

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

(aa) *Reports.* The recipient must collect and report data on its use of ESG funds in the Integrated Disbursement and Information System (IDIS) and other reporting systems, as specified by HUD. The recipient must also comply with the reporting requirements in 24 CFR parts 85 and 91 and the reporting requirements under the Federal Funding Accountability and Transparency Act of 2006, (31 U.S.C. 6101 note), which are set forth in Appendix A to 2 CFR part 170.

#### § 576.501 Enforcement.

##### (a) *Performance reviews.*

(1) HUD will review the performance of each recipient in carrying out its responsibilities under this part whenever determined necessary by HUD, but at least annually. In conducting performance reviews, HUD will rely primarily on information obtained from the records and reports from the recipient and, when appropriate, its subrecipients, as well as information from onsite monitoring, audit reports, and information from IDIS and HMIS. Where applicable, HUD may also consider relevant information pertaining to the recipient's performance gained from other sources, including citizen comments, complaint determinations, and litigation. Reviews to determine compliance with specific requirements of this part will be conducted as necessary, with or without prior notice to the recipient.

(2) If HUD determines preliminarily that the recipient or one of its subrecipients has not complied with an ESG program requirement, HUD will give the recipient notice of this determination and an opportunity to demonstrate, within the time prescribed by HUD and on the basis of substantial facts and data, that the recipient has complied with Emergency Solutions Grant (ESG) requirements. HUD may change the method of payment to require the recipient to obtain HUD's prior approval each time the recipient draws down Emergency Solutions Grant (ESG) funds. To obtain prior approval, the recipient may be required to manually submit its payment requests and supporting documentation to HUD in order to show that the funds to be drawn down will be expended on

eligible activities in accordance with all ESG program requirements.

(3) If the recipient fails to demonstrate to HUD's satisfaction that the activities were carried out in compliance with ESG program requirements, HUD will take one or more of the remedial actions or sanctions specified in paragraph (b) of this section.

(b) *Remedial actions and sanctions.* Remedial actions and sanctions for a failure to meet an ESG program requirement will be designed to prevent a continuation of the deficiency; mitigate, to the extent possible, its adverse effects or consequences; and prevent its recurrence.

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

(i) Preparing and following a schedule of actions for carrying out activities affected by the noncompliance, including schedules, timetables, and milestones necessary to implement the affected activities;

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

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

(iv) Reprogramming ESG funds that have not yet been expended from affected activities to other eligible activities;

(v) Suspending disbursement of ESG funds for some or all activities;

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

(vii) Making matching contributions before or as draws are made from the recipient's ESG grant.

(2) HUD may change the method of payment to a reimbursement basis.

(3) HUD may suspend payments to the extent HUD deems it necessary to preclude the further expenditure of funds for affected activities.

(4) HUD may remove the recipient from participation in reallocations of funds under subpart D of this part.

(5) HUD may deny matching credit for all or part of the cost of the affected activities and require the recipient to make further matching contributions to make up for the contribution determined to be ineligible.

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

(7) HUD may reduce or terminate the remaining grant of a recipient and

reallocate those funds to other recipients in accordance with subpart D of this part.

(8) HUD may condition a future grant.

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

(c) *Recipient sanctions.* If the recipient determines that a subrecipient is not complying with an ESG program requirement or its subgrant agreement, the recipient must take appropriate actions, as prescribed for HUD in paragraphs (a) and (b) of this section. If the recipient is a State and funds become available as a result of an action under this section, the recipient must reallocate those funds to other subrecipients as soon as practicable. If the recipient is a unit of general purpose local government of territory, it must either reallocate those funds to other subrecipients or reprogram the funds for other activities to be carried out by the recipient as soon as practicable. The recipient must amend its Consolidated Plan in accordance with its citizenship participation plan if funds become available and are reallocated or reprogrammed under this section. The reallocated or reprogrammed funds must be used by the expenditure deadline in § 576.203.

Dated: November 9, 2011.

**Mercedes Márquez,**

*Assistant Secretary for Community Planning and Development.*

[FR Doc. 2011-30938 Filed 12-2-11; 8:45 am]

BILLING CODE 4210-67-P

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### 24 CFR Parts 91, 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 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:* January 4, 2012.

**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 (Pub. L. 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 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 seq.*), (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, including the ESG program interim rule, which is published elsewhere in today's **Federal Register**.

Regarding the second concern, documentation of an individual or family's status as "homeless" has always been required. Failure to maintain appropriate documentation of a household's status as homeless is the monitoring finding that most often requires recipients of HUD funds to repay grant funds. The recordkeeping requirements established by this final rule are those necessary for appropriately documenting "homeless" status.

Specific comments most frequently expressed by commenters pertained to requests that: (1) HUD revisit the standards provided for "long-term period" and "persistent instability" and the list provided for "barriers to employment" and (2) HUD broaden the fourth category of "homeless," "homeless individual," and "homeless person" to include "other dangerous or life-threatening situations" and not limit the fourth category to individuals and families fleeing, or attempting to flee, domestic violence, dating violence, sexual assault, stalking, or other dangerous life-threatening conditions that relate to violence against the individual or family member.

In addition to the general concerns raised and specific comments submitted regarding the definitions and the

recordkeeping requirements in the proposed rule, many commenters raised questions or provided comments about topics that will be addressed in the upcoming proposed rules for the Rural Housing Stability program, the Continuum of Care program, and the Homeless Management Information System and the interim rule for the ESG program. Topics on which further clarification and guidance was requested, and which HUD intends to address in one or more of the upcoming proposed rules, or has addressed in the ESG interim rule, include the following: The definition of "chronically homeless"; the definition of "episode of homelessness"; the definition of "at risk of homelessness"; the overlap between the definition of "homeless" and the definition of "at risk of homelessness" and how this impacts eligibility for programs; conducting point-in-time counts; establishing local priorities for serving homeless persons; matching requirements for recipients of funds; specific program requirements for protecting the confidentiality of victims of domestic violence, dating violence, sexual assault, and stalking; specific program requirements to ensure that recipients and subrecipients make known to lesbian, gay, bisexual, and transgendered persons the facilities, assistance, and services available within the community; confidentiality and privacy standards of HMIS; requirements for domestic violence providers with regard to HMIS; eligibility of costs necessary to participate in HMIS; further guidance on the Involuntary Separation provision in section 404 of the McKinney-Vento Act; further guidance on the provision providing communities the flexibility to serve persons identified as homeless under other federal laws established in section 422(j) of the McKinney-Vento Act; determining eligibility for rapid rehousing and homelessness prevention assistance; determining eligibility of subpopulations, specifically unaccompanied youth, in HUD's homeless assistance and homelessness prevention programs; for projects that are limited to persons with disabilities, guidance on which family member must have the disability to qualify a family for assistance; an appeal process for a person presenting as homeless who was denied assistance; information about the coordination and collaboration between recipients of ESG program funds and recipients of Continuum of Care program funds; eligibility of costs related to documenting homelessness; eligibility of costs related to documenting disability; Collaborative

Applicants; Unified Funding Agencies; discharge planning requirements; high-performing communities and the bonus available to communities selected as high-performing; guidance on the "Use Restrictions" as they apply to "Conversion" as established in section 423(c)(3) of the McKinney-Vento Act; clarification of "renewal funding for unsuccessful applicants" established in section 422(e) of the McKinney-Vento Act; clarification on the standards HUD will use to determine when transitional housing assistance may be extended beyond 24 months; and clarification of the other federal laws that apply to the programs in the Act. For these issues, HUD welcomes commenters to review forthcoming HEARTH Act proposed rules when published and the ESG interim rule published elsewhere in today's **Federal Register** and to submit comments.

Many commenters requested future guidance and technical assistance related to this final rule defining "homeless," "homeless person," "homeless individual," and "homeless individual with a disability," on the following topics: a simple matrix clarifying the definition; a standard set of questions that can be used to make determinations about the credibility of oral statements; a standard set of questions for determining "imminent loss of housing;" a simple, safe process for determining survivor eligibility, with great attention paid to the confidentiality rights and needs of victims of domestic violence, dating violence, sexual assault, and stalking; eligibility of specific subpopulations, including prisoners and youth exiting the foster care system, within the specific categories of the definition of "homeless," "homeless individual," and "homeless person"; the other federal definitions of homelessness and how to integrate these definitions into intake procedures; assisting agencies and projects adjust their service delivery models to serving a broader group of homeless persons to ensure success; targeting funds from HUD's homeless assistance programs and other common funding streams; and the consequences of signing a certification that is false for both the applicant of funds and the program participant. HUD is coordinating a technical assistance strategy to assist recipients of funds who are required to use this definition adapt their projects, as necessary, and meet the requirements set forth in this proposed rule.

Many commenters noted that current funding levels for the homeless assistance programs at HUD will not be sufficient to serve the increase in

individuals and families defined as homeless under this final rule and encouraged HUD to work with Congress to increase funding to the homeless programs. HUD and its federal partners, including the U.S. Interagency Council on Homelessness, the U.S. Department of Education, the U.S. Department of Health and Human Services, the U.S. Department of Veterans Affairs, and the U.S. Department of Labor, are committed to preventing and ending homelessness as evidenced in *Opening Doors: Federal Strategic Plan to Prevent and End Homelessness*. To meet the goals established in the *Federal Strategic Plan*, HUD and its federal partners will provide the resources from both targeted and nontargeted agency programs. HUD reminds its stakeholders that the availability of resources, both for targeted and nontargeted programs, are subject to appropriations by Congress.

#### *B. The Definition of "Homeless" in 24 CFR Parts 91, 582, and 583*

##### In General: Overarching Comments

*Comment:* The definition of "homeless" should be broadened to include others that continue to be left out of the definition. Several commenters noted that HUD's definition of homeless continues to leave out vulnerable persons who should be included in order for them to access needed housing and services. Several commenters requested that HUD's definition match the definition of homeless used by the U.S. Department of Education. Another commenter stated that someone who is living doubled up with others due to economic or other safety conditions should be included in the definition of homeless. One commenter requested that the definition be broadened to include those who are currently homeless, in danger of becoming homeless, or in housing where the rental or mortgage rate exceeds 30 percent of household qualifying income, while another commenter requested that the definition also include those persons who have recently experienced homelessness. Another commenter stated that a person should retain his or her homeless status if the person exited the shelter to live with family and friends.

One commenter stated that a fifth category of "homeless" should consist of persons with disabilities who: (1) Have resided with a relative, but by virtue of age or other circumstances of that relative is unable to continue to provide shelter to the individual with a disability; (2) reside in an institution or facility not meant for permanent human

habitation such as a hospital, rehabilitation facility, nursing or board and care home, and such individual has no home to return to where that person could live independently and safely; (3) are in situations such as (1) and (2) who no longer choose to live in that circumstance and who wish to live independently.

*HUD Response:* HUD understands that there are vulnerable populations that continue to be excluded from the definition of homeless used by HUD to administer its programs; however, HUD is following the statutory guidelines established in section 103 of the McKinney-Vento Act as HUD further clarifies the definition. HUD reminds its stakeholders that the McKinney-Vento Act also includes the definition of "at risk of homelessness" and that funds through the ESG program, Rural Housing Stability program, and Continuum of Care program will be available to serve persons "at risk of homelessness" as well. Commenters should review the upcoming proposed and interim program rules when they are published, and HUD welcomes comments at that time.

*Comment:* Restore the categories established in the statute. Some commenters viewed the paragraphs of section 103 of the McKinney-Vento Act as seven separate categories of homelessness and recommended that HUD use them instead of the four categories included in the proposed rule. These commenters stated that if Congress had intended for the statutory categories to be condensed from seven to four categories, then Congress would have drafted the law differently.

One commenter stated that the proposed rule's simplification of the categories does not provide enough information and is confusing. This commenter suggested that the statutory categories be restored or be listed as examples.

Several commenters stated that HUD is effectively eliminating eligibility for persons who lack a fixed, regular and adequate nighttime residence. The commenters stated that the statute was unambiguous and that HUD has narrowed the definition.

Several commenters suggested that by maintaining the seven distinct categories from the McKinney-Vento Act, HUD's definition would match the Department of Education's definition and better align federal homelessness policy and complementary services.

*HUD Response:* The final rule clarifies that an individual or family meets the first paragraph of section 103 of the McKinney-Vento Act by meeting the second, third, or fourth paragraph. In

other words, a person “lacks a fixed, regular and adequate nighttime residence,” if that person “lives in a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings,” “lives in a supervised publicly or privately operated shelter designated to provide temporary living arrangements,” or “is exiting an institution in which he or she temporarily resided after living in a shelter or a place not meant for human habitation.”

This interpretation is consistent with HUD’s longstanding interpretation of the statutory language “lacks a fixed, regular and adequate nighttime residence,” which the HEARTH Act, in amending the McKinney-Vento Act, did not change. This longstanding interpretation has helped target HUD’s limited homeless resources to those most in need of them, while directing other people, like those who are poorly housed, to other HUD housing programs. The suggested alternatives to HUD’s interpretation would greatly reduce this targeting of resources.

The suggested alternatives also appear inconsistent with the statutory language. If the first paragraph were interpreted to encompass people who are poorly housed, it would undermine the McKinney-Vento Act’s imposition of additional criteria for these people under the sixth paragraph of the “homeless” definition and the “at risk of homelessness” definition in section 401(1) of the McKinney-Vento Act. For example, if a person qualifies as homeless merely because she lives in housing, there would be no reason to consider the additional criteria those provisions would otherwise require the person to meet.

Although the final rule does not broaden the definition as requested by the commenters, HUD is committed to working as much as possible within its statutory parameters to facilitate coordination across all federal programs that can help prevent and end homelessness, including those administered by the Department of Education.

*Comment:* Expand the single term “domestic violence” to include “domestic violence, dating violence, sexual assault, stalking, or other dangerous or life-threatening conditions.” Many commenters disagreed with the proposed rule’s inclusion of the term “domestic violence” without any accompanying mention of “domestic violence, dating violence, sexual assault, stalking, or other dangerous or life-threatening conditions.” Commenters stated that

individuals and families fleeing their homes for reasons of lack of safety in their housing situation, other than domestic violence, should be included as it is specified in the statute. Commenters explained that the term domestic violence does not adequately or accurately describe each unique term. By using separate terms, commenters stated that victims of each crime are afforded the same protections and benefits. The commenters recommended that each term be identified specifically and consistently throughout the proposed rule and stated that each term is defined under VAWA.

*HUD Response:* HUD agrees that the references to “domestic violence, dating violence, sexual assault, stalking, or other dangerous or life-threatening conditions” should appear together in the final rule, wherever possible. Therefore, the final rule includes each of these unique terms in both the last category of the homeless definition and its corresponding recordkeeping requirements. However, because the term “domestic violence” is the only one of these terms to appear in section 103(a)(6)(C) of the Act, it remains the only one of these terms to appear in the corresponding provision in the final rule.

*Rule clarification.* HUD has revised paragraph (b)(5) of the recordkeeping requirements of the final rule to include individuals and families who are fleeing dating violence, sexual assault, stalking, or other dangerous or life-threatening conditions that relate to violence, in addition to individuals and families who are fleeing domestic violence.

*Comment:* A more detailed standard for “lacks the resources” is necessary. Section 577.3(b)(2)(ii) and (b)(4)(iii) of the proposed rule required that the individual or family lack the resources or support networks needed to obtain other permanent housing. One commenter asked for a clear definition of the meaning of lack of resources, as well as guidance on how to demonstrate a lack of resources, which would include examples.

*HUD Response:* Historically, HUD has not specifically defined in regulations or notices “lacks the resources or support networks” for the purposes of documenting eligibility for HUD’s homeless and homelessness prevention programs. HUD’s view is that the resources and support networks required to demonstrate this criteria can vary drastically from person to person and community to community and HUD could never capture all of the various possibilities. The final rule, therefore, does not define “resources or support networks,” although HUD has included

examples of support networks about which recipients must inquire when determining whether an individual or family lacks the resources or support networks to obtain other permanent housing. These examples, which include friends, family, and faith-based or other social networks, are not meant to be an all-inclusive list, but rather they are designed to illustrate the kinds of support networks that people must first turn to, if they are able to, before drawing on the scarce resources targeted to homeless people. A housing situation that is unsafe due to violence is not considered a resource or support network, and providers must not disqualify an individual or family under the applicable category based on these situations.

*Rule clarification.* To clarify that family, friends, and faith-based or other social networks are examples of “resources or support networks” about which recipients must inquire, HUD is revising paragraphs (2)(iii) and (4)(iii) of the “homeless” definition.

*Comment:* Strike the word “other” when referring to “other permanent housing.” Where the proposed rule required “The individual or family lacks the resources or support networks needed to obtain other permanent housing,” some commenters recommended that HUD strike the word “other.” These commenters stated that the term “other” implies that housing in which one lives without paying rent or shares with others, including rooms in hotels and motels not paid for by federal, state, or local government programs for low-income individuals or by charitable organizations, is considered a permanent living arrangement as opposed to a primary nighttime residence.

*HUD Response:* HUD recognizes that the statutory language may infer permanency in a housing situation that may not exist in reality; however, “other” is statutory language. Therefore, in this final rule, HUD has not changed the language from the proposed rule.

#### Category 1: An Individual or Family Who Lacks a Fixed, Regular, and Adequate Nighttime Residence

*Comment:* Address severely substandard housing by including “places designed for or ordinarily used as a regular sleeping accommodation that are not fit/suitable for human beings.” Several commenters noted that the definition in the proposed rule does not address the issue of severely substandard housing. These commenters stated that by only including a “place not designed for or ordinarily used as a regular sleeping

accommodation,” persons living in houses that are dilapidated, or without water or electricity, will be excluded from the homeless definition because the buildings were originally designed for sleeping accommodation.

*HUD Response:* HUD recognizes that there are vulnerable populations that live in overcrowded housing and are excluded from the definition of homeless; however, the language “place not designed for or ordinarily used as a regular sleeping accommodation” is statutory.

*Comment:* A person staying in a hotel or motel room is homeless. Commenters recommended that a person be considered homeless regardless of who was paying the bill for the hotel or motel room—a federal, state, or local government; charitable institution; or the individual. The commenters stated that it should be recognized that these types of nighttime residences, as well as housing that is shared and in which rent is not paid, are, by their nature, temporary living arrangements.

*HUD Response:* HUD understands that some housing situations are more precarious than others; however, the language in the proposed and final rules concerning people living in hotels and motels is directly derived from the statutory language in section 103(a)(3) and (5)(A) of the McKinney-Vento Act. Therefore, HUD has not changed this language in response to the comments.

*Comment:* A clearer standard is needed for the term “shelter.” With respect to the term “shelter,” several commenters requested that HUD explicitly include both transitional housing and emergency shelter in the definition of “shelter.” One commenter stated that this inclusion is important for certain geographic areas where it is difficult to establish emergency shelters, but transitional housing has been more acceptable.

*HUD Response:* The proposed rule did not define the term “shelter” from the definition in the McKinney-Vento Act. However, after reviewing the comments, HUD agrees that more clarification is needed regarding the use of the term “shelter” and has further clarified that “shelter” means “emergency shelter.” HUD disagrees that transitional housing should be included in the definition of “shelter” for persons who are exiting institutions who have resided in such institutions for less than 90 days. Historically, projects funded through the Supportive Housing Program and Shelter Plus Care program have been allowed to maintain a unit for an individual who is temporarily residing in an institution, and HUD intends to continue this policy

in the proposed rule for the Continuum of Care program; therefore, these individuals would not be “homeless” because they would have a unit to which they could return. HUD welcomes commenters to review the Continuum of Care proposed rule when published and to submit any comments on this issue in connection with the Continuum of Care proposed rule.

*Rule clarification.* The final rule clarifies that “shelter” in paragraph (1)(iii) of the definition of “homeless” means “emergency shelter.”

*Comment:* More clarification is needed for the term “institution.” With respect to the term “institution,” HUD received many comments that a clear standard for this term is needed. Commenters offered suggested standards, the most common of which were: penal institutions (jails and prisons), hospitals, nursing homes, Institutes for Mental Disease (IMDs), juvenile detention centers, substance abuse facilities, publicly operated mental health facilities, state mental hospitals, youth crisis beds, and Intensive Residential Treatment Service (IRTS) facilities. One commenter said that, in the regulatory text, “institution” should explicitly include all possibilities, including health, mental health, and chemical dependency institutions.

*HUD Response:* HUD acknowledges that clarification of the type of facility that qualifies as an institution would aid in better understanding of the meaning of “institution.” However, rather than establishing a fixed set of institutions in the final rule, HUD intends to issue guidance on the meaning of “institution.”

*Comment:* The standard for “temporarily resided” should be revised. With respect to the term “temporarily resided,” many commenters stated that the standard of 90 days or less should be lengthened. A variety of alternative time frames were suggested, the most common of which was 180 days, which is the current standard for HUD’s Homelessness Prevention and Rapid Re-Housing Program (HPRP). Other commenters suggested that HUD define the term as a period of up to one year.

Other commenters recommended that HUD not limit “temporarily resided” by an arbitrary count of calendar days and instead allow for a length of stay in the institution that varies based on the reason the individual entered the institution. One commenter suggested that HUD not establish a time frame or any additional qualifiers for “temporarily resided” and instead should allow anyone who was homeless

when entering an institution to be considered homeless upon exit.

One commenter suggested that “temporarily resided” should mean that an individual exiting an institution may be considered homeless if that individual had at least one previous episode of homelessness lasting at least 30 days in the 5 years prior to entering the institution, has no subsequent residence identified, and lacks the resources or support networks needed to obtain other permanent housing.

*HUD Response:* HUD disagrees with the conclusion that “temporarily resided” should be for a period of longer than 90 days. HUD has determined that 90 days strikes an appropriate balance between allowing homeless persons to maintain their homeless status while residing in an institution without undermining the considerable progress made in strengthening the discharge planning protocols and practices of institutions or state systems of care. Additionally the 90-day standard set for “temporarily resided” in paragraph (1)(iii) of the definition of “homeless” is consistent with policy established in the Fiscal Year (FY) 2008 Continuum of Care Homeless Assistance Grants Notice of Funding Availability (NOFA) and matches the “Rule of Construction” regarding the definition of “chronically homeless” in section 401(2)(B) of the McKinney-Vento Act, which states that “a person who currently lives or resides in an institutional care facility \* \* \* and has resided there for fewer than 90 days shall be considered chronically homeless if such person met all of the requirements.”

Category 2: An Individual or Family Who Will Imminently Lose Their Housing

*Comment:* Restore the statutory language covering people who will imminently lose their housing. Section 103(a)(5) of the McKinney-Vento Act adds a new category under which families and individuals may qualify as homeless: “individuals or families who will imminently lose their housing, including housing they own, rent, or live in without paying rent, are sharing with others, and rooms in hotels or motels not paid for by Federal, State, or local government programs.” The corresponding language in the proposed rule is “an individual or family who will imminently lose their primary nighttime residence.” Commenters stated that Congress used explicit language to ensure that there would be no confusion by HUD or other parties that a subset of doubled-up individuals and families would be allowed access to HUD’s homeless assistance programs.

Many of these commenters stated that the proposed rule's rewording of the statute's language creates a risk that this subset of families will not be considered homeless as Congress intended.

Commenters requested that HUD restore the language, "(including housing they own, rent, or live in without paying rent, are sharing with others, and rooms in hotels or motels not paid for by Federal, State, or local government programs \* \* \*)" in the final rule. One commenter stated that HUD should be faithful to the statute and give guidance to individuals in eligibility determination roles.

*HUD Response:* HUD disagrees that any population was excluded by replacing "housing" with "primary nighttime residence" or that clarity was lost by eliminating the examples from paragraph (a)(2) of the statutory definition of "homeless." It is HUD's position that the recordkeeping requirements provided in § 577.3(3)(i) of the proposed rule establish clear guidance for persons responsible for verifying and documenting homeless status for category two of the "homeless" definition. Accordingly, HUD did not make changes in the final rule in response to these comments.

*Comment:* Increase the time frame for the imminent loss of housing beyond 14 days. While many commenters supported the 14-day limit in § 577.2(2)(i) of the proposed rule, which pertains to the period in which an individual or family has housing, but is about to lose such housing under § 577.2(2)(i), one commenter disagreed. This commenter stated that more must be done to ensure that resources remain available to those who need them the most. The commenter stated that the 14-day limit presents a difficult time constraint on individuals and social workers trying to secure housing and resources. The commenter stated that the limit would also drastically reduce the ability to create a smooth housing transition without forcing individuals and families onto the streets. This commenter stated that many people who "couch-surf" would not be eligible, because these people are not considered "street homeless." This commenter stated that by viewing a temporary shared living space with a friend or family as an obstacle to receiving additional housing assistance, the reality of homelessness looks more like a revolving door than a slow, steady climb to safe and suitable, permanent housing.

*HUD Response:* HUD acknowledges that 14 days may not be sufficient time in all situations to ensure a smooth housing transaction to individuals and

families facing imminent loss of their housing; however, the 14-day limit is statutory. However, HUD notes that 14 days is an increase from the 7-day time frame currently allowed in HUD's homeless programs. Beginning with the publication of the 2005 NOFA, and for every year since, HUD has allowed persons who are about to lose their housing within 7 days to be considered homeless if no subsequent residence has been identified and they lack the resources and support networks needed to obtain housing. Accordingly, HUD did not make changes in the final rule in response to these comments.

*Comment:* Individuals and families who will imminently lose their housing should not be defined as "homeless" if the eviction was due to a lease violation. One commenter stated that being evicted should not qualify as homeless if the reason for eviction is based on a tenant's actions that violate the lease. The commenter pointed out that in public housing, it is conceivable that a family is evicted for failure to pay rent, drugs, etc. and that in such cases, the family should not qualify as homeless under this definition.

*HUD Response:* HUD recognizes that there may be situations where individuals and families could have prevented the loss of their housing; however, HUD disagrees that these persons should not be defined as homeless when all other criteria for the definition of "homeless" are met. HUD has not changed this language from the proposed rule based on these comments.

Category 3: Unaccompanied Youth and Families With Children and Youth Defined as Homeless Under Other Federal Statutes

*Comment:* HUD should include individuals in the category of persons defined as homeless under other federal statutes. Many commenters stated that the category for unaccompanied youth and families with children and youth defined as "homeless" under other federal statutes should also include adult individuals. One commenter stated that HUD unnecessarily distinguishes families with children from those without children. Another commenter stated that many individuals who experience homelessness depend on "couch surfing," especially in rural areas in the winter months when it is life-threatening to sleep outside, and would meet the criteria of this category.

*HUD Response:* HUD recognizes that many adult individuals experience a long period of time without living independently and moving frequently; however, the limitation to unaccompanied youth and families with

children and youth is statutory. HUD has not changed this language from the proposed rule.

*Comment:* It would be helpful to identify the specific definitions of "homeless" included in "other federal statutes." Commenters requested further clarification on using the definitions of homeless children and youth from other federal statutes. Commenters stated that the proposed rule is not clear concerning which other federal programs have definitions of "homeless." One commenter asked if the proposed rule addresses only definitions existing as of the date of this proposed rule or if future definitions by other federal programs will also be considered.

*HUD Response:* HUD agrees that further clarification is needed of the other federal statutes that have definitions of "homeless" that relate to children and youth. HUD has identified the following federal statutes with definitions of homelessness that apply to children and youth: 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 VAWA (42 U.S.C. 14043e *et seq.*), section 330 of the Public Health Service Act (42 U.S.C. 254b), the Food and Nutrition Act of 2008 (7 U.S.C. 2012(m)), the Child Nutrition Act of 1996 (42 U.S.C. 1786(b)(15)), and subtitle B of title VII of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11431 *et seq.*). This list represents the current universe of statutes with definitions under which an unaccompanied youth or 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. This list also includes section 725(2) of the McKinney-Vento Act, which contains the definition of "homeless children and youths" used by the Department of Education. While this section is not actually an "other federal statute," its definition of "homeless children and youths" is fully incorporated by reference in the definition of "homeless children" under section 330 of the Public Health Service Act (42 U.S.C. 254b). See 42 U.S.C. 254b(h)(5)(A). Therefore, section 725(2) of the McKinney-Vento Act would be applicable, regardless of whether it is specifically mentioned. HUD has specifically included this statutory section in order to make its applicability clear.

*Rule clarification:* To clarify the other federal statutes with definitions of "homeless" that apply to youth and

families with children and youth, HUD has revised paragraph (3) of the definition of "homeless" by listing the other federal statutes in the final rule.

*Comment:* Clarification of the terms "unaccompanied youth," "children" and "youth" is needed. Many commenters suggested that HUD define an age range for youth. The suggested age in these requests varied, but the most common age suggested was 24 and under, followed by the suggestion that youth be defined as persons under the age of 21. Commenters noted that HUD traditionally has defined "child" as up to 18 and "adult" as 18 and older and wanted to ensure that the uniquely vulnerable population of persons aged 18 through 24 were explicitly included in this category. One commenter suggested that HUD rename the category as "unaccompanied minors" and include children up to age 18.

With respect to "child," one commenter recommended that HUD define the term "child," as "an individual, the greater of not more than 18 years of age or the age of majority established by the law of the State in which the child or his or her family is seeking assistance."

With respect to "unaccompanied youth," many commenters requested that HUD define unaccompanied youth. These commenters suggested that HUD define "unaccompanied youth" to mean "youth not in physical custody of a parent or guardian."

*HUD Response:* HUD agrees that more clarification is needed regarding the use of the term "youth." HUD determined that defining "youth" as up to age 25 for the purposes of this category will help meet the needs of this uniquely vulnerable population, especially those youth exiting the foster care system. Additionally, this age standard aligns with that provided in the Runaway and Homeless Youth Act (42 U.S.C. 5732a(3)). The final rule clarifies that an unaccompanied youth must be under 25 years of age to qualify under the category for unaccompanied youth and families with children and youth defined as homeless under other federal statutes.

HUD disagrees that additional clarification is needed regarding the terms "unaccompanied youth" and "child."

*Rule clarification:* To clarify that HUD means a youth under 25 years of age when referring to unaccompanied youth, paragraph (3) of the "homeless" definition is revised.

*Comment:* The standard for "living independently" should be revised. As reflected in the proposed rule, HUD interpreted "without living

independently in permanent housing" under section 103(a)(6)(A) of the McKinney-Vento Act as not having "a lease, ownership interest, or occupancy agreement in permanent housing." Some commenters requested that HUD change its interpretation of the statutory language to include people who "have not resided in a place where they had a lease, ownership interest, or occupancy agreement," in order to account for a person whose name appears on a lease for a residence but who cannot live in that residence because of domestic violence, uninhabitable housing, or other reasons. Commenters stated that under HUD's proposed language, families whose names appear on any lease, ownership interest, or occupancy agreement cannot qualify for assistance, whether or not they have been able to reside in that unit. Commenters submitted that changing the language to specify that an individual or family must have resided in the property where they are named on the lease will increase the effectiveness of this section and ensure that families in these situations do not have to remove their names from a lease before receiving assistance.

One commenter stated that the lease language unnecessarily excludes families with children who have a rental agreement with their landlord, but are doubling up out of economic need. This commenter explained that despite the fact that such families have leases or rental agreements, they often are not living "independently" and, out of pressing economic need, these families often strike long-term voluntary arrangements to inhabit housing with other individuals or families as a double or triple occupancy. This commenter recommended that HUD allow these families, even if their names appear on a lease, to be considered as not living independently.

Another commenter stated that language requiring that a family not have a lease, ownership interest, or occupancy agreement should be removed altogether from the rule because it is too difficult to prove and to document that someone has not had a lease and it adds little value.

*HUD Response:* HUD disagrees that the standard for "living independently" in the proposed rule, "have not had a lease, ownership interest, or occupancy agreement in permanent housing," needs to be revised to reflect individuals who cannot stay in their housing due to domestic violence or uninhabitable housing or to accommodate those who are living doubled up due to economic reasons. Accordingly, HUD has not

changed the language in this final rule from the proposed rule.

HUD reiterates that this category is for unaccompanied youth, and families with children and youth, who do not qualify as homeless under another part of the definition. Those families who cannot stay in their housing due to domestic violence would qualify as homeless under the fourth category of the definition.

*Comment:* The standards for "long-term period" and "persistent instability" should be redefined. Commenters urged HUD to amend the time period used in the proposed rule to define "long-term period," as a period which is at least 91 days. The suggested time frames varied greatly—the most commonly suggested time period was 30 days. Another common recommendation was 180 days. One commenter suggested that HUD use 14 days to define "long-term period" because this is the time frame that HUD's rental housing programs use for visitation rules and that HUD should be consistent across programs.

One commenter stated that there is nothing in the statutory language that required the long-term period to be continuous and suggested that the standard could be met by having several doubled up experiences over a certain longer time frame. This commenter suggested a definition similar to the chronically homeless definition, which allows four episodes over a time frame of 3 years.

Many commenters simply requested that HUD elaborate on why 91 days or less was the chosen standard. These commenters stated that it would be helpful to understand HUD's decision-making process on the 91-day standard and whether there was research to support this time frame. Commenters noted that 91 days is not a factor in the Department of Education's statutory definition of homelessness under the Education for Homeless Children and Youth programs. Commenters mentioned that having two different standards would create confusion.

With respect to "persistent instability" as measured by "frequent moves," the proposed rule set a standard of three moves or more during a 90-day period. Many commenters had concerns about this interpretation. These commenters stated that this standard is too restrictive and suggested a variety of alternatives. The standard most frequently suggested by the commenters was two moves; however, the period of time over which those two moves should occur varied greatly among the commenters. Common suggestions were 30 days, 90 days, and

180 days. Many commenters stated that one move should be sufficient, while others stated that three moves is appropriate so long as the length of time was extended to 180 days or a year. Most commenters agreed that the initial move out of the original, permanent placement should count as the first move.

Some commenters suggested a standard not relating to a set period of time and number of moves. These commenters stated that there should be an alternate option that would combine the housing history of the family or unaccompanied youth with the current housing instability, which might be more applicable for some families and youth. One of these commenters stated that the housing history and current situation could be considered in conjunction with referrals from social workers and school counselors.

Other commenters suggested a standard that was a combination of situational and number of moves over a designated length of time. One commenter recommended that, for unaccompanied youth, the standard for persistent instability should be defined as having no viable housing resources and having been in the foster care system some time during the 90-day period immediately before applying for homeless assistance or experiencing at least two moves in 90 days. Another commenter recommended that for unaccompanied youth between the ages of 18 and 22, the following standard should apply: two moves in 90 days or having been in the care and responsibility of the child welfare or juvenile justice systems at some point in the 90-day period immediately before applying for homeless assistance.

Commenters stated that nothing in the McKinney-Vento Act requires a long period such as chronic homelessness when defining "persistent instability" over a "long-term period." Many commenters stated that this standard would be detrimental to unaccompanied youth and children, especially when related to their performance in school. Some commenters pointed to studies that have proven that homelessness causes multiple problems for children when they lack stability and must experience multiple moves. Other commenters stated that there is little actual evidence to either support or contradict HUD's decision to provide this standard. These commenters recommended that HUD study the phenomenon of persistent instability, and modify this regulation in the future, if the need to do so is indicated by evidence.

*HUD Response:* HUD agrees that 90 days without a permanent housing placement, coupled with three moves over that period, is too long a period and too many moves for unaccompanied youth and families with children and youth before homeless status can be documented and resources can be provided. In an effort to respect the statutory language of "long term" and "frequent moves" in section 103(6)(A) and (B) of the McKinney-Vento Act while still reaching this population earlier in their instability, in the final rule, HUD has redefined the long-term period as 60 days and redefined frequent moves as two moves or more during those 60 days. Moreover, HUD would consider the move out of the initial permanent housing placement as the first move.

*Rule clarification.* To clarify that HUD means 60 days when referring to "long-term period," and that HUD means two moves or more over that period when referring to "persistent instability," HUD is revising paragraph (3)(i) of the definition of "homeless." To clarify that HUD means persistent instability as measured by two moves or more during that 60-day period, HUD is revising paragraph (3)(ii) of the definition of "homeless."

*Comment:* Standards should be established for "childhood abuse." With respect to "childhood abuse," many commenters requested a specific definition of this term. These commenters recommended that "childhood abuse" be defined to include physical abuse, sexual abuse, chronic neglect, commercial sexual exploitation and human trafficking, mental abuse, and emotional or psychological abuse. In addition, commenters recommended that "childhood abuse" be defined without increasing the burden of proof for agencies.

*HUD Response:* HUD disagrees that the term "childhood abuse" requires further specificity. HUD would consider "childhood abuse" to include physical abuse, sexual abuse, chronic neglect, commercial sexual exploitation and human trafficking, mental abuse, and emotional or psychological abuse, without further definition. Accordingly, HUD has not changed the language from the proposed rule.

*Comment:* Fewer "barriers to employment" should be required. Some commenters did not agree with HUD's interpretation of "multiple barriers to employment" to mean two or more barriers to employment. Commenters recommended that only one barrier to employment be required. Other commenters stated that requiring youths

to face two or more barriers to their employment unfairly restricts their ability to receive aid, because even well-qualified individuals, including recent college graduates, have been unable to attain employment in this economy. Commenters stated that the inherent barriers facing homeless youth are as great, and presumably greater, than those standing in the way of the average person trying to find a job.

*HUD Response:* Section 103(6)(C) of the McKinney-Vento Act specifically refers to "multiple barriers to employment" (emphasis added). HUD disagrees with comments that one barrier meets the "multiple" standard established by the McKinney-Vento Act. HUD has not revised the rule in response to these comments.

*Comment:* The list of "barriers to employment" should be expanded and be more representative of the actual experiences of youth. Commenters expressed concerns with the list of "barriers to employment." Some commenters urged HUD to make the list of barriers illustrative and not exclusionary. To achieve this, commenters recommended that HUD include the phrase "including but not limited to." Other commenters recommended that HUD eliminate the list altogether.

Other commenters strongly encouraged HUD to include additional barriers to employment to the list. The most common requests for inclusion were lack of child care; lack of transportation; lack of resources for necessary job-specific items (uniforms); the responsibility for care of another family member; and a history of victimization including domestic violence, stalking, dating violence, sexual assault, controlling behaviors, substance abuse, mental health issues such as post traumatic stress disorder (PTSD) and complex trauma, and other dangerous nonlife-threatening conditions. Commenters recommend that HUD include the barriers identified by the Department of Labor and Workforce Investment Act. Other commenters stated that there are barriers to employment that affect the general population, such as a high unemployment rate, plant closures, or an over-burdened Work Investment Act agency that should be included.

Within the list of barriers to employment in the proposed rule was "a history of unstable employment." Several commenters stated that this term should be further clarified. Some commenters suggested that the phrase should be revised to state "a lack of employment history or a history of unstable employment" and should

reference the barrier created by a weak, unstable job market. Another commenter recommended that the number of jobs held within a specific time period and/or the length of periods of employment and unemployment experienced should define “a history of unstable employment.”

Other commenters stated that “unstable employment,” unlike the other listed barriers, is an outcome and not necessarily a precipitating factor. These commenters suggested this term be further revised to read “unstable employment refers to employment that is not permanent or procured on a full-time basis.” Commenters also stated that unstable employment could be inferred as the result of a combination of the barriers to employment currently listed; therefore, these commenters recommended that lack of work experience, including vocational training, be identified in this section as it is both a barrier to employment and a factor which contributes to unstable employment.

Many commenters commented that the list of barriers to employment did not accurately reflect the experiences of youth. Specifically, commenters recommended that HUD change the inclusion of a “history of incarceration” in the proposed rule to a “history of incarceration or detention.” Other commenters stated that a “history of incarceration” should be more inclusive, such as including a history of institutionalization, and should also include detention or involvement with juvenile court, since these are much more likely in the case of youth.

Many commenters suggested that unaccompanied youth under the age of 18 should automatically be considered as having met the barriers to employment, because being under the age of majority and being unaccompanied by a parent or guardian each represent barriers to employment.

*HUD Response:* The list in the regulatory text of “barriers to employment” provides examples of possible barriers to employment that unaccompanied youth and families with children and youth might face and is not indicative of all the possible barriers. HUD has not added additional items to the list of barriers in the regulatory text, and HUD has not further defined “a history of unstable employment.” HUD would consider the suggestions provided in the comments (e.g., lack of child care, lack of transportation, lack of work experience) as barriers to employment without their specific inclusion in the regulatory text.

HUD agrees with comments that the list of barriers does not reflect the

typical experiences of youth and has added “detention for criminal activity” to “history of incarceration,” as suggested by many commenters.

HUD also agrees that it is probable that unaccompanied youth under the age of 18 will likely meet the criteria of having multiple barriers to employment; however, intake workers cannot automatically presume eligibility for this criterion. The intake worker must document the barriers used to establish eligibility in the case file.

*Rule clarification.* To more accurately reflect the experiences of youth, HUD has revised paragraph (3)(iii) of the definition of “homeless” to add “detention for criminal activity.”

*Comment:* This category should be revised to broaden the number of children, youth, and families defined as homeless that could meet the standards. Commenters appeared, through the comments submitted, to understand that lack of precision in the statute compelled HUD to elaborate on the statutory provisions; however, the commenters sought to ensure that HUD did so in a way that is inclusive of as many people considered homeless under other federal statutes as possible. One commenter stated the view that HUD’s narrow interpretation of the key terms is unnecessary to meet the statutory requirements and is unreasonable. A few commenters stated that unaccompanied youth and families with children and youth should not have to meet all three criteria to qualify as “homeless” under this category. One commenter recommended that families be considered homeless if they: (1) Have not lived independently in the last 90 days (including doubling up) and are likely to continue to be unstably housed because of disability or barriers to employment; or (2) have moved frequently in the last 90 days (with three or more moves dispositive, but fewer moves still allowable) and are likely to continue to be unstably housed because of disability or barriers to employment; or (3) have experienced a combination of not living independently and moving frequently. The commenter stated that this language allowed the consideration of a number of conditions, but did not create a rigid formula that excludes needy families with children. Another commenter suggested that as long as the youth and families deemed homeless under this category have chronic disabilities or other similarly disabling conditions, there is no purpose served by extending the time period to be living in doubled-up conditions or requiring a certain number of moves, as it is the presence of these conditions

that make it difficult for these youth and families to find stable housing.

*HUD Response:* HUD understands that there are vulnerable populations that continue to be excluded from the definition of homeless. The changes made to the standards for “youth,” “long-term period,” and “persistent instability” discussed above will help make the definition more inclusive. Nevertheless, the requirement that unaccompanied youth, and families with children and youth defined as homeless under other federal statutes meet the three criteria in paragraphs (3)(i), (ii), and (iii) of the definition of “homeless” is statutory. HUD has not made any change in the final rule in response to these comments.

Category 4: Individual or Family Who Is Fleeing, or Attempting To Flee, Domestic Violence, Dating Violence, Sexual Assault, Stalking, or Other Dangerous or Life-Threatening Conditions

*Comment:* Restore the statutory language regarding people fleeing domestic violence and other dangerous or life-threatening situations. Section 103(b) of the McKinney-Vento Act states that any individual or family “who is fleeing, or is attempting to flee, domestic violence, dating violence, sexual assault, stalking, or other dangerous or life-threatening conditions in the individual’s or family’s current housing situation, including where the health and safety of the children are jeopardized \* \* \*” shall be considered homeless. The proposed rule limited the “other dangerous or life-threatening conditions” to those that “relate to violence against the individual or family member that has either taken place within the individual’s or family’s primary nighttime residence or has made the individual or family afraid to return to their primary nighttime residence.” Many commenters expressed concerns about the specific language of “that relate to violence,” noting that the McKinney-Vento Act did not require this. Commenters stated that violence is not the only dangerous environment and strongly suggested that HUD use broad language that includes unsanitary and unsafe living conditions.

Other commenters simply sought clarification regarding other dangerous or life-threatening conditions that relate to violence against an individual or family that HUD would consider as meeting this standard. One commenter asked if an arson case would qualify as a dangerous or life-threatening condition or must such condition specifically relate to domestic violence.

Many commenters expressed concerns that the proposed rule does not refer to “where the health and safety of children are jeopardized,” which is statutory language, given the paramount importance of protecting already vulnerable children and youth. Some commenters advised that other federal programs contain express provisions for the health and safety of children (i.e., the Childcare and Development Block Grant, and the Asbestos Control Loan programs). Commenters explained that unaccompanied youth may be vulnerable to sexual abuse or other exploitation and they should not have to experience such abuse to meet eligibility criteria for homeless services. The commenters also recommended that HUD elaborate on “where the health and safety of children are jeopardized” by including the following: Physical abuse, sexual abuse, mental or emotional abuse, child abuse, child neglect, commercial sexual exploitation, human trafficking, sex trafficking, discharge from the child welfare system into a nonpermanent living arrangement, discharge from juvenile justice placement into a nonpermanent living arrangement, and witness to domestic violence or sexual assault. Some commenters stated that while the current language could be interpreted to include sex exploitation and sex trafficking, there would be no debate about their inclusion if they were specifically mentioned.

Commenters stated that the statutory language uses the phrase “in the individual’s or family’s current housing situation,” but the proposed rule uses the phrase “primary nighttime residence.” Commenters stated that the proposed rule’s simplification narrows the number of people who would be covered. For example, commenters explained that a dangerous situation could be at the house of a noncustodial parent but this would not be the custodial parent’s nor the children’s primary nighttime residence. One commenter stated that the language in the proposed rule did not take into account dangers to children that may exist within an apartment complex, such as actions by a known child predator. Commenters recommended that HUD use the phrase “in the individual’s or family’s current housing situation.”

*HUD Response:* HUD acknowledges that the rule limits the eligibility of individuals and families living in unsanitary and unsafe living conditions. HUD’s view is that persons living in these types of situations are at risk of homelessness and reiterates that persons at risk of homelessness may be served

under programs created by the HEARTH Act amendments. Additionally, the Department administers other programs to serve persons who are poorly housed, such as the Housing Choice Voucher (Section 8) program, the Public Housing program, and the HOME program.

The examples that commenters recommended for inclusion for situations “where the health and safety of children are jeopardized” are already covered in the definition of “homeless” either under this category or another category within the definition. However, HUD has revised the language to state “including a child” to identify that the dangerous or life-threatening condition applies to the child as well as to the adult.

Further, HUD disagrees that any population has been excluded by replacing “housing” with “primary nighttime residence.” Accordingly, HUD has not revised the language from the proposed rule based on these comments.

*Rule clarification:* HUD has revised paragraph (4)(i) to state “including a child” in the definition of “homeless.”

*Comment:* The phrase “dangerous or life-threatening” should not be construed to describe the level of violence required to qualify as “homeless.” Commenters expressed concern that the phrase “dangerous or life-threatening” could be construed as describing the level of domestic violence, dating violence, sexual assault, and stalking needed to qualify for programs. Commenters feared that this interpretation could result in the denial of assistance to domestic violence, dating violence, sexual assault, or stalking victims who may not appear to be in immediate physical danger. The commenters stated that the definition could exclude many victims of violence whose situations may not be deemed dangerous or life-threatening by untrained third parties, contrary to congressional intent. Commenters recommended that HUD ensure that dangerous or life-threatening is not applied as a determination of the level of violence experienced.

*HUD Response:* It is HUD’s position that any level of domestic violence, dating violence, sexual assault, or stalking is inherently dangerous and life-threatening. Therefore, HUD did not intend the phrase “dangerous or life-threatening” to be interpreted as a level of violence that must occur before an individual or family can qualify as homeless. HUD interprets the intent behind section 103(a)(6) of the McKinney-Vento Act as including all individual and families fleeing, or attempting to flee domestic violence,

dating violence, sexual assault, and stalking in the definition of “homeless” and plans to interpret this provision in such a way.

*Comment:* Unaccompanied youth should be presumed eligible under category four of the definition of “homeless.” Many commenters suggested that unaccompanied youth should be presumed eligible under the last category of the definition of “homeless.” These commenters stated that an unaccompanied youth’s vulnerability to abuse should constitute a dangerous or life-threatening condition and consequently automatically qualify such youth as eligible. Some commenters limited this to unaccompanied minor youth that have left their housing and are living on the streets or seeking assistance. All of these commenters expressed the view that these youth are particularly vulnerable to victimization, sexual abuse, exploitation, and other forms of abuse.

*HUD Response:* HUD agrees that unaccompanied youth are highly vulnerable to victimization, sexual abuse, exploitation, and other forms of abuse. However, intake workers cannot automatically presume that a youth is eligible under the last category of the definition. The category under which an unaccompanied youth can qualify as homeless will depend on his or her particular situation. An unaccompanied youth who is living on the streets or in shelters will qualify as homeless under the first category of this definition. An unaccompanied youth who has been notified that she or he cannot stay in her or his current home may qualify under the second category of homeless. An unaccompanied youth who has bounced from one home to the next may qualify under the third category of the definition. If an unaccompanied youth is fleeing domestic violence, dating violence, sexual assault, or stalking, she or he will qualify under the last category of the definition. But to qualify under any of these four categories, an unaccompanied youth must meet the same criteria and evidentiary requirements that apply to all other individuals and families. The intake worker must obtain the credible evidence required to document that an unaccompanied youth is fleeing, or attempting to flee, domestic violence, dating violence, sexual assault, stalking, or other dangerous or life-threatening conditions that relate to violence, in order to qualify the unaccompanied youth as homeless under this category.

*Comment:* The standards in the fourth category are so broad that almost anyone can qualify. One commenter suggested

that the definition of domestic violence in the proposed rule is so broad that almost anyone can qualify. This commenter suggested that the prescreening tools could be fine tuned to clearly identify those who truly need and would most likely benefit from the limited resources.

*HUD Response:* In the final rule, HUD has clarified that the lesser documentation standards for homeless status under this category shall be limited to victim service providers, as defined in section 401(32) of the McKinney-Vento Act. If the person is not being admitted to a domestic violence shelter or is not receiving services from a victim service provider, then stricter documentation requirements are imposed. Specifically, the individual or head of household must certify in writing 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 documentation must include either: (1) A written referral by 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 or head of household has sought assistance for domestic violence, dating violence, sexual assault, or stalking, (2) or a written observation that will verify that the individual or family is fleeing, or attempting to flee, domestic violence, dating violence, sexual assault, stalking, or other dangerous and life-threatening situations that relate to violence. 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.

HUD stresses that where the safety of the individual or family fleeing, or attempting to flee, domestic violence, dating violence, sexual assault, or stalking would be jeopardized by an intake worker's attempt to obtain third-party verification, that the intake worker must not attempt to obtain, under any circumstances, third-party verification and may accept written certification by the individual or head of household that he or she is fleeing, or attempting to flee, domestic violence, dating violence,

sexual assault, or stalking. When making this determination, homeless service providers are expected to take into account community dynamics that may impact the victim. For example, if the community is so small that any attempt to gain third-party documentation would potentially reveal the identity or location of the victim to the perpetrator of the violence, the homeless service provider must not pursue third-party documentation.

*Rule clarification:* To clarify HUD's expectations, HUD has revised the recordkeeping requirements found in paragraph (b)(5) of the final rule to accept the most minimal documentation of an oral statement only if it is made by an individual or family being admitted to a domestic violence shelter or receiving services from a victim service provider as defined in section 401(32) of the McKinney-Vento Act. Otherwise, the oral statement that the individual or head of household seeking assistance 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 must be documented by a certification by the individual or head of household, 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 by a housing or service provider, social worker, health-care provider, law enforcement agency, legal assistance provider, pastoral counselor, or other organization from whom the individual or head of household 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.

*C. Recordkeeping Requirements for the Definition of "Homeless" in 24 CFR Parts 582 and 583*

*Comment:* In general, reduce the recordkeeping requirements. Generally, commenters recommended that HUD keep recordkeeping requirements to a minimum. These commenters stated that this would help expedite assistance and be less burdensome to providers. Other commenters emphasized that individuals claiming to be homeless under the rule should be taken at their

word, unless information comes to light that casts substantial doubt on a claim of homelessness. Many commenters expressed the view that an oral statement, or self-verification, by the homeless person should suffice in order to receive housing and/or services and that the statements should not be verified in such rigid terms. Finally, many commenters stated that the verification requirements in the proposed rule will be burdensome to project sponsors, take up valuable caseworker time and resources, and will increase the burden on homeless individuals and families.

While most commenters supported reduced recordkeeping requirements, many suggested differing standards for persons seeking emergency shelter as opposed to those seeking transitional and permanent housing. Many commenters suggested that HUD allow Continuums of Care to adopt a presumptive eligibility period in which an intake worker could serve a homeless household or a household at risk of homelessness while obtaining the required evidence. These commenters explained that presumptive eligibility should apply particularly to homelessness prevention and permanent supportive housing.

*HUD Response:* HUD acknowledges that the recordkeeping requirements established in the proposed rule are detailed and have not previously been established by HUD in codified regulation. However, recipients of grants have always been required to keep records proving the eligibility of program participants. The monitoring finding that most often requires repayment of grant funds by recipients is failure to maintain adequate documentation of homeless eligibility; therefore, to assure that program compliance and funding is directed to those individuals intended to be the beneficiaries of funding under the McKinney-Vento Act programs, the recordkeeping requirements set forth in this final rule are important and necessary.

The recordkeeping requirements in paragraph (b) of the rule are included to clarify for recipients the documentation that HUD deems acceptable as proof of homelessness to assist recipients in maintaining adequate case files. For paragraphs (b)(1) and (b)(5), the rule prefaces the list of acceptable documentations with the term "includes." This assures that the list is not the all-inclusive list but rather that HUD will consider other forms of evidence, in addition to those listed, for these categories. The recordkeeping requirements for all four categories of

“homeless” contain more than one form of evidence that HUD considers satisfactory evidence.

HUD recognizes that circumstances, as well as the type of service or housing provided, will affect the ability of intake workers to obtain some forms of documentation listed in paragraph (b) of the recordkeeping requirements for the definition of “homeless.” For emergency shelters that require clients to present every night to gain access to a bed for just that night, HUD would not want the inability to obtain third-party documentation to prohibit access to a bed for the night. Therefore, in such instances, HUD would expect to see certification by the individual or head of household as the primary method of establishing homeless eligibility. HUD would consider a sign-in sheet, with a certification that the individual or head of household seeking assistance is homeless typed at the top, as meeting this standard. However, for permanent housing and nonemergency services, such as employment assistance, HUD will expect to see third-party documentation.

Specific changes to the recordkeeping requirements for the definition of “homeless” will be discussed in the remainder of this section of the preamble.

*Comment:* Create a template for communities to use to document “homeless” status. In the proposed rule, HUD solicited comment as to whether a HUD-approved form would assist recipients in documenting homelessness. The comments HUD received in response to this question were mixed. Some commenters requested a standard form of documentation to allow intake workers to record oral statements provided by homeless households, as well as enable applicants to self-certify statements. Some commenters stated that the HPRP Eligibility Determination and Documentation Guidance (3-17-10) was an extremely helpful tool and suggested that HUD develop a document similar to this guide.

Other commenters stated that it would be helpful if HUD provided guidelines regarding the information a self-certification should include, as well as a sample form, or template, that a provider could choose to use, but not be required to use. These commenters stated that it would be easier to comply with the rules if there was flexibility regarding the format of the statement and certification and suggested that a HUD-approved form would not lessen the recordkeeping burden. Other commenters requested that HUD create a mechanism whereby a Continuum of

Care could submit one or more forms for preapproval to HUD. One commenter suggested that a government form may actually create a barrier to service for many people, especially those who have a mental illness. Many commenters requested the ability to collect intake information in a flexible manner that meets local needs.

*Response:* HUD understands that communities need flexibility at the local level to determine a household’s status. Therefore, HUD will not issue a HUD-approved form that providers must use to document homelessness at this time, because HUD agrees that would be contrary to providing the flexibility needed at the local level. However, HUD intends to provide a template that can be used, or modified, by providers to certify homeless status at intake.

*Comment:* Documentation standards should be clarified and third-party documentation is preferable. While many commenters suggested that the recordkeeping standards established by HUD in the proposed rule were burdensome, other commenters recommended that oral statements should be relied upon as evidence only after all other attempts to obtain documentation have been exhausted. Another commenter, referring specifically to the standards established in § 577.3(3) of the proposed rule, stated that the standards were particularly confusing and it was unclear when an oral statement could be accepted versus one written down versus when third-party documentation must be obtained. One commenter urged HUD to establish and promulgate clear criteria for documentation to confirm eligibility and suggested that the inability to obtain a written or oral statement from a third party to document homeless status will cause providers to rely heavily on self-declaration of homelessness, which will increase the likelihood of misuse, and which is problematic because of the inability to meet current need, combined with the knowledge that few resources will be available to the current eligible population when the eligibility pool is expanded with the publication of this rule.

*HUD Response:* HUD agrees that third-party documentation should be obtained whenever possible. HUD revised paragraph (b) of the recordkeeping requirements for “homeless status” to clarify that the order of priority among documentation is third-party documentation first, intake worker observation second, and certification by the individual or head of household seeking assistance third. Overnight emergency shelters, where

program participants line up nightly for a bed for one night and must leave at a designated time in the morning, may rely on certifications by the individual or head of household seeking assistance.

*Rule clarification.* To clarify HUD’s expectations for the recordkeeping requirements, giving priority to third-party documentation, HUD has revised paragraph (b) in the recordkeeping requirements for homeless status.

*Comment:* The rule should allow intake workers to use other evidence that may be available to document homeless status of a household. Some commenters stated that the rule should include other evidence that providers could use to document homeless status. These commenters stated that this would be particularly useful when a person may be reluctant to reveal information or sign a certification because of a disability or because the person fears for his or her safety. Some commenters suggested that incorporating existing electronic technology, such as HMIS, is favorable.

*HUD Response:* HUD agrees that providers should be able to use existing evidence to document a household’s status. To help reduce the burden of documentation on providers and to utilize existing resources where they are available, HUD has revised the rule to allow use of information recorded in an HMIS that retains an auditable history of all entries, including the person who entered the data, the date of entry, and the change made, and that prevents overrides of changes of the dates on which entries are made.

*Rule clarification.* HUD has revised paragraph (b) of the recordkeeping requirements for “homeless status” to include service transactions recorded in an HMIS or comparable database as acceptable evidence.

*Comment:* The recordkeeping requirements for persons leaving an institution should be clarified. Commenters stated that HUD should provide additional guidance on documentation that should be collected or provided by an institution under this rule to certify homeless status at entry and exit. Commenters recommended that, at a minimum, institutions should document the address and program name of the last known location, and any supportive service program a resident may have had contact with prior to entry. One commenter suggested that HUD create a form that institutions could use to certify homelessness. These commenters noted that extensive documentation requirements will create an additional burden on already stressed institutions, and that it will be important to know

what the homeless documentation requirements will be for institutions so that they can attempt to collect as much information as needed at intake.

Many commenters expressed concern that it is very difficult to obtain information from institutions. Commenters stated that many public institutions are currently in crisis mode and will not have the time or wherewithal to do this. In addition, commenters stated that once the person has left the institution, the institution is less likely to respond quickly to requests for information. Commenters said that there is often local information that would verify the stay in the institution, such as a local mental health agency or HMIS records. Commenters recommended that the rule mention other ways stays in institutions could be verified, such as via certifications by local caseworkers, discharge paperwork, or HMIS. In addition, commenters recommended that intake workers that can reach the institution by phone should be allowed to document that call. The commenters expressed the view that it was important that access to assistance for a homeless individual not be adversely impacted by the inability of a provider to obtain data from the institution.

Other commenters expressed the view that the proposed rule places a relatively light burden of documentation or proof for institutions, such as a referral letter with end dates, while provider agencies are burdened with far greater documentation requirements. These commenters requested that HUD clarify protocols whereby social workers, case managers, or other officials of institutions identify homelessness and community of origin, so that it is clear that institutions are not simply coding clients as homeless without cause.

*HUD Response:* HUD recognizes that it is often difficult for homeless providers to obtain documentation from discharging institutions and agrees that an individual should not be denied access to housing or services because the institution did not maintain the appropriate records. To accommodate these concerns while still maintaining a level of responsibility for documentation by the institution, HUD added additional methods of documenting "homeless status" for persons in paragraph (1)(iii) of the "homeless" definition to include discharge paperwork; written and oral referrals from a social worker, case manager, or other appropriate official of the institution; and a written record of the intake worker's due diligence in attempting to obtain a statement from an

appropriate official at the institution as acceptable evidence when coupled with a certification by the individual seeking assistance.

*Rule clarification.* To incorporate additional methods of documenting homeless status for persons who have temporarily resided in an institution, but were homeless prior to entry, HUD has revised paragraph (b)(2) of the recordkeeping requirements for the "homeless" definition.

*Comment:* Additional documentation standards should be included for persons at imminent risk of losing their housing. Many commenters expressed concern with HUD's standard set in § 577.3(b)(3)(i)(A) of the proposed rule. These commenters stated that this language shows a disconnect with how the eviction process actually works, fails to recognize that eviction procedures differ by state, and lacks the understanding that many evictions are not conducted legally, and even if they are, the paperwork is not easily transferred from location to location by the evicted household. These commenters recommended that HUD incorporate a Notice to Quit/Notice to Terminate, a letter from the landlord, or other similar documentation as acceptable evidence in the final rule.

*HUD Response:* The language to which the commenters object in § 577.3(b)(3) of the proposed rule is the exact language from the statute. In response to the comments, HUD has added "or the equivalent under applicable state law" after "court order resulting from an eviction action" in recognition of differing state law. HUD agrees that the recordkeeping standards established in section § 577.3(b)(3) of the proposed rule should be expanded to incorporate a documentation standard that reflect situations that occur. Accordingly, HUD has revised the language from the proposed rule in this section to include "or the equivalent under applicable state law" after "court order resulting from an eviction." Additionally, HUD has clarified that the "equivalent notice under applicable state law, a Notice to Quit, or a Notice to Terminate issued under state law" are acceptable evidence where a court order resulting from an eviction action or other equivalent under applicable state law are not available.

*Rule clarification.* HUD has revised paragraph (b)(3) of the recordkeeping requirements for the "homeless" definition in response to these comments.

*Comment:* Clarify the recordkeeping standards for persons staying in a hotel or motel that lack the resources to stay

there for more than 14 days. One commenter stated that the requirement to prove that someone lacks the funds to continue paying for a hotel or motel established in § 577.3(b)(3)(i)(B) of the proposed rule is not realistic and is unnecessary. This commenter questioned how this could be proven and suggested that persons whose residence is a motel should automatically be assumed homeless without this requirement.

*HUD Response:* The requirement that the individual or family "lack the resources necessary to reside there for more than 14 days" is statutory. HUD recognizes that the methods used to establish lack of resources and lack of funds will vary by community. In order to allow for this variation, HUD has not revised the language from the proposed rule.

*Comment:* An oral statement should be sufficient without further verification. Many commenters stated that HUD should relax the verification and documentation requirements under § 577.3(b)(3)(i)(C) of the proposed rule for households that will imminently lose their housing. Most commenters stated that an oral statement should be sufficient and that requiring an intake worker to obtain records from the host family where the individual or family is living could cause friction between the families and seriously threaten the housing. In addition, many commenters expressed the view that this requirement is burdensome and stated that it would divert resources from assistance to individual and families. Other commenters stated that requiring additional documentation went against the statutory intent of the McKinney-Vento Act and would lengthen the time that persons spend homeless. Another commenter stated that requiring written, third-party documentation of an oral statement is inconsistent with and contrary to the principles of statutory interpretation articulated in *Chevron, U.S.A., Inc. v. N.R.D.C., Inc.*, 467 U.S. 837 (1984). Other commenters questioned the value of a written self-certification and stated that it did nothing to increase the credibility of an oral statement. Many commenters agreed with the recordkeeping requirements established in § 577.3(b)(3)(i)(C) of the proposed rule, but suggested that further elaboration of the role of the intake worker is needed and suggested that "due diligence" be defined. One commenter suggested that the proposed rule contain a provision that there is a legal penalty of \$10,000 associated with falsifying the homeless status of a person receiving HUD funds for housing and/or services. Other

commenters suggested that time frames should be set for how long the intake worker has to complete the “due diligence.”

*HUD Response:* The statute specifically states that “an oral statement \* \* \* that is found to be credible shall be considered credible evidence.” HUD proposed implementation of this provision by providing verification requirements intended to establish a consistent standard by which an oral statement may be found credible. Some form of verification is needed to faithfully implement the statute. However, in light of the numerous comments received, HUD revised the requirements to require a written certification by the person making an oral statement only when third-party documentation is not available and the owner or renter cannot be reached. If the oral statement is verified by the owner or renter of the home where the person or family is living, the oral statement may be documented by the intake worker’s certification. The final rule maintains the requirement that the intake worker document his or her due diligence in attempting to obtain the owner or renter’s verification, if the owner or renter cannot be reached.

Additionally, HUD recognizes that the methods used to establish “imminent loss of housing,” including standards for “due diligence,” vary by community and often by the circumstances of the presenting household. In order to allow for a variety of appropriate processes, HUD has not revised the language from the proposed rule.

*Comment:* Provide training on eligibility criteria for other federal statutes with definitions of “homeless.” One commenter stated that many service providers are not familiar with eligibility criteria for other federal statutes with definitions of “homeless” and stated that it is one more program requirement on which they must be trained in order to effectively document homeless status under § 577.3(b)(3) of the proposed rule.

*HUD Response:* HUD does not expect its providers to become experts in applying the definitions of homeless under other federal statutes. Therefore, HUD has revised the language from the proposed rule to accept certification of homeless status by the local private nonprofit organizations or state or local government entities responsible for administering assistance under the other federal statutes (e.g., the school district) in order to determine if the youth or children meet the homeless definition under that statute.

*Rule clarification.* HUD has slightly revised § 577.3(b)(4) to incorporate language allowing the local private nonprofit organizations or state or local government entities responsible for administering assistance under the other federal statutes to certify the homeless status of an unaccompanied youth or family with children and youth.

*Comment:* Relax the standards for documenting “persistent instability.” Many commenters stated that the standards established for documenting homelessness of unaccompanied youth and families with children and youth in § 577.3(b)(4) were cumbersome, difficult, countered the intent of increased coordination with school liaisons, and failed to reflect the reality that unaccompanied youth are not likely to travel with documentation. One commenter posited that the criteria for establishing proof of eligibility in this category was so complex that it would cause program operators to “work around” this category and qualify this population as homeless under category two.

Some commenters requested that HUD adopt standards similar to those established in § 577.3(b)(5) for victims of domestic violence, dating violence, sexual assault, and stalking. These commenters stated that unaccompanied youth are often being kicked out of housing by the very people that abuse them.

Specifically, for the standards for “persistent instability” established in § 577.3(b)(4)(ii) of the proposed rule, many commenters stated that the requirement to obtain a statement from host households is unduly burdensome for case managers, as well as for unaccompanied youth and families with children and youth whose living situations are fragile. Other commenters expressed the fear that the requirement to obtain a statement may put host households at risk of losing their housing because they violated the terms of their lease by allowing the unaccompanied youth or family with children and youth to stay there. Some commenters requested that the standard to obtain documentation from each host household be eliminated entirely, other commenters requested that the standard be limited to the most recent owner or renter of the housing, and others requested that it be limited to those host families who still resided in the place where the unaccompanied youth or family with children and youth stayed or to those host households who have phones or email.

*HUD Response:* HUD understands that it can often be difficult to obtain verification from the owner or renter of

the housing where the individual or family presenting for assistance has been staying. HUD agrees that the standard should be eliminated or scaled back where a move by the unaccompanied youth or family with children and youth was due to domestic violence, dating violence, sexual assault, or stalking. It is HUD’s position that these verification steps help ensure that individuals and families meet the definition of “homeless” and assist in identifying resources and needs to allow providers to assist the unaccompanied youth or family with children and youth effectively; however, HUD understands the need to protect this particularly vulnerable population from their abusers.

HUD reminds readers that where an unaccompanied youth or family with children and youth is moving to immediately flee, or attempt to flee, domestic violence, dating violence, sexual assault, or stalking, the unaccompanied youth or family with children and youth will qualify as homeless under the fourth category of the homeless definition and the accompanying minimal evidentiary standards for that category will apply.

*Rule clarification:* HUD has revised paragraph (b)(4)(iii) of the recordkeeping requirements for the definition of “homeless” to clarify that where a move of the unaccompanied youth, or of the family with children and youth, was due to domestic violence, dating violence, sexual assault, or stalking, the provider may accept a written certification from the individual or head of household as documentation of that living arrangement.

*Comment:* Appropriate licensed professionals should be able to diagnose and document disabilities. With respect to the standards for documenting disability in § 577.3(b)(4)(iii) of the proposed rule, many commenters suggested that HUD remove the term “medical” and allow “appropriate licensed professionals” to diagnose and document disabilities. These commenters stated that a licensed nonmedical professional will be able to provide acceptable evidence of disability in many cases. Some of these commenters stated that requiring that a disability be confirmed by an “appropriate licensed medical professional” will cost money and HUD should pay the associated costs. These commenters recommended that HUD publish a list of professionals that can verify disability. Another commenter suggested that HUD explore the feasibility of including certification by a Center for Independent Living as

acceptable evidence of disability status if the individual or member of the household has a pre-existing consumer service record.

Other commenters suggested that the provision requiring documentation by an "appropriate licensed medical professional" be removed entirely and that intake workers be allowed to use self-certifications and/or documented behavioral observations by staff as evidence of a disability and that a written diagnosis is not needed.

Other commenters suggested that documentation of disability by an appropriate licensed medical professional within 45 days, as required in § 577.3(b)(4)(iii) of the proposed rule, may be impossible. One commenter urged HUD to consider the constraints of availability of medical professionals in some locations.

*HUD Response:* HUD disagrees that the requirement to verify disability should be removed from the rule completely. HUD has a responsibility to ensure that federal funds are spent wisely and having the existence of a disabling condition confirmed where required for eligibility protects against fraud and waste. However, in light of the comments, HUD clarified that the diagnosis of a disability need not be made by an appropriate licensed "medical" professional, but must be made by a professional who is licensed by the state to diagnose and treat that condition.

*Rule clarification.* HUD has revised the recordkeeping standards established in paragraph (b)(4)(iv) of the recordkeeping requirements for the "homeless" definition.

*Comment:* Revise the standards for documenting "barriers to employment." Many commenters requested that HUD lessen the standards for documenting "barriers to employment" established in § 577.3(4)(iii) of the proposed rule.

Many of these commenters suggested that an oral statement from the unaccompanied youth or family with children or youth should be acceptable. Other commenters stated that intake workers should be required to document, in their case notes, the challenges an individual faces in seeking work, but should not have to seek out employment records, department of correction records, and literacy tests. Another commenter requested that a self-certification be an acceptable form of documentation for barriers to employment.

One commenter stated that within the barriers to employment that HUD lists as examples, there are some that are easier to document than others. This commenter stated that this could cause

providers to serve unaccompanied youth and families with children and youth with fewer barriers because they are easier to document and be detrimental to harder-to-serve populations with more intensive disabilities.

*HUD Response:* HUD disagrees that the standards for documenting barriers to employment are cumbersome and would cause providers to serve easier-to-serve populations for which the recordkeeping requirements are easier to meet. HUD reminds commenters that the list of barriers to employment are examples and not all-inclusive. Intake workers should use whatever evidence is available that is appropriate to the barrier to employment that is utilized for determining eligibility under category three of the definition of "homeless."

*Comment:* Additional guidance is needed for documenting the absence of a characteristic. Many commenters requested guidance on how to document the absence of a characteristic, such as the lack of a "lease, ownership interest or occupancy agreement in permanent housing," or a "lack of a high school degree or General Education Development (GED)."

*HUD Response:* The methods used to establish the absence of a characteristic often varies depending on the characteristic, the presenting individual's or family's situation, local processes, and local data that is available. In order to allow for a variety of appropriate documentation standards, including a note from a high school, employment counselor, or a certification signed by the individual or head of household that a characteristic does not exist, HUD has not revised the language from the proposed rule.

*Comment:* The recordkeeping standards established for victims of domestic violence, dating violence, sexual assault, stalking, and other dangerous or life-threatening conditions should be reduced. Many commenters recommended that § 577.3(b)(5) of the proposed rule should be revised to allow an oral statement to be sufficient. These commenters suggested that requiring a written certification, whether by the victim or the intake worker, creates a number of safety concerns and the proposed rule should be amended to allow service providers to accept the oral statement without the additional written documentation. One commenter stated that by granting intake workers discretion to certify statements in writing, this policy not only risks undermining the confidentiality of sensitive information, but introduces the potential for

subjective judgment to result in discrimination against victims. Other commenters stated that requiring a written verification goes beyond the plain meaning of the McKinney-Vento Act.

Commenters suggested that if HUD requires service providers to implement a written certification process, it should do so in a manner that reduces the burden on survivors and staff and maximizes confidentiality. These commenters proposed that HUD issue guidance on the limited scope of any certification form, requiring only the name of the victim and family members and a box to check to indicate victim status. Some commenters suggested that the same degree of brevity should also characterize the documentation submitted by housing or service providers, social workers, hospital staff, or police when making referrals on behalf of victims.

*HUD Response:* HUD recognizes the importance of maintaining the confidentiality of all client-level information. HUD also recognizes the significant safety needs of victims of domestic violence, dating violence, sexual assault, or stalking, and for this reason, greatly limited the documentation requirements for victims of domestic violence, dating violence, sexual assault, and stalking. HUD must require some documentation to assist the Department in monitoring and oversight of projects receiving HUD funds, and the final rule presents the minimal documentation necessary. HUD will publish confidentiality and privacy standards at the time of publication of those rules.

#### *D. Definition of "Persons With Disabilities" in 24 CFR Part 582*

The proposed rule contained proposed definitions for "developmental disability" and "homeless individual with a disability," which were intended to be included in the final regulations for the Continuum of Care program and the Rural Housing Stability program. However, because the proposed rules for those programs have not yet been published, this final rule has integrated the proposed definitions for "developmental disability" and "homeless individual with a disability" into the regulations for the Shelter Plus Care program and the Supportive Housing Program. Because the existing regulations for the Shelter Plus Care program (24 CFR part 582) use the term "persons with disabilities," the substance of the proposed definition of "homeless individual with a disability" has been integrated into the existing definition of "persons with disabilities"

in the Shelter Plus Care regulations while preserving language that involves requirements that go beyond the definition of "homeless individual with a disability" in the HEARTH Act.

*Comment:* Further define "long-continuing or indefinite duration." Commenters recommended that HUD provide clear, objective guidelines and factors for determining whether a person's disability is expected to be "long-continuing or of indefinite duration," to assist persons and organizations responsible for administering programs authorized in the Act. Commenters suggested that the guidelines include a set of factors to consider and forms of verifying information, and requested that the guidelines take into account circumstances in which a homeless individual with a disability may not be able to produce such documentation or relate necessary information, often because of their disabilities. These commenters expressed concern that without clear, objective guidelines, decisions on whether a person's disability is "long-continuing or of indefinite duration" may be based on subjective notions or stereotypes about disabilities, and will potentially exclude eligible individuals.

*HUD Response:* The definition of disability is one that currently exists for HUD's homeless programs. Historically, HUD has not further defined "long-continuing or indefinite duration," and allows an appropriate licensed official to certify that the disability meets this criterion. To clarify that HUD continues to expect a professional licensed by the state to diagnose and treat that condition to certify that the disability is expected to be "long-continuing or of indefinite duration," HUD has added recordkeeping requirements to the final rule.

*Rule clarification.* To clarify that HUD expects an appropriate professional licensed in the state to diagnose and treat the condition to verify that the disability of the person applying for assistance, is expected to be "long continuing or of indefinite duration," this final rule adds specific recordkeeping requirements for "disability."

*Comment:* Include additional factors to the list for determining a disabling condition. Commenters requested that HUD include additional factors to the definition of homeless individual with a disability, including persons with intellectual, cognitive, or developmental disabilities (ICDD), who are institutionalized, at risk of institutionalization, or placed in a licensed or more restrictive setting,

under the definition of a homeless individual with a disability. In addition, these commenters requested that HUD include disabled persons residing with aging caregivers. Other commenters expressed the view that the definition of homeless individual with a disability should explicitly recognize individuals with cancer as having a disability, especially those with cancer in advanced stages. Commenters stated that cancer should be explicitly recognized in the regulation because it generally falls outside the traditional notions of physical or mental disability like Human Immunodeficiency Virus (HIV)/Acquired Immune Deficiency Syndrome (AIDS), which is explicitly recognized by the proposed rule. Commenters stated that cancer is a disability when it, or its side effects, substantially limit(s) one or more of a person's major life activities, and it can lead to the occurrence of other impairments that may be considered a disability.

*HUD Response:* The definition of "homeless individual with a disability" in the proposed rule includes a "physical, mental, or emotional impairment." Where persons with ICDD and cancer also are homeless, and where the ICDD or cancer is expected to be long-continuing or of indefinite duration, substantially impede the individual's ability to live independently, and could be improved by the provision of more suitable housing, then the individual could be considered a "homeless individual with a disability." HUD has not changed the language from the proposed rule in response to these comments.

*Comment:* Remove provisions (1)(ii) and (1)(iii) from the definition of "homeless individual with a disability." Commenters recommended that HUD eliminate the requirement that the homeless individual's disability be one that "substantially impedes the individual's ability to live independently." Commenters expressed the view that in order to avoid unnecessary confusion and maintain consistency, HUD should utilize the federal definition of disability employed by other federal laws, such as the Fair Housing Act, Section 504 of the Rehabilitation Act of 1973, and the Americans with Disabilities Act. These laws require only that the disability be one that causes a "substantial limitation on one or more major life activities." Commenters stated that requiring additional proof that the disability "substantially impedes" the individual's ability to live independently is unnecessary and an extremely high burden that will

needlessly preclude many deserving individuals from obtaining housing assistance based on their disabilities.

While commenters strongly recommended that HUD eliminate this requirement, if the regulation is implemented as is, commenters urged HUD to set clear, objective guidelines on how persons and organizations responsible for administering the HEARTH Act should determine whether an individual's disability is a substantial impediment to his or her ability to live independently. These guidelines should include a set of factors these persons and organizations should consider, and types of verifying information, and should also take into account circumstances in which a homeless individual with a disability may not be able to produce such documentation or relate such information, often because of his or her disability.

Some commenters recommended that HUD delete the requirement that the disability "could be improved by the provision of more suitable housing conditions." These commenters stated that every homeless individual's disability improves by the provision of more suitable housing, and this factor is difficult to document and adds little value. Other commenters submitted that the rule should not condition disability eligibility for housing assistance on an expectation that homeless people with disabilities will "improve" their disability in housing. Commenters explained that such a notion is misguided and will exclude many people with disabilities deserving of housing assistance, and that this type of definition is based on outdated concepts of disability. Commenters stated that while housing assistance provided through this program may improve the person's quality of life or stability, the disability itself will often remain. The commenters concluded that individuals with disabilities should not be barred from the program because their disability cannot be remediated, and barring such individuals from the program would likely violate federal nondiscrimination mandates, including those in the Americans with Disabilities Act and Section 504 of the Rehabilitation Act.

In addition, these commenters expressed the view that housing assistance should be focused on stabilizing homeless people with disabilities. The commenters stated that while suitable housing may not succeed immediately in changing the level of impairment of an individual's disability, it does succeed in stabilizing homeless people with disabilities, such as those with serious mental illness and/or

substance-related disorders who have traditionally been very difficult to house or have had great difficulty maintaining their housing. The commenters further stated that housing combined with support services can stabilize a client's financial status and promote self-sufficiency.

*HUD Response:* The language in paragraphs (1)(ii) and (1)(iii) of the definition of a "homeless individual with a disability" is statutory. Recordkeeping requirements have been established in this rule to assist recipients appropriately document that a disability will "substantially impede the individual's ability to live independently," as will be discussed in Section IV.F of this preamble. It is HUD's position that the provision of stable housing and services will inherently improve with the provision of more stable housing conditions. Additionally, the proposed rule requires that a disability be expected to be "long-continuing or of indefinite duration;" therefore, HUD does not expect the disability to be completely remediated by the provision of more suitable housing.

HUD disagrees that housing and service providers will be barred from determining that an individual has a disability because the disability cannot be remediated; therefore, HUD has not changed this language from the proposed rule based on these comments. HUD includes recordkeeping requirements to assist intake workers in documenting disability as defined in this final rule.

*Comment:* Restore the statutory language under Section 401(9)(B) of the Act. Commenters recommended that HUD include in the final rule the specific statutory language under section 401(9)(B) the McKinney-Vento Act. Commenters strongly recommended that this language be included unless the language regarding AIDS is removed.

*HUD Response:* HUD disagrees that the statutory language in section 401(9)(B) of the McKinney-Vento Act needs to be included in the rule or that the language regarding AIDS in section 401(9)(A)(iii) needs to be removed if the language in section 401(9)(B) is not included. Because of the inclusion of an "or," instead of an "and," after the statement in paragraph (2) of the definition of "homeless individual with a disability" in the proposed rule, the language allows persons eligible under paragraph (3) to also qualify as a homeless individual with a disability under paragraphs (1) and (2). Including the statutory language as recommended by the commenters creates a

redundancy in the proposed rule; therefore, HUD has not made changes to the language in the proposed rule based on this comment.

#### *E. Definition of "Disability" in 24 CFR Part 583*

Because the existing regulations for the Supportive Housing Program (24 CFR part 583) do not use the term "homeless individual with a disability," the substance of the new definition, including changes HUD has adopted in response to public comments on the proposed rule, has been included in a revised definition of "disability."

#### *F. Recordkeeping Requirements for "Disability" in 24 CFR Parts 582 and 583*

*Comment:* The proposed rule should contain documentation standards for "homeless individual with a disability." Commenters mentioned that the proposed rule did not clarify the requirements for documenting a disability (when a client is not receiving Supplemental Social Security Income (SSI) or Social Security Disability Income (SSDI), other than a brief note in conjunction with the definition of homelessness by virtue of persistent instability. Commenters said that it is critically important to document a disability for the purpose of determining client eligibility for permanent supportive housing targeted for homeless persons with disabilities. Thus, commenters recommended that HUD use this opportunity to clarify, and to the extent possible, expand the options for documenting disability.

Additionally, one commenter recommended that the recordkeeping requirements for a "homeless individual with a disability" should include a process for identifying a person with a disability after intake. This commenter stated that HUD needs to ensure that persons not originally identified at intake as a "homeless individual with a disability" can be identified at a later point and be made eligible for resources associated with that definition.

*HUD Response:* HUD recognizes that providers need clear guidelines and documentation standards for establishing that an individual meets the definition of "homeless individual with a disability." HUD has added recordkeeping requirements to the language from the proposed rule.

*Rule clarification.* To set clear guidelines and documentation standards for the definition of "homeless individual with a disability," this final rule adds recordkeeping requirements for "disability" to 24 CFR parts 582 and 583.

#### *G. Comments Regarding Burden Estimate*

*Comment:* The burden estimate of 0.25 hours is too low. Some commenters expressed the view that the Reporting and Recordkeeping burden estimate of 0.25 hours as an average time for requirement is not enough for even one portion of the documentation. Commenters stated that the average burden could be as high as 2 to 3 hours for many individuals and families, and under the third category of homelessness, it could easily be 1 to 2 days per case. Other commenters expressed concern that 0.25 hours was an inadequate amount of time to analyze and document the information provided by applicants and third parties, especially when an applicant has resided in upwards of three different residences, and stated that the time required would be between 30 minutes to 3 hours.

*HUD Response:* HUD disagrees that the Reporting and Recordkeeping burden estimate of 0.25 hours as an average time is too low. The reporting and recordkeeping burden is an estimate of the average time it takes all recipients of HUD funds that serve homeless persons to document homeless status. In this final rule, HUD has made significant changes to lessen the documentation standards for providers, including allowing providers to use information that is available through other community resources, including HMIS, and clarifying that lesser documentation standards apply to overnight emergency shelters; therefore, HUD determined that 0.25 hours is an appropriate average. HUD has not revised the burden estimated in the April 2010 proposed rule.

## **IV. Findings and Certifications**

### *Regulatory Planning and Review*

The Office of Management and Budget (OMB) reviewed this rule under Executive Order 12866, "Regulatory Planning and Review." This rule was determined to be a "significant regulatory action," as defined in section 3(f) of the order (although not an economically significant regulatory action under the order). The docket file is available for public inspection in the Regulations Division, Office of the General Counsel, 451 7th Street SW., Room 10276, Washington, DC 20410-0500. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the docket file by calling the Regulations Division at (202) 402-3055 (this is not a toll-free number). Individuals with speech or hearing impairments may

access this number via TTY by calling the Federal Information Relay Service at (800) 877-8339.

#### Information Collection Requirements

The information collection requirements contained in this final rule have been submitted to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520) and assigned OMB control number 2506-0112. In accordance with the Paperwork Reduction Act, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless the collection displays a currently valid OMB control number.

#### Environmental Impact

This rule does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate, real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new construction, or establish, revise, or provide for standards for construction or construction materials, manufactured housing, or occupancy. Accordingly, under 24 CFR 50.19(c)(1), this proposed rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

#### Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) (UMRA) establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and on the private sector. This rule does not impose a federal mandate on any state, local, or tribal government, or on the private sector, within the meaning of UMRA.

#### Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. This rule solely addresses the definitions of "homeless," "homeless individual," "homeless person," and "homeless individual with a disability." The purpose of this rule is to determine the universe of individuals and families who qualify as "homeless" under the HEARTH Act, and are therefore eligible to be served by HUD homeless programs that will be implemented by separate

rulemaking. Given the narrow scope of this rule, HUD has determined that it would not have a significant economic impact on a substantial number of small entities.

#### Executive Order 13132, Federalism

Executive Order 13132 (entitled "Federalism") prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on state and local governments and is not required by statute, or the rule preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This final rule does not have federalism implications and does not impose substantial direct compliance costs on state and local governments nor preempt state law within the meaning of the Executive Order.

#### List of Subjects

##### 24 CFR Part 91

Aged, Grant programs—housing and community development, Homeless, Individuals with disabilities, Low- and moderate-income housing, Reporting and recordkeeping requirements.

##### 24 CFR Part 582

Homeless, Rent subsidies, Reporting and recordkeeping requirements, Supportive housing programs—housing and community development, Supportive services.

##### 24 CFR Part 583

Homeless, Rent subsidies, Reporting and recordkeeping requirements, Supportive housing programs—housing and community development, Supportive services.

Accordingly, for the reasons described in the preamble, parts 91, 576, 582, and 583 of title 24 of the Code of Federal Regulations are amended as follows:

#### **PART 91—CONSOLIDATED SUBMISSIONS FOR COMMUNITY PLANNING AND DEVELOPMENT PROGRAMS**

■ 1. The authority citation for 24 CFR part 91 continues to read as follows:

**Authority:** 42 U.S.C. 3535(d), 3601-3619, 5301-5315, 11331-11388, 12701-12711, 12741-12756, and 12301-12912.

■ 2. In § 91.5, the definition of "Homeless" is added to read as follows:

##### **§ 91.5 Definitions.**

\* \* \* \* \*

**Homeless.** (1) An individual or family who lacks a fixed, regular, and adequate nighttime residence, meaning:

(i) An individual or family with a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings, including a car, park, abandoned building, bus or train station, airport, or camping ground;

(ii) An individual or family living in a supervised publicly or privately operated shelter designated to provide temporary living arrangements (including congregate shelters, transitional housing, and hotels and motels paid for by charitable organizations or by federal, state, or local government programs for low-income individuals); or

(iii) An individual who is exiting an institution where he or she resided for 90 days or less and who resided in an emergency shelter or place not meant for human habitation immediately before entering that institution;

(2) An individual or family who will imminently lose their primary nighttime residence, provided that:

(i) The primary nighttime residence will be lost within 14 days of the date of application for homeless assistance;

(ii) No subsequent residence has been identified; and

(iii) The individual or family lacks the resources or support networks, e.g., family, friends, faith-based or other social networks needed to obtain other permanent housing;

(3) Unaccompanied youth under 25 years of age, or families with children and youth, who do not otherwise qualify as homeless under this definition, but who:

(i) Are defined as homeless under section 387 of the Runaway and Homeless Youth Act (42 U.S.C. 5732a), section 637 of the Head Start Act (42 U.S.C. 9832), section 41403 of the Violence Against Women Act of 1994 (42 U.S.C. 14043e-2), section 330(h) of the Public Health Service Act (42 U.S.C. 254b(h)), section 3 of the Food and Nutrition Act of 2008 (7 U.S.C. 2012), section 17(b) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(b)), or section 725 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a);

(ii) Have not had a lease, ownership interest, or occupancy agreement in permanent housing at any time during the 60 days immediately preceding the date of application for homeless assistance;

(iii) Have experienced persistent instability as measured by two moves or more during the 60-day period immediately preceding the date of applying for homeless assistance; and

(iv) Can be expected to continue in such status for an extended period of

time because of chronic disabilities, chronic physical health or mental health conditions, substance addiction, histories of domestic violence or childhood abuse (including neglect), the presence of a child or youth with a disability, or two or more barriers to employment, which include the lack of a high school degree or General Education Development (GED), illiteracy, low English proficiency, a history of incarceration or detention for criminal activity, and a history of unstable employment; or

(4) Any individual or family who:  
 (i) Is fleeing, or is 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, including a child, that has either taken place within the individual's or family's primary nighttime residence or has made the individual or family afraid to return to their primary nighttime residence;

(ii) Has no other residence; and  
 (iii) Lacks the resources or support networks, e.g., family, friends, faith-based or other social networks, to obtain other permanent housing.

**PART 582—SHELTER PLUS CARE**

■ 3. The authority citation for 24 CFR part 582 continues to read as follows:

**Authority:** 42 U.S.C. 3535(d), and 11403–11407b.

■ 4. In § 582.5, the definition of “Homeless or homeless individual” is removed, the definitions of “Developmental disability” and “Homeless” are added, and the definition of “Person with disabilities” is revised to read as follows:

**§ 582.5 Definitions.**

\* \* \* \* \*

*Developmental disability* means, as defined in section 102 of the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (42 U.S.C. 15002):

- (1) A severe, chronic disability of an individual that—
  - (i) Is attributable to a mental or physical impairment or combination of mental and physical impairments;
  - (ii) Is manifested before the individual attains age 22;
  - (iii) Is likely to continue indefinitely;
  - (iv) Results in substantial functional limitations in three or more of the following areas of major life activity:
    - (A) Self-care;
    - (B) Receptive and expressive language;
    - (C) Learning;

- (D) Mobility;
- (E) Self-direction;
- (F) Capacity for independent living;
- (G) Economic self-sufficiency; and
- (v) Reflects the individual's need for a combination and sequence of special, interdisciplinary, or generic services, individualized supports, or other forms of assistance that are of lifelong or extended duration and are individually planned and coordinated.

(2) An individual from birth to age 9, inclusive, who has a substantial developmental delay or specific congenital or acquired condition, may be considered to have a developmental disability without meeting three or more of the criteria described in paragraphs (1)(i) through (v) of the definition of “developmental disability” in this section if the individual, without services and supports, has a high probability of meeting those criteria later in life.

\* \* \* \* \*

*Homeless* means:

(1) An individual or family who lacks a fixed, regular, and adequate nighttime residence, meaning:

(i) An individual or family with a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings, including a car, park, abandoned building, bus or train station, airport, or camping ground;

(ii) An individual or family living in a supervised publicly or privately operated shelter designated to provide temporary living arrangements (including congregate shelters, transitional housing, and hotels and motels paid for by charitable organizations or by federal, state, or local government programs for low-income individuals); or

(iii) An individual who is exiting an institution where he or she resided for 90 days or less and who resided in an emergency shelter or place not meant for human habitation immediately before entering that institution;

(2) An individual or family who will imminently lose their primary nighttime residence, provided that:

- (i) The primary nighttime residence will be lost within 14 days of the date of application for homeless assistance;
- (ii) No subsequent residence has been identified; and
- (iii) The individual or family lacks the resources or support networks, e.g., family, friends, faith-based or other social networks, needed to obtain other permanent housing;

(3) Unaccompanied youth under 25 years of age, or families with children

and youth, who do not otherwise qualify as homeless under this definition, but who:

(i) Are defined as homeless under section 387 of the Runaway and Homeless Youth Act (42 U.S.C. 5732a), section 637 of the Head Start Act (42 U.S.C. 9832), section 41403 of the Violence Against Women Act of 1994 (42 U.S.C. 14043e–2), section 330(h) of the Public Health Service Act (42 U.S.C. 254b(h)), section 3 of the Food and Nutrition Act of 2008 (7 U.S.C. 2012), section 17(b) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(b)), or section 725 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a);

(ii) Have not had a lease, ownership interest, or occupancy agreement in permanent housing at any time during the 60 days immediately preceding the date of application for homeless assistance;

(iii) Have experienced persistent instability as measured by two moves or more during the 60-day period immediately preceding the date of applying for homeless assistance; and

(iv) Can be expected to continue in such status for an extended period of time because of chronic disabilities; chronic physical health or mental health conditions; substance addiction; histories of domestic violence or childhood abuse (including neglect); the presence of a child or youth with a disability; or two or more barriers to employment, which include the lack of a high school degree or General Education Development (GED), illiteracy, low English proficiency, a history of incarceration or detention for criminal activity, and a history of unstable employment; or

(4) Any individual or family who:

(i) Is fleeing, or is 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, including a child, that has either taken place within the individual's or family's primary nighttime residence or has made the individual or family afraid to return to their primary nighttime residence;

(ii) Has no other residence; and  
 (iii) Lacks the resources or support networks, e.g., family, friends, and faith-based or other social networks, to obtain other permanent housing.

\* \* \* \* \*

*Person with disabilities* means a household composed of one or more persons at least one of whom is an adult who has a disability.

(1) A person shall be considered to have a disability if he or she has a disability that:

(i) Is expected to be long-continuing or of indefinite duration;

(ii) Substantially impedes the individual's ability to live independently;

(iii) Could be improved by the provision of more suitable housing conditions; and

(iv) Is a physical, mental, or emotional impairment, including an impairment caused by alcohol or drug abuse, post-traumatic stress disorder, or brain injury.

(2) A person will also be considered to have a disability if he or she has a developmental disability, as defined in this section.

(3) A person will also be considered to have a disability if he or she has acquired immunodeficiency syndrome (AIDS) or any conditions arising from the etiologic agent for acquired immunodeficiency syndrome, including infection with the human immunodeficiency virus (HIV).

(4) Notwithstanding the preceding provisions of this definition, the term person with disabilities includes, except in the case of the SRO component, two or more persons with disabilities living together, one or more such persons living with another person who is determined to be important to their care or well-being, and the surviving member or members of any household described in the first sentence of this definition who were living, in a unit assisted under this part, with the deceased member of the household at the time of his or her death. (In any event, with respect to the surviving member or members of a household, the right to rental assistance under this part will terminate at the end of the grant period under which the deceased member was a participant.)

■ 5. A new § 582.301 is added to read as follows:

**§ 582.301 Recordkeeping.**

(a) [Reserved.]

(b) *Homeless status.* The recipient must maintain and follow written intake procedures to ensure compliance with the homeless definition in § 582.5. The procedures must require documentation at intake of the evidence relied upon to establish and verify homeless status. The procedures must establish the order of priority for obtaining evidence as third-party documentation first, intake worker observations second, and certification from the person seeking assistance third. However, lack of third-party documentation must not prevent an individual or family from being

immediately admitted to emergency shelter, receiving street outreach services, or being immediately admitted to shelter or receiving services provided by a victim service provider, as defined in section 401(32) of the McKinney-Vento Homeless Assistance Act, as amended by the HEARTH Act. Records contained in an HMIS or comparable database used by victim service or legal service providers are acceptable evidence of third-party documentation and intake worker observations if the HMIS retains an auditable history of all entries, including the person who entered the data, the date of entry, and the change made; and if the HMIS prevents overrides or changes of the dates entries are made.

(1) If the individual or family qualifies as homeless under paragraph (1)(i) or (ii) of the homeless definition in § 582.5, acceptable evidence includes a written observation by an outreach worker of the conditions where the individual or family was living, a written referral by another housing or service provider, or a certification by the individual or head of household seeking assistance.

(2) If the individual qualifies as homeless under paragraph (1)(iii) of the homeless definition in § 582.5, because he or she resided in an emergency shelter or place not meant for human habitation and is exiting an institution where he or she resided for 90 days or less, acceptable evidence includes the evidence described in paragraph (b)(1) of this section and one of the following:

(i) Discharge paperwork or a written or oral referral from a social worker, case manager, or other appropriate official of the institution, stating the beginning and end dates of the time residing in the institution. All oral statements must be recorded by the intake worker; or

(ii) Where the evidence in paragraph (b)(2)(i) of this section is not obtainable, a written record of the intake worker's due diligence in attempting to obtain the evidence described in paragraph (b)(2)(i) and a certification by the individual seeking assistance that states he or she is exiting or has just exited an institution where he or she resided for 90 days or less.

(3) If the individual or family qualifies as homeless under paragraph (2) of the homeless definition in § 582.5, because the individual or family will imminently lose their housing, the evidence must include:

(i)(A) A court order resulting from an eviction action that requires the individual or family to leave their residence within 14 days after the date of their application for homeless assistance; or the equivalent notice

under applicable state law, a Notice to Quit, or a Notice to Terminate issued under state law;

(B) For individuals and families whose primary nighttime residence is a hotel or motel room not paid for by charitable organizations or federal, state, or local government programs for low-income individuals, evidence that the individual or family lacks the resources necessary to reside there for more than 14 days after the date of application for homeless assistance; or

(C) An oral statement by the individual or head of household that the owner or renter of the housing in which they currently reside will not allow them to stay for more than 14 days after the date of application for homeless assistance. The intake worker must record the statement and certify that it was found credible. To be found credible, the oral statement must either: (I) Be verified by the owner or renter of the housing in which the individual or family resides at the time of application for homeless assistance and be documented by a written certification by the owner or renter or by the intake worker's recording of the owner or renter's oral statement; or (II) if the intake worker is unable to contact the owner or renter, be documented by a written certification by the intake worker of his or her due diligence in attempting to obtain the owner or renter's verification and the written certification by the individual or head of household seeking assistance that his or her statement was true and complete;

(ii) Certification by the individual or head of household that no subsequent residence has been identified; and

(iii) Certification or other written documentation that the individual or family lacks the resources and support networks needed to obtain other permanent housing.

(4) If the individual or family qualifies as homeless under paragraph (3) of the homeless definition in § 582.5, because the individual or family does not otherwise qualify as homeless under the homeless definition but is an unaccompanied youth under 25 years of age, or homeless family with one or more children or youth, and is defined as homeless under another Federal statute or section 725(2) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(2)), the evidence must include:

(i) For paragraph (3)(i) of the homeless definition in § 582.5, certification of homeless status by the local private nonprofit organization or state or local governmental entity responsible for administering assistance under 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.*), 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), or subtitle B of title VII of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11431 *et seq.*), as applicable;

(ii) For paragraph (3)(ii) of the homeless definition in § 582.5, referral by a housing or service provider, written observation by an outreach worker, or certification by the homeless individual or head of household seeking assistance;

(iii) For paragraph (3)(iii) of the homeless definition in § 582.5, certification by the individual or head of household and any available supporting documentation that the individual or family moved two or more times during the 60-day period immediately preceding the date of application for homeless assistance, including:

Recorded statements or records obtained from each owner or renter of housing, provider of shelter or housing, or social worker, case worker, or other appropriate official of a hospital or institution in which the individual or family resided; or, where these statements or records are unobtainable, a written record of the intake worker's due diligence in attempting to obtain these statements or records. Where a move was due to the individual or family fleeing domestic violence, dating violence, sexual assault, or stalking, then the intake worker may alternatively obtain a written certification from the individual or head of household seeking assistance that they were fleeing that situation and that they resided at that address; and

(iv) For paragraph (3)(iv) of the homeless definition in § 582.5, written diagnosis from a professional who is licensed by the state to diagnose and treat that condition (or intake staff-recorded observation of disability that within 45 days of the date of application for assistance is confirmed by a professional who is licensed by the state to diagnose and treat that condition); employment records; department of corrections records; literacy, English proficiency tests; or other reasonable documentation of the conditions required under paragraph (3)(iv) of the homeless definition.

(5) If the individual or family qualifies under paragraph (4) of the homeless definition in § 582.5, because the individual or family is fleeing domestic violence, dating violence, sexual assault, stalking, or other dangerous or

life-threatening conditions related to violence, then acceptable evidence includes an oral statement by the individual or head of household seeking assistance that they are fleeing that situation, that no subsequent residence has been identified, and that they lack the resources or support networks, e.g., family, friends, faith-based or other social networks, needed to obtain other housing. If the individual or family is receiving shelter or services provided by a victim service provider, as defined in section 401(32) of the McKinney-Vento Homeless Assistance Act, as amended by the HEARTH Act, the oral statement must be documented by either a certification by the individual or head of household, or a certification by the intake worker. Otherwise, the oral statement that the individual or head of household seeking assistance 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 must be documented by a certification by the individual or head of household that the oral statement is true and complete, 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 by 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 or head of household 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.

(c) *Disability.*—Each recipient of assistance under this part must maintain and follow written intake procedures to ensure that the assistance benefits persons with disabilities, as defined in § 582.5. In addition to the documentation required under paragraph (b), the procedures must require documentation at intake of the evidence relied upon to establish and verify the disability of the person applying for homeless assistance. The recipient must keep these records for 5 years after the end of the grant term. Acceptable evidence of the disability includes:

(1) Written verification of the disability from a professional licensed by the state to diagnose and treat the disability and his or her certification that the disability is expected to be long-continuing or of indefinite duration and substantially impedes the individual's ability to live independently;

(2) Written verification from the Social Security Administration;

(3) The receipt of a disability check (e.g., Social Security Disability Insurance check or Veteran Disability Compensation);

(4) Intake staff-recorded observation of disability that, no later than 45 days of the application for assistance, is confirmed and accompanied by evidence in paragraph (c)(1), (2), (3), or (4) of this section; or

(5) Other documentation approved by HUD.

#### **PART 583—SUPPORTIVE HOUSING PROGRAM**

■ 6. The authority citation for 24 CFR part 583 continues to read as follows:

**Authority:** 42 U.S.C. 3535(d) and 11389.

■ 7. In § 583.5, the definitions of “Disability” and “Homeless person” are removed and the definitions of “Disability,” “Developmental disability,” and “Homeless” are added to read as follows:

#### **§ 583.5 Definitions.**

\* \* \* \* \*

*Developmental disability* means, as defined in section 102 of the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (42 U.S.C. 15002):

(1) A severe, chronic disability of an individual that—

(i) Is attributable to a mental or physical impairment or combination of mental and physical impairments;

(ii) Is manifested before the individual attains age 22;

(iii) Is likely to continue indefinitely;

(iv) Results in substantial functional limitations in three or more of the following areas of major life activity:

(A) Self-care;

(B) Receptive and expressive language;

(C) Learning;

(D) Mobility;

(E) Self-direction;

(F) Capacity for independent living;

(G) Economic self-sufficiency; and

(v) Reflects the individual's need for a combination and sequence of special, interdisciplinary, or generic services, individualized supports, or other forms of assistance that are of lifelong or extended duration and are individually planned and coordinated.

(2) An individual from birth to age 9, inclusive, who has a substantial developmental delay or specific congenital or acquired condition, may be considered to have a developmental disability without meeting three or more of the criteria described in paragraphs (1)(i) through (v) of the definition of “developmental disability” in this section if the individual, without services and supports, has a high probability of meeting those criteria later in life.

\* \* \* \* \*

*Disability* means:

- (1) A condition that:
  - (i) Is expected to be long-continuing or of indefinite duration;
  - (ii) Substantially impedes the individual's ability to live independently;
  - (iii) Could be improved by the provision of more suitable housing conditions; and
  - (iv) Is a physical, mental, or emotional impairment, including an impairment caused by alcohol or drug abuse, post-traumatic stress disorder, or brain injury;
- (2) A developmental disability, as defined in this section; or
- (3) The disease of acquired immunodeficiency syndrome (AIDS) or any conditions arising from the etiologic agent for acquired immunodeficiency syndrome, including infection with the human immunodeficiency virus (HIV).

\* \* \* \* \*

*Homeless* means:

- (1) An individual or family who lacks a fixed, regular, and adequate nighttime residence, meaning:
  - (i) An individual or family with a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings, including a car, park, abandoned building, bus or train station, airport, or camping ground;
  - (ii) An individual or family living in a supervised publicly or privately operated shelter designated to provide temporary living arrangements (including congregate shelters, transitional housing, and hotels and motels paid for by charitable organizations or by federal, state, or local government programs for low-income individuals); or
  - (iii) An individual who is exiting an institution where he or she resided for 90 days or less and who resided in an emergency shelter or place not meant for human habitation immediately before entering that institution;
- (2) An individual or family who will imminently lose their primary nighttime residence, provided that:

(i) The primary nighttime residence will be lost within 14 days of the date of application for homeless assistance;

(ii) No subsequent residence has been identified; and

(iii) The individual or family lacks the resources or support networks, e.g., family, friends, faith-based or other social networks, needed to obtain other permanent housing;

(3) Unaccompanied youth under 25 years of age, or families with children and youth, who do not otherwise qualify as homeless under this definition, but who:

(i) Are defined as homeless under section 387 of the Runaway and Homeless Youth Act (42 U.S.C. 5732a), section 637 of the Head Start Act (42 U.S.C. 9832), section 41403 of the Violence Against Women Act of 1994 (42 U.S.C. 14043e–2), section 330(h) of the Public Health Service Act (42 U.S.C. 254b(h)), section 3 of the Food and Nutrition Act of 2008 (7 U.S.C. 2012), section 17(b) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(b)), or section 725 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a);

(ii) Have not had a lease, ownership interest, or occupancy agreement in permanent housing at any time during the 60 days immediately preceding the date of application for homeless assistance;

(iii) Have experienced persistent instability as measured by two moves or more during the 60-day period immediately preceding the date of applying for homeless assistance; and

(iv) Can be expected to continue in such status for an extended period of time because of chronic disabilities, chronic physical health or mental health conditions, substance addiction, histories of domestic violence or childhood abuse (including neglect), the presence of a child or youth with a disability, or two or more barriers to employment, which include the lack of a high school degree or General Education Development (GED), illiteracy, low English proficiency, a history of incarceration or detention for criminal activity, and a history of unstable employment; or

(4) Any individual or family who:

(i) Is fleeing, or is 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, including a child, that has either taken place within the individual's or family's primary nighttime residence or has made the individual or family afraid to return to their primary nighttime residence;

(ii) Has no other residence; and

(iii) Lacks the resources or support networks, e.g., family, friends, and faith-based or other social networks, to obtain other permanent housing.

■ 8. A new § 583.301 is added to read as follows:

**§ 583.301 Recordkeeping.**

(a) [Reserved.]

(b) *Homeless status.* The recipient must maintain and follow written intake procedures to ensure compliance with the homeless definition in § 583.5. The procedures must require documentation at intake of the evidence relied upon to establish and verify homeless status. The procedures must establish the order of priority for obtaining evidence as third-party documentation first, intake worker observations second, and certification from the person seeking assistance third. However, lack of third-party documentation must not prevent an individual or family from being immediately admitted to emergency shelter, receiving street outreach services, or being immediately admitted to shelter or receiving services provided by a victim service provider, as defined in section 401(32) of the McKinney-Vento Homeless Assistance Act, as amended by the HEARTH Act. Records contained in an HMIS or comparable database used by victim service or legal service providers are acceptable evidence of third-party documentation and intake worker observations if the HMIS retains an auditable history of all entries, including the person who entered the data, the date of entry, and the change made; and if the HMIS prevents overrides or changes of the dates on which entries are made.

(1) If the individual or family qualifies as homeless under paragraph (1)(i) or (ii) of the homeless definition in § 583.5, acceptable evidence includes a written observation by an outreach worker of the conditions where the individual or family was living, a written referral by another housing or service provider, or a certification by the individual or head of household seeking assistance.

(2) If the individual qualifies as homeless under paragraph (1)(iii) of the homeless definition in § 583.5, because he or she resided in an emergency shelter or place not meant for human habitation and is exiting an institution where he or she resided for 90 days or less, acceptable evidence includes the evidence described in paragraph (b)(1) of this section and one of the following:

(i) Discharge paperwork or a written or oral referral from a social worker, case manager, or other appropriate official of the institution, stating the beginning and end dates of the time

residing in the institution. All oral statements must be recorded by the intake worker; or

(ii) Where the evidence in paragraph (b)(2)(i) of this section is not obtainable, a written record of the intake worker's due diligence in attempting to obtain the evidence described in paragraph (b)(2)(i) and a certification by the individual seeking assistance that states he or she is exiting or has just exited an institution where he or she resided for 90 days or less.

(3) If the individual or family qualifies as homeless under paragraph (2) of the homeless definition in § 583.5, because the individual or family will imminently lose their housing, the evidence must include:

(i)(A) A court order resulting from an eviction action that requires the individual or family to leave their residence within 14 days after the date of their application for homeless assistance; or the equivalent notice under applicable state law, a Notice to Quit, or a Notice to Terminate issued under state law;

(B) For individuals and families whose primary nighttime residence is a hotel or motel room not paid for by charitable organizations or federal, state, or local government programs for low-income individuals, evidence that the individual or family lacks the resources necessary to reside there for more than 14 days after the date of application for homeless assistance; or

(C) An oral statement by the individual or head of household that the owner or renter of the housing in which they currently reside will not allow them to stay for more than 14 days after the date of application for homeless assistance. The intake worker must record the statement and certify that it was found credible. To be found credible, the oral statement must either: Be verified by the owner or renter of the housing in which the individual or family resides at the time of application for homeless assistance and documented by a written certification by the owner or renter or by the intake worker's recording of the owner or renter's oral statement; or if the intake worker is unable to contact the owner or renter, be documented by a written certification by the intake worker of his or her due diligence in attempting to obtain the owner or renter's verification and the written certification by the individual or head of household seeking assistance that his or her statement was true and complete;

(ii) Certification by the individual or head of household that no subsequent residence has been identified; and

(iii) Certification or other written documentation that the individual or family lacks the resources and support networks needed to obtain other permanent housing.

(4) If the individual or family qualifies as homeless under paragraph (3) of the homeless definition in § 583.5, because the individual or family does not otherwise qualify as homeless under the homeless definition but is an unaccompanied youth under 25 years of age, or homeless family with one or more children or youth, and is defined as homeless under another Federal statute or section 725(2) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(2)), the evidence must include:

(i) For paragraph (3)(i) of the homeless definition in § 583.5, certification of homeless status by the local private nonprofit organization or state or local governmental entity responsible for administering assistance under 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.*), 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), or subtitle B of title VII of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11431 *et seq.*), as applicable;

(ii) For paragraph (3)(ii) of the homeless definition in § 583.5, referral by a housing or service provider, written observation by an outreach worker, or certification by the homeless individual or head of household seeking assistance;

(iii) For paragraph (3)(iii) of the homeless definition in § 583.5, certification by the individual or head of household and any available supporting documentation that the individual or family moved two or more times during the 60-day period immediately preceding the date for application of homeless assistance, including: Recorded statements or records obtained from each owner or renter of housing, provider of shelter or housing, or social worker, case worker, or other appropriate official of a hospital or institution in which the individual or family resided; or, where these statements or records are unobtainable, a written record of the intake worker's due diligence in attempting to obtain these statements or records. Where a move was due to the individual or family fleeing domestic violence, dating violence, sexual assault, or stalking, then the intake worker may alternatively obtain a written certification from the

individual or head of household seeking assistance that they were fleeing that situation and that they resided at that address; and

(iv) For paragraph (3)(iv) of the homeless definition in § 583.5, written diagnosis from a professional who is licensed by the state to diagnose and treat that condition (or intake staff-recorded observation of disability that within 45 days of the date of application for assistance is confirmed by a professional who is licensed by the state to diagnose and treat that condition); employment records; department of corrections records; literacy, English proficiency tests; or other reasonable documentation of the conditions required under paragraph (3)(iv) of the homeless definition.

(5) If the individual or family qualifies under paragraph (4) of the homeless definition in § 583.5, because the individual or family is fleeing domestic violence, dating violence, sexual assault, stalking, or other dangerous or life-threatening conditions related to violence, then acceptable evidence includes an oral statement by the individual or head of household seeking assistance that they are fleeing that situation, that no subsequent residence has been identified, and that they lack the resources or support networks, e.g., family, friends, faith-based or other social networks, needed to obtain housing. If the individual or family is receiving shelter or services provided by a victim service provider, as defined in section 401(32) of the McKinney-Vento Homeless Assistance Act, as amended by the HEARTH Act, the oral statement must be documented by either a certification by the individual or head of household; or a certification by the intake worker. Otherwise, the oral statement that the individual or head of household seeking assistance 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, must be documented by a certification by the individual or head of household that the oral statement is true and complete, 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 by a housing or service provider, social worker, health-care provider, law enforcement agency, legal assistance provider, pastoral counselor, or any another organization from whom the individual or head of household 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.

(c) *Disability*.—Each recipient of assistance under this part must maintain and follow written intake procedures to ensure that the assistance benefits persons with disabilities, as defined in § 583.5. In addition to the documentation required under paragraph (b) of this section, the procedures must require documentation

at intake of the evidence relied upon to establish and verify the disability of the person applying for homeless assistance. The recipient must keep these records for 5 years after the end of the grant term. Acceptable evidence of the disability includes:

(1) Written verification of the disability from a professional licensed by the state to diagnose and treat the disability and his or her certification that the disability is expected to be long-continuing or of indefinite duration and substantially impedes the individual's ability to live independently;

(2) Written verification from the Social Security Administration;

(3) The receipt of a disability check (e.g., Social Security Disability

Insurance check or Veteran Disability Compensation);

(4) Other documentation approved by HUD; or

(5) Intake staff-recorded observation of disability that, no later than 45 days of the application for assistance, is confirmed and accompanied by evidence in paragraph (c)(1), (2), (3), or (4) of this section.

Dated: November 9, 2011.

**Mercedes Márquez,**

*Assistant Secretary for Community Planning and Development.*

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