

# HOUSING JUSTICE

National Housing Law Project

Newsletter January 2012

## New Regulations Address HUD's Homelessness Programs

The Department of Housing and Urban Development (HUD) has published interim regulations for the Emergency Solutions Grant (ESG) Program, which will replace its existing Emergency Shelter Grant Program. The regulations reflect changes made to HUD's homelessness assistance programs as part of the Homeless Emergency Assistance and Rapid Transition to Housing (HEARTH) Act of 2009. These changes will be especially important to clients, including survivors of domestic and sexual violence, who need assistance with temporary costs in order to stay housed or to find new housing quickly after they become homeless.

According to HUD, the new ESG regulations reflect the agency's increased focus on homelessness prevention and rapid re-housing assistance. Homelessness prevention activities include housing relocation and stabilization services and short- and medium-term rental assistance to help people avoid becoming homeless. Rapid re-housing activities include similar services to help people who are homeless move quickly into permanent housing. As discussed in a separate article in this newsletter, people fleeing domestic violence may be defined as homeless for purposes of receiving these services.

HUD states that in developing the ESG regulations, it relied on its experience with the Homelessness Prevention and Rapid Re-Housing Program (HPRP), which was a temporary program funded through economic stimulus legislation. According to HUD, the interim rule is intended to

ensure continuity between HPRP and ESG.

The interim regulations went into effect on January 4, 2012, though HUD sought public comment on the interim regulations through February 3, 2012. It is possible that HUD will amend the interim regulations in response to public comments.

### Eligible Activities

In general, the interim rule allows ESG funds to be used for five programs: street outreach, emergency shelter, homelessness prevention, rapid re-housing, and Homeless Management Information Systems (HMIS). Funds used for street outreach and emergency shelter activities will be limited to the greater of 60% of a recipient's total grant for the fiscal year (FY) or the amount committed to these activities in FY 2010. The interim rule revises the eligible costs for operating emergency shelters by removing the limit on staff costs, adding the cost of supplies, and allowing the cost of a hotel or motel stay under certain conditions.

As part of homeless prevention and rapid re-housing activities, ESG funds may be used to provide housing relocation and stabilization services. This includes payment of rental application fees, security deposits, last month's rent, utility deposits, utility payments (including up to six months of arrears), and moving costs. It also includes payment of costs associated with services, such as housing stability case management, mediation to prevent a program participant from losing housing, and credit repair. Assistance with these costs could be invaluable for domestic and sexual violence survivors who need assistance in moving to

*(Continued on page 2)*

### IN THIS ISSUE

**HUD Issues Final Rule  
Clarifying Its Definition of "Homeless"**

**HUD Proposes Rule on Homelessness  
Management Information Systems Requirements**

(Continued from page 1)

permanent housing. ESG funds also may be used for legal services that are necessary to resolve a legal problem that prohibits the program participant from obtaining permanent housing or will likely result in the program participant losing permanent housing.

The interim rule gives ESG recipients broad discretion in determining the type, amount, and duration of rental assistance a program participant can receive for homelessness prevention or rapid re-housing assistance. The interim rule provides that ESG funds can be used for short-term rental assistance (up to three months) and medium-term rental assistance (up to 24 months). To receive rental assistance, an individual and a housing owner must have a written lease. The interim rule also requires a rental assistance agreement between the ESG grant recipient and the owner of the housing.

Individuals who are currently receiving housing assistance through other “public sources” cannot receive rental assistance through ESG funds. The regulation does not define “public sources.” In the past, HUD has stated that the intent of this rule is to prevent the use of its homelessness funds where other governmental assistance is provided on a regular basis. Thus, domestic violence survivors receiving rental support on a regular basis from an agency that has received an Office on Violence against Women transitional housing award may be barred from applying for ESG rental assistance. However, a survivor who has received a one-time payment for assistance with rental arrears is not barred from receiving ESG rental assistance. Agencies that need more information regarding these issues can submit questions to HUD at [http://www.hudhre.info/index.cfm?do=viewHelpdesk&program\\_system=17](http://www.hudhre.info/index.cfm?do=viewHelpdesk&program_system=17).

### Requirements for ESG Recipients

The interim rule contains a new requirement for ESG recipients to consult with Continuums of Care in allocating funds for activities. Further, the interim rule requires ESG recipients to coordinate

### Statistic of the Month

In the United States, 1.6 million children, or one in 45 children, are homeless in a year.

*National Center on Family Homelessness,  
America's Youngest Outcasts 2010*  
[http://www.homelesschildrenamerica.org/media/NCFH\\_AmericaOutcast2010\\_web.pdf](http://www.homelesschildrenamerica.org/media/NCFH_AmericaOutcast2010_web.pdf)

their activities with other programs targeted toward homeless people, as well as other social services for which families and individuals at risk of homelessness may be eligible. Program participants receiving homelessness prevention or rapid-rehousing assistance must be required to meet regularly with a case manager. However, exceptions are made where this requirement would violate the Violence Against Women Act and the Family Violence Prevention and Services Act.

The interim rule introduces a proposed requirement for ESG recipients to use a centralized system to assess the eligibility and needs of each individual who seeks homeless assistance or homelessness prevention assistance. HUD provides several examples of centralized systems, including central locations within a geographic area where individuals must seek homeless services and hot-lines that connect callers to service providers in the area. However, HUD recognizes that imposing a requirement for a centralized system could have risks for domestic and sexual violence survivors. As one agency pointed out, a centralized intake location would be widely known to individuals in a community, including the abuser. Therefore, HUD sought comments on whether victim service providers should have the ability to opt out of the centralized system. Several agencies commented on the need for HUD to provide maximum flexibility for the housing of survivors. HUD likely will issue a final regulation or guidance that addresses in greater detail whether and how victim service providers can opt out of a centralized intake system.

(Continued on page 3)

(Continued from page 2)

### Terminating Assistance

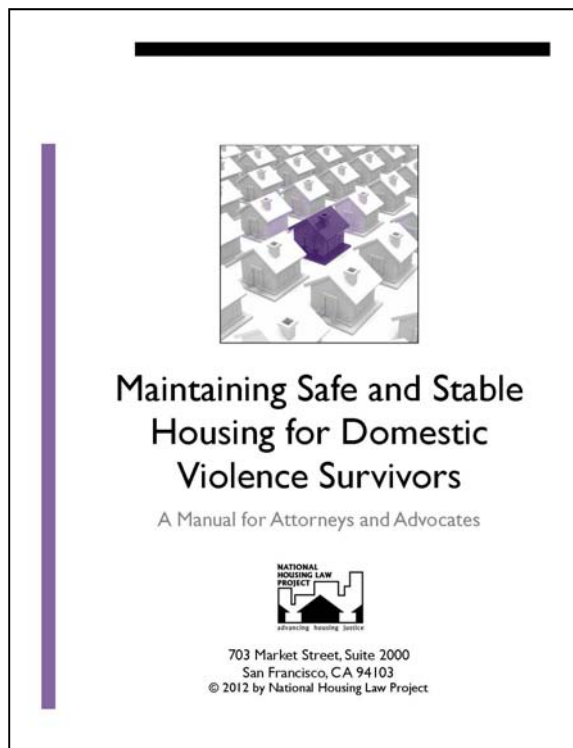
The interim rule states that if an individual receiving assistance violates program requirements, the ESG recipient may terminate the assistance using a formal process established by the recipient that protects the rights of the individuals affected. To terminate rental assistance or housing relocation and stabilization services, the minimum process must include a written notice to the individual containing a clear statement of the reasons for termination, a review of the decision, and a prompt written notice of the final decision to the individual. The review of the decision must give the individual the opportunity to present objections before a person other than the person (or a subordinate of that person) who made or approved the termination decision.

### Other Requirements

HUD states that ESG recipients must operate programs or activities receiving federal financial assistance so that they are readily accessible to people with disabilities. Additionally, recipients must conduct affirmative outreach to make known that their facilities and services are available to all on a nondiscriminatory basis. Further, recipients must take reasonable steps to ensure meaningful access to programs and activities for limited English proficient persons.

### Conclusion

The new ESG regulations provide important guidance on the changes made to HUD's homelessness assistance programs. The information regarding assistance with costs such as deposits, rent payments, and utilities is especially important to domestic and sexual violence advocates who are helping clients to relocate. To view the ESG regulations, visit <http://www.gpo.gov/fdsys/pkg/FR-2011-12-05/pdf/2011-30938.pdf>. ■



### Free Resource Available Online

The National Housing Law Project is pleased to announce the publication of "Maintaining Safe and Stable Housing for Domestic Violence Survivors: A Manual for Attorneys and Advocates." The manual focuses on the rights of survivors who are facing loss of housing, who need to improve the safety of their housing, or who need to relocate. Topics include changing the locks; breaking the lease; defending against evictions and subsidy terminations; housing discrimination; reasonable accommodations for survivors with disabilities; and the housing protections of the Violence Against Women Act.

The Manual is available for download at <http://www.nhlp.org/node/1745>

The Appendices to the Manual contain a number of sample advocacy documents. Access to the Appendices is limited to OVW grantees. Contact [mschultzman@nhlp.org](mailto:mschultzman@nhlp.org) to obtain the Appendices.

## HUD Issues Final Rules Clarifying Its Definition of Homeless

The Department of Housing and Urban Development (HUD) released final regulations to implement a new definition of “homeless.” The definition went into effect on January 4, 2012. The definition will be critical for advocates in determining whether a client is eligible for HUD’s homeless assistance programs. The definition contains four categories of homelessness, including people who are fleeing or attempting to flee domestic and sexual violence. The categories are described below.

With regard to the documentation required to prove homelessness, the final rule generally provides that, whenever possible, third-party documentation should be obtained. However, lack of documentation must not prevent an individual from being admitted to emergency shelter, receiving street outreach services, or immediately receiving services from a victim service provider.

### Categories of Homelessness

The first category of people who are defined as homeless are those who lack a fixed, regular, and adequate nighttime residence. This category includes people who are living in a place not meant for human habitation, in emergency shelter, in transitional housing, or who are exiting an institution where they temporarily resided if they were in shelter or a place not meant for human habitation before entering the institution. People will be considered homeless if they are exiting an institution where they resided for up to 90 days and were homeless immediately prior to entering that institution.

The second category is people who will lose their primary nighttime residence, which may include a motel, hotel or a doubled-up situation, within 14 days and who lack resources or support networks to remain in housing. Documentation of imminent loss of housing includes a court order resulting from an eviction action, a formal eviction notice, a notice to quit, or a notice to terminate.

The third category is families with children or

unaccompanied youth who are unstably housed and likely to continue in that state. This category includes unaccompanied youth (up to age 24) and families with children and youth who have not had a lease or housing ownership in the last 60 or more days, have had two or more moves in the last 60 days, and who are likely to continue to be unstably housed because of disability or barriers to employment.

The fourth category is people who are fleeing or attempting to flee domestic violence, dating violence, sexual assault, stalking, or other dangerous or life-threatening situations related to violence; have no other residence; and lack the resources or support networks to obtain other permanent housing. An individual must certify that she has not identified a subsequent residence and lacks the resources and support networks needed to obtain housing.

Where the safety of the individual would not be jeopardized, the abuse must be verified by a written observation by the intake worker or a written referral from a service provider, social worker, health-care provider, law enforcement agency, legal assistance provider, pastoral counselor, or other organization from whom the individual has sought assistance for the abuse. HUD states that the written referral or observation need only include the minimum amount of information needed to document that the individual is fleeing or attempting to flee abuse or violence. HUD does not expect the written referral to contain specific details about the incidents of abuse or violence.

### Conclusion

HUD’s regulations regarding the definition of “homeless” provide important clarification for determining whether clients are eligible for homeless assistance programs. Of particular interest to domestic and sexual violence advocates are the definition’s provisions regarding families with children and youth, and people who are fleeing or attempting to flee domestic and sexual violence. The regulations are available at <http://www.gpo.gov/fdsys/pkg/FR-2011-12-05/pdf/2011-30942.pdf>. ■

## HUD Proposes Rule on Homeless Management Information Systems Requirements

On December 9, 2011, the Department of Housing and Urban Development (HUD) issued a proposed rule regarding Homeless Management Information Systems (HMIS) requirements. HUD accepted public comments until February 9, 2012, and will likely issue a final regulation after it has reviewed the comments. This article focuses on the sections of the proposed rule that are of greatest interest to organizations that serve survivors of domestic and sexual violence.

### Background

HMIS systems are used to record demographic information on homeless individuals who seek HUD-funded services. Local programs that receive HUD homelessness program funds are expected to use HMIS to record information about the homeless individuals they serve. Typically, HMIS information is shared among service providers in a regional community. However, under the Violence Against Women Act, victim service providers are prohibited from entering personally identifying information into HMIS. This is intended to protect the safety and confidentiality of domestic and sexual violence survivors by ensuring that their personally identifying information is not entered into shared HMIS databases.

### The Proposed Rule

The proposed rule states that victim service providers must not directly enter data into HMIS if they are legally prohibited from participating in HMIS. Further, legal agencies may choose not to use HMIS if it is necessary to protect attorney-client privilege. Under the proposed rule, victim service providers and legal agencies that are recipients of HUD funds that require participation in HMIS must instead use a “comparable database.”

A comparable database is an alternative to HMIS that legal agencies and victim service pro-

viders may use to collect client data over time and to generate unduplicated aggregate reports based on the data. The proposed rule states that the comparable database must comply with all HMIS data information, security, and processing standards, as set forth elsewhere in the proposed rule. Further, the comparable database must meet the standards for security, data quality, and privacy of the HMIS within the local Continuum of Care.

Consistent with the McKinney-Vento Act, the proposed rule defines “victim service provider” as “a private nonprofit organization whose primary mission is to provide services to victims of domestic violence, dating violence, sexual assault, or stalking.” According to HUD, victim service providers include, but are not limited to, rape crisis centers, battered women’s shelters, and domestic violence transitional housing programs.

### Conclusion

Victim service providers and legal agencies that receive HUD homelessness funds should review the proposed rule’s provisions regarding comparable databases. To read the proposed rule, visit <http://www.gpo.gov/fdsys/pkg/FR-2011-12-09/pdf/2011-31634.pdf>. ■

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