports clear guidance in the NOFA regarding performance – the HEARTH Act set out strong and explicit national goals and it will be important for HUD to carry that through, rather than leave communities to figure this out for themselves. Evaluation of outcomes, mentioned in this regulation, is important - although there is still room for more detail about what communities will be expected to do. Additional comments on specific subsections follow:

§578.7(a)(8) – The term “comprehensive assessment” may create problems if it is read as requiring a process that will delay placement in programs. Please see the discussion above, under the definition of “centralized or coordinated assessment system.”

§578.7(a)(9), (b), and (c) – The requirements of written policies is important to clarify what procedures will be used, who will participate in which programs, and who in the community will be responsible for which undertakings. It appears likely that the development of these policies will require intensive work by Continuums. HUD should provide assistance to communities, including sample policies and trainings.

It is particularly important to encourage communities to employ nationally recognized best practices in determining which kinds of interventions will be provided to which people.

§578.17(a)(4) – This paragraph provides that if total CoC funding, after making various allowable deductions, is insufficient to fund all existing grants at the level in the previous year, then HUD will make proportionate reductions in each community, rather than make awards through a competitive process. In so doing, HUD foregoes an important opportunity to incentivize performance by, for example, allowing top-performing communities to receive full funding of their existing grants. Since the competition would be based largely on cost-effectiveness of moving homeless people into housing, the effect of an across-the-board reduction would be homelessness instead of housing for more people than would be the case if the more efficient communities received full funding and the entire shortfall came from less efficient communities. The Alliance strongly supports sufficient funding for the CoC program. Nonetheless, in the event Congress does not appropriate sufficient funds, HUD should develop a competitive process to allocate the shortfall in a way that recognizes the performance of each Continuum of Care.

In any event, the rule is clear and should remain clear that final decisions about how funds are distributed to individual programs within a community should remain the province of the Continuum of Care – HUD’s role is to determine the funding level for the community as a whole.

§578.17(b) – Under previous practice as set out by appropriations legislation, Shelter Plus Care renewals were funded through a separate determination. Under the rule, the amount of renewal demand for communities with existing Shelter Plus Care grants will be substantially higher than in previous years if those grants are now to be included in the renewal demand. It would be useful for HUD to clarify this.

The calculation of maximum award amount leaves out an important step – to the extent some communities receive a maximum award amount that is higher than their PPRN due to their existing funding level, then other communities will have a maximum award amount that is less than their PPRN.

§578.23(c)(3) – The Alliance supports the involvement of people who are experiencing homelessness in projects funded through the Continuum of Care. Providing employment is especially important.

§578.23(c)(9) – This paragraph allows victim services providers to create an alternate system of assessment. As explained above, the Alliance supports this policy, while recognizing that the best outcome would be for communities to adopt unified, secure coordinated assessment systems that include people who have experienced domestic violence. HUD should promote this approach through technical assistance and work with DoJ and HHS domestic violence programs.

§578.37(a)(1)(ii) – The last sentence of the introductory portion of this subparagraph lists some parts of the rule that will or will not apply to short- and medium-term rental assistance. If it is HUD’s intent that short- and medium-term rental assistance is not subject to any parts of §578.51 other than those specifically listed as applying, HUD should clarify this in the final regulations.

§578.37(a)(1)(ii)(E) – This subparagraph requires reevaluation of eligibility and appropriateness of the service package for a program participant on an annual basis. The Alliance supports reevaluation every three months, in order to ensure that program participants receive the right interventions.

§578.37(a)(1)(ii)(F) – The Alliance recommends that HUD eliminate the requirement that program participants meet with a case manager on a monthly basis, and instead leave it to recipients to determine the precise amount of case management that each program participant needs. The performance incentives built into the Continuum of Care, along with technical assistance from HUD and the expressed desires of program participants, will steer programs toward making the most effective decisions in this regard. Monthly case management meetings may strengthen results for some program participants, but it may also be unnecessary or possibly counterproductive for others. In many instances, case managers may be duplicative of other casework associated with additional forms of assistance that program participants are receiving. Particularly where only short-term assistance is provided, the requirements that program participants meet with case managers regularly could result in allocating precious resources toward case managers that could more effectively be used to provide financial assistance to additional households in the community.

§578.39 and .41 – These sections imply that spending for CoC planning and, where appropriate, UFA activities must fit within the FPRN. §578.17(b)(4), however, implies that these costs are to be awarded in addition to FPRN amounts. This should be clarified.

§578.49(a)(1) – It is unclear what the phrase “for up to 3 years” applies to – the term of the lease, or the term of the grant. HUD should clarify this in the final rule.

§578.49(b)(8) – The effect of this paragraph appears to be that existing projects that used SHP funds to pay rent for tenants would all be considered “rental assistance” instead of “leasing” and could only be administered by a public-sector entity, even if the existing SHP project has been administered by a nonprofit. This is a result that is inconsistent with congressional intent to allow existing activities to continue to be funded. Programs that are operated by nonprofits under SHP and that provide what is now regarded as “rental assistance” should be allowed to operate under the same structures as previously.

§578.51(b) – This paragraph states that only a government entity or public housing agency may administer rental assistance. This requirement threatens in many communities to be a serious impediment to successful administration of rapid re-housing programs funded by the Continuum of Care. The Alliance believes that congressional intent and good policy are best served by limiting this requirement to programs where both the tenancy and the rental assistance are “permanent,” i.e. not time-limited; and to allow nonprofits to administer temporary rental assistance in rapid re-housing programs as well. Good rapid re-housing programs require a range of different payment arrangements, including short-term, medium-term, or the commitment of an initial amount with the option of providing more later. In all respects, it works better when payment can be processed quickly – for the re-housing to indeed be rapid, payment must be available to landlords with the minimum of processing time. In some communities, there are state or local government agencies or public housing agencies that are able and willing to operate in this manner. In other communities this is not the case, and in fact these agencies have no interest in undertaking this task, while a nonprofit could do the job. This is another case where there should be local flexibility in determining which entity does what, and it is consistent with the statutory language, where “permanent housing rental assistance” can be read to apply to situations where neither the housing/tenancy nor the rental assistance are explicitly time-limited.

As an alternative, HUD should clarify that state and local government and public housing agencies have the ability to delegate this authority to a qualified nonprofit.

§578.51(c)(3) allows a type of portability, if necessary, to escape domestic violence. This is an important and positive policy. The Alliance encourages HUD to develop educational material to make it easier for providers to use this option when necessary.

§578.51(h)(4) – This provision allows recipients whose expenses are less than anticipated to use the money to serve additional people. This is an important and positive provision that encourages efficiency.

§578.51(j) – This subsection allows the use of grant funds, not to exceed one month's rent, to pay for damage to housing caused by a program participant. The limitation on the amount is likely to be insufficient in many areas to overcome resistance by landlords to participate in these programs, particularly where recipients need to convince landlords to rent to people who have been experiencing homelessness the longest.

§578.51(l) – This paragraph requires a one-year lease for any payment of rental assistance. See the comments above under the definition of permanent housing (§578.3) for the Alliance's views.

§578.53(a)(1) – The Alliance commends HUD for clearly stating that supportive services in these programs are appropriate where they are necessary to obtain and maintain housing.

§578.53(a)(3) – Allowing continued services to people for the first six months after they leave homelessness for permanent housing continues to be a practice that stabilizes people and prevents returns to homelessness. This is an important provision.

§578.65(c) – In setting out the standards for “high performing communities,” the regulations leave out the statutory requirement that only homeless people under similar circumstances are compared against each other. For example, a community that, over time, provides housing placements to more homeless people with severe behavioral health issues through a permanent supportive housing model may find that of all the people who leave homelessness, the percentage who return to homelessness within two years has not decreased year-over-year by the 20 percent necessary for HPC designation. But if that community compared the results for homeless people with severe behavioral health problems who left homelessness, the percentage of that group who return may have in fact declined by more than 20 percent. Although obviously complicated, HUD can help move the field in the direction of serving people with more challenging problems by making room for such “like-to-like” comparisons.

§578.73(a) – The HEARTH Act contemplates that the matching requirement will apply only to the entire Continuum of Care, not to each individual recipient. This is an important part of the move to more system-wide integration, and will improve the likelihood that major funders such as state mental health departments will be encouraged to participate in efforts to end homelessness. The regulations appear to adopt this Continuum-wide approach to matching only in Continuums where a Unified Funding Agency has been designated. While the UFA simplifies the calculation and enforcement of a Continuum-wide approach to matching, the Alliance urges HUD to adopt this approach in other communities as well as those with UFAs.

§578.75(b) – The inspection requirement has the potential to keep people homeless for longer periods. HUD should explore ways to use a provisional move-in system, as some communities have used with the HUD-VASH program for homeless veterans, in order to allow more rapid placement while still protecting

the interests of HUD, tenants, and landlords. More flexibility should be provided particularly for short-term rental assistance.

§578.75(e) – Requiring supportive services in each project is inappropriate. Within a community, supportive services may be provided by one project while another provides rental assistance or other means of paying for housing. Research also demonstrates that for a substantial number of homeless people, assistance paying rent or obtaining housing is the only service necessary.

§578.75(f) – The meaning of the term “residential supervision” is unclear. Many scattered-site models of supportive housing have achieved excellent results without any kind of live-in or on-site supervision.

§578.75(h) – The Alliance supports the policy that disability-related services not be required in a program that is not a treatment program. In addition, there is little or no indication that programs are more successful at moving people out of homelessness when they require compliance with service plans, disability-related or not.

§578.77(c)(1)(i) – It would be useful to note that the statute cited in this subparagraph does not allow a minimum rent in McKinney-Vento programs, only in programs funded by Public Housing or Section 8.

§578.87(b) – This subsection on faith-based organizations is unclear. The use of the phrase “program participant” appears to be used differently here than in other parts of the regulation. The Alliance supports faith-based organizations participating in this program.

§578.91(c) – The Alliance strongly supports the policy in this subsection of limiting termination of “hard-to-house” participants to only the most severe cases. HUD should clarify who is included, especially people who have been homeless the longest, people with disabilities, and others where evidence and experience show that they are likely to face barriers to housing.

§578.93(b) – The Alliance supports the policy in this subsection of allowing programs to focus on particular subpopulations, in order to take advantage of leveraging opportunities and the particular expertise of the recipients.

§578.93(b)(1) – HUD is developing policies and best practice guidance on serving transgender people in its homelessness programs. The regulation on one-sex programs should be implemented with these developing policies in mind.

§578.93(b)(7) – This paragraph clarifies that permanent supportive housing targeted to people who meet the regulatory and statutory definition of “chronic homelessness” is an allowable activity. The Alliance supports this policy. The Alliance applauds HUD for recognizing the importance of targeting interventions, while at the same time attempting to ensure that resources and housing opportunities do not go wasted if there are other eligible populations that could benefit from it.

§578.93(e) – The Alliance is supportive of this policy, allowing children of either sex to live with their families in HUD-funded programs. It would be helpful for HUD to provide information to communities about this policy, and to promote it broadly.

§578.107(d)(4) appears to say that HUD may deobligate funds if rental assistance costs are less than in the grant agreement. This would be in conflict with §578.51(h)(4), which, as stated above, allows using

unused rental assistance to serve more people. HUD should clarify that §578.51(h)(4) takes precedence in that situation.

Issues not addressed:

Moving from one permanent housing setting to another – The regulations should clarify that a program participant who was homeless and moved into permanent housing funded through HUD’s homeless assistance programs may move into another permanent housing project funded through those programs when appropriate. There are many situations where this would be important for meeting the needs of the program participant or recipient. The HEARTH Act makes clear that this is allowable when the “receiving” project provides project-based or sponsor-based rental assistance; but does not otherwise preclude it. It is an important policy for designing systems that work for people who are escaping homelessness; particularly those with severe disabilities who may have lived on the street for years, and for whom the best program “fit” may not be apparent until several months after they have been housed.

Eligibility comparison with ESG – HUD should clarify either in the final regulation or other program materials who is eligible for which kinds of programs, both in the Continuum of Care and ESG, pointing out the differences between the two. The line between “prevention” and “rapid re-housing” in ESG, for example, differs from the line between eligibility and ineligibility in the Continuum of Care.