

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**24 CFR Part 576**

[Docket No. FR-4088-F-01]

RIN 2506-AB84

Office of the Assistant Secretary for Community Planning and Development; Streamlining the Emergency Shelter Grants Program

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

ACTION: Final rule.

SUMMARY: This final rule amends HUD's regulations for the Emergency Shelter Grants (ESG) Program. In an effort to comply with the President's regulatory reform initiatives, this rule will streamline the regulations by eliminating provisions that are redundant of statutes or are otherwise unnecessary. This final rule will make the ESG regulations clearer and more concise. In addition, this rule will reflect provisions implementing legislation that has amended the program since the last general rule amending the ESG regulations. The legislation has, among other changes to the program: Extended program entitlements to Indian tribes; established new limits on expenditures for specified purposes, including administrative costs, services, and prevention activities; reduced the amount required to be matched by grantees and recipients, especially those non-State recipients that are least capable of meeting matching funds requirements; and mandated habitability standards and required the implementation of procedures to ensure confidentiality of records relating to family violence services.

EFFECTIVE DATE: November 1, 1996.

FOR FURTHER INFORMATION CONTACT: Mark Johnston, Director, Program Coordination and Analysis Division, Office of Community Planning and Development, Room 7262, telephone (202) 708-1226. For questions on program requirements for Indian tribes, contact: Bruce Knott, Director, Housing and Community Development Division, Office of Native American Programs, Room B-133, telephone (202) 755-0068. (These telephone numbers are not toll-free.) For hearing- and speech-impaired persons, these numbers may be accessed via TTY (text telephone) by calling the Federal Information Relay Service at 1-800-877-8339.

The address for both of these persons is: Department of Housing and Urban

Development, 451 Seventh Street, SW., Washington, DC 20410.

SUPPLEMENTARY INFORMATION:**Background**

On March 4, 1995, President Clinton issued a memorandum to all Federal departments and agencies regarding regulatory reinvention. In response to this memorandum, the Department of Housing and Urban Development conducted a page-by-page review of its regulations to determine which can be eliminated, consolidated, or otherwise improved. HUD has determined that the regulations for the ESG Program can be improved and streamlined by eliminating unnecessary provisions.

Several provisions in the regulations repeat statutory language. It is unnecessary to maintain statutory requirements in the Code of Federal Regulations (CFR), because those requirements are otherwise fully accessible and binding. Furthermore, if regulations contain statutory language, HUD must amend the regulations whenever Congress amends the statute. Therefore, this final rule removes repetitious statutory language and replaces it with a citation to the specific statutory section for easy reference.

Several other provisions in the regulations apply to more than one program, and therefore HUD repeated these provisions in different parts. This repetition is unnecessary, and updating these scattered provisions is cumbersome and often creates confusion. Therefore, this final rule consolidates duplicative and related provisions, maintaining appropriate cross-references for the reader's convenience. For example, requirements for environmental review have been moved into the section on "Other federal requirements" (§ 576.57) and have been streamlined by reference to a new rule on these requirements that was published on April 30, 1996 (61 FR 19120). This April 30 rule also permits streamlining of references to flood hazards and coastal barriers in § 576.57.

Similarly, provisions that are not regulatory requirements—for example, provisions containing nonbinding guidance or explanations—have been removed. Although this information can be helpful to program participants, HUD will more appropriately provide this information through handbook guidance or other materials, rather than maintain it in the CFR.

Justification for Final Rulemaking

HUD generally publishes a rule for public comment before issuing a rule for effect, in accordance with its own

regulations on rulemaking in 24 CFR part 10. However, part 10 provides for exceptions to the general rule if the agency finds good cause to omit advance notice and public participation. The good cause requirement is satisfied when prior public procedure is "impracticable, unnecessary, or contrary to the public interest" (24 CFR 10.1). HUD finds that good cause exists to publish portions of this rule for effect without first soliciting public comment. This rule merely removes unnecessary regulatory provisions and does not establish or affect substantive policy. Therefore, prior public comment is unnecessary.

Some portions of this rule have been subject to notice-and-comment rulemaking in the past. A proposed rule that was published in 58 FR 17766 (April 5, 1993) included statutory provisions applicable to Indian tribe allocations, and was based on the first Notice of Funding Availability (NOFA) that the Department used to distribute Emergency shelter grant (ESG) amounts to Indian tribes. Normally, the Department would not allow a final rule to be based on a proposed rule for which so much time has lapsed. Because this very limited portion of the program has been operating in accordance with the statutory requirements and expressly based upon the methodology included in the proposed rule, and because this is the first general rule that the Department has published on this program subsequent to the proposed rule (upon which the Department received no comments), an exception is being made to the standard rulemaking policy. The Department emphasizes, however, that any provisions in the proposed rule that are made final in this rule are based strictly upon the statutory provisions and are allowed primarily because inclusion in this rule provides better notice to affected parties.

Similarly, this rule also makes final a very limited interim rule on the reallocation of unused ESG amounts that was published on November 19, 1992 (57 FR 54505) and has remained in effect since that time. The Department received three comments on the interim rule, one of which praised the rule and two which suggested changes. Based on its experience in operating under the provision contained in the interim rule, the Department does not believe that the administrative mechanism chosen to distribute the unused funds is unfair, as suggested by one of the commenters. The regulations already ensure a preference for using grant amounts in the jurisdiction to which they were allocated. A change suggested by

another commenter, regarding advance notification by the Department before an action to recover unspent grant amounts, does not require a regulation for implementation. Therefore, in issuing this final streamlining rule, the Department is not changing the provision on reallocation of unused grant amounts.

The ESG Program

The more general regulations applicable to the ESG Program (24 CFR part 576) were amended most recently by a final rule published on November 7, 1989 (54 FR 46799). Today's streamlining rule incorporates provisions in two subsequent statutes that contain numerous amendments to subtitle B of title IV of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11371–11377) (the McKinney Act), the authorizing legislation for the ESG program: (1) section 832 (104 Stat. 4359) of the National Affordable Housing Act (Pub. L. 101–625, approved November 28, 1990) (NAHA); and (2) section 1402 (106 Stat. 4012) of the Housing and Community Development Act of 1992 (Pub. L. 102–550, approved October 28, 1992) (1992 Act).

Changes in NAHA

Section 832(b) of NAHA permits recipients to use up to 5% of an annual ESG Program grant for administrative purposes. Section 832(c) increased from 20% to 30% the percentage of a grant that may be used to provide essential services. Section 832(d) withdraws homelessness prevention activities from categorization as “essential services”, and imposes a separate limit of 30% of the aggregate amount of assistance to a State (including each territory), local government, or Indian tribe that may be used for efforts to prevent homelessness.

Section 832(e) reduced by \$100,000 the amount that States are required to provide as a match to assistance received under the ESG program. The \$100,000 reduction is required to be implemented by each State in a manner that will benefit those participating local governments, Indian tribes, agencies, and nonprofit organizations that are least able to contribute to the State's matching funds. The Department is revising § 576.51 (as redesignated) to reflect the determination under which the Department has been operating that a territory is not required to provide matching funds. This revision, which is authorized as a matter of the Department's discretion by 48 U.S.C. 1469a(d), ensures that the funds allocated to the territories can be provided whether or not they are able to meet the matching requirements

otherwise applicable under this program.

Section 832(e) of NAHA requires each recipient to certify that it will develop and implement procedures to ensure the confidentiality of records pertaining to any individual provided family violence prevention or treatment services with ESG Program assistance. In addition, the address or location of any ESG-assisted housing used as a family violence shelter may not be made public without the written authorization of persons responsible for the operation of the shelter.

Section 832(f) expressly extends eligibility for assistance under the ESG Program to Indian tribes. This extension is reflected in numerous sections of this rule. Additional requirements that will be applicable to Indian tribes interested in competing for ESG set-aside funds will be included in periodic NOFAs published in the Federal Register, as provided in § 576.31 of this final rule.

Section 832(g) mandates the Secretary to prescribe standards for emergency shelters that ensure appropriate privacy, safety, and health-related living conditions. Section 576.55 of this rule continues to require that buildings used for emergency shelters comply with local government safety and sanitation standards.

Changes in Housing and Community Development Act of 1992

Section 1402(b) of the 1992 Act requires a certification regarding the involvement of homeless individuals and families in providing work or services pertaining to facilities or activities assisted under the ESG program. Section 1402(c) requires each unit of local government, Indian tribe, and nonprofit recipient that receives ESG funds to provide for the participation of homeless individuals on its board of directors or other policymaking entity. Section 1402(d) provides that grantees and recipients may terminate assistance provided to an individual or family who violates program requirements only in accordance with a formal process. Section 1402(e) expressly authorizes as an eligible activity the use of not more than 10 percent of any ESG grant for costs of staff.

Policy Emphasis

The Department seeks to emphasize that emergency shelters are intended to be part of a process for ending homelessness. Thus, emergency shelter grant funds are also appropriately targeted on efforts to avoid homelessness for families and individuals at imminent risk of

becoming homeless. This policy is reflected in language added to § 576.1, “Applicability and purpose”.

While the Department is not expanding its definition of “homeless”, it is restating in this preamble its understanding of the scope of that definition. The Department does not believe that the limited resources of the ESG program were intended by Congress to be used to serve persons who are poorly housed; the primary purpose of the program is to help persons who lack shelter. Therefore, in this program the Department is concerned with persons who are, or may soon become, homeless, rather than persons who are living in overcrowded or substandard housing. Other programs administered by the Department, such as the Section 8 housing assistance payments programs, public and Indian housing, and the HOME Program, target persons living in overcrowded or substandard housing.

The Department would correct several omissions from the current regulations by adding paragraphs (h) and (i) to § 576.57 (as redesignated). Paragraph (h) refers to statutory lobbying and disclosure requirements. Paragraph (i) clarifies that the Davis-Bacon Act (40 U.S.C. 276a–276a–5), which establishes minimum wage requirements, does not apply to this Program. Although the Davis-Bacon Act was never incorporated into the McKinney Act and therefore is not applicable to the ESG program, a specific statement to this effect was not included in the program regulations. Similar references may be found in other McKinney Act programs administered by HUD.

Findings and Certifications

Paperwork Reduction Act Statement.

The information collection requirements contained in §§ 576.21, 576.31, 576.57, 576.43, 576.59, and 576.61 in this rule have been approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), and assigned OMB control numbers 2506–0117 and 2506–0089. 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 valid control number.

Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Secretary has reviewed this rule before publication and by approving it certifies that this rule will not have a significant economic impact on a substantial

number of small entities. The rule is largely in the nature of technical amendments to existing regulations for the purpose of recognizing specific statutory requirements under which the program already is operating. The remainder of the rule merely streamlines regulations by removing unnecessary provisions. The rule will have no adverse or disproportionate economic impact on small businesses.

Environmental Review

This rulemaking does not have an environmental impact. This rulemaking simply amends existing regulations by streamlining and updating provisions and does not alter the environmental effect of the regulations being amended. A Finding of No Significant Impact with respect to the environment was made in accordance with HUD regulations in 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332) at the time of development of the ESG program regulations. That Finding remains applicable to this rule, and is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk at the above address.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that the policies contained in this rule will not have federalism implications, because the regulatory changes either: (1) Would not have substantial direct effects on States, including units of local government and other political subdivisions established by the States; on the relationship between the Federal Government and the States; or on the distribution of power and responsibilities among the various levels of government; or (2) would merely implement statutory changes to the Emergency Shelter Grants Program. A more comprehensive review under Executive Order 12612 of any of these changes is not required because the implementation of the statutes leaves little discretion with the Department to lessen these impacts.

Executive Order 12606, The Family

The General Counsel, as the Designated Official under Executive Order 12606, *The Family*, has determined that this rule does not have potential for significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the Order. No significant change in existing HUD

policies or programs would result from promulgation of this rule.

Unfunded Mandates Reform Act

The Secretary has reviewed this rule before publication and by approving it certifies, in accordance with the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532), that this rule does not impose a Federal mandate that will result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year. This rule is limited to simplifying and streamlining the Emergency Shelter Program regulations.

The Catalog of Federal Domestic Assistance program number is 14.231.

List of Subjects in 24 CFR Part 576

Community facilities, Emergency shelter grants, Grant programs—housing and community development, Grant programs—social programs, Homeless, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, part 576 of title 24 of the Code of Federal Regulations is amended as follows:

PART 576—EMERGENCY SHELTER GRANTS PROGRAM: STEWART B. MCKINNEY HOMELESS ASSISTANCE ACT

1. The authority citation for part 576 continues to read as follows:

Authority: 42 U.S.C. 3535(d) and 11376.

Subpart A—General

2. Section 576.1 is revised to read as follows:

§ 576.1 Applicability and purpose.

This part implements the Emergency Shelter Grants program contained in subtitle B of title IV of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11371–11378). The program authorizes the Secretary to make grants to States, units of general local government, territories, and Indian tribes (and to private nonprofit organizations providing assistance to homeless individuals in the case of grants made with reallocated amounts) for the rehabilitation or conversion of buildings for use as emergency shelter for the homeless, for the payment of certain operating expenses and essential services in connection with emergency shelters for the homeless, and for homeless prevention activities. The program is designed to be the first step in a continuum of assistance to enable homeless individuals and families to

move toward independent living as well as to prevent homelessness.

3. Section 576.3 is amended as follows:

a. By revising the first sentence in the definition of “Consolidated plan.”;

b. By revising the definitions of “Conversion”, “Homeless”, “Major rehabilitation”, “Metropolitan city”, “Private nonprofit organization”, “Rehabilitation”, “Renovation”, and “Urban county”;

c. By removing the definition for “Emergency shelter grant amounts or grant amounts”;

d. By redesignating paragraphs (a) through (h) of the definition of “Essential services” as paragraphs (1) through (8), respectively; and

e. By redesignating paragraphs (a) through (f) of the definition of “Homeless prevention” as paragraphs (1) through (6), respectively; and

f. By adding definitions in alphabetical order of “Administrative costs”, “Indian tribe”, and “Responsible entity”; to read as follows:

§ 576.3 Definitions.

* * * * *

Administrative costs means as the term is defined in 583.135(b) of this part, except that the exclusion relates to the costs of carrying out eligible activities under § 576.21(a).

Consolidated plan means the plan prepared in accordance with part 91 of this title. * * *

Conversion means a change in the use of a building to an emergency shelter for the homeless under this part, where the cost of conversion and any rehabilitation costs exceed 75 percent of the value of the building after conversion.

* * * * *

Formula city or county means a metropolitan city or urban county that is eligible to receive an allocation of grant amounts under § 576.5.

* * * * *

Homeless means as the term is defined in 42 U.S.C. 11302.

* * * * *

Indian tribe means as the term is defined in 42 U.S.C. 5302(a).

Major rehabilitation means rehabilitation that involves costs in excess of 75 percent of the value of the building before rehabilitation.

Metropolitan city means a city that was classified as a metropolitan city under 42 U.S.C. 5302(a) for the fiscal year immediately preceding the fiscal year for which emergency shelter grant amounts are made available.

* * * * *

Private nonprofit organization means as the term is defined in 42 U.S.C. 11371.

Rehabilitation means the labor, materials, tools, and other costs of improving buildings, other than minor or routine repairs. The term includes where the use of a building is changed to an emergency shelter and the cost of this change and any rehabilitation costs does not exceed 75 percent of the value of the building before the change in use.

Renovation means rehabilitation that involves costs of 75 percent or less of the value of the building before rehabilitation.

Responsible entity means as the term is defined in § 58.2 of this title, as applied though § 58.1(b)(3) of this title and § 576.57(e).

* * * * *

Urban county means a county that was classified as an urban county under 42 U.S.C. 5302(a) for the fiscal year immediately preceding the fiscal year for which emergency shelter grant amounts are made available.

* * * * *

4. A new § 576.5 is added in subpart A, to read as follows:

§ 576.5 Allocation of grant amounts.

(a) *Territories.* HUD will set aside for allocation to the territories an amount equal to 0.2 percent of the total amount of each appropriation under this part in any fiscal year. HUD will allocate this set-aside amount to each territory based upon its proportionate share of the total population of all territories.

(b) *States, metropolitan cities, urban counties, and Indian tribes.* HUD will allocate the amounts that remain after the set-aside to territories under paragraph (a) of this section, to States, metropolitan cities, urban counties, and Indian tribes, as provided in 42 U.S.C. 11373. HUD will subsequently distribute the amount set aside for Indian tribes under this paragraph as provided in § 576.31.

(c) *Notification of allocation amount.* HUD will notify in writing each State, metropolitan city, urban county, and territory that is eligible to receive an allocation under this section of the amount of its allocation.

Subpart B—Eligible Activities

5. Section 576.21 is revised to read as follows:

§ 576.21 Eligible activities.

(a) *Eligible activities.* Emergency shelter grant amounts may be used for one or more of the following activities relating to emergency shelter for the homeless:

(1) Renovation, major rehabilitation, or conversion of buildings for use as emergency shelters for the homeless;

(2) Provision of essential services to the homeless, subject to the limitations in paragraph (b) of this section;

(3) Payment for shelter maintenance, operation, rent, repairs, security, fuel, equipment, insurance, utilities, food, and furnishings. Not more than 10 percent of the grant amount may be used for costs of staff;

(4) Developing and implementing homeless prevention activities, subject to the limitations in 42 U.S.C. 11374(a)(4) and paragraph (c) of this section. Grant funds may be used under this paragraph to assist families that have received eviction notices or notices of termination of utility services only if the conditions stated in 42 U.S.C. 11374(a)(4) are met; and

(5) Administrative costs, in accordance with 42 U.S.C. 11378.

(b) *Limitations on provision of essential services.* (1) Grant amounts provided by HUD to units of general local government, territories, or Indian tribes, and grant amounts provided by a State to State recipients, may be used to provide an essential service under paragraph (a)(2) of this section only if the service is a new service, or is a quantifiable increase in the level of a service above that which the unit of general local government (or, in the case of a nonprofit organization, the unit of general local government in which the proposed activities are to be located), territory, or Indian tribe, as applicable, provided with local funds during the 12 calendar months immediately before the grantee or State recipient received initial grant amounts.

(2) Limits on the use of assistance for essential services established in 42 U.S.C. 11374(a)(2) are applicable even when the unit of local government, territory, or Indian tribe provides some or all of its grant funds to a nonprofit recipient. This limitation may be waived in accordance with 42 U.S.C. 11374.

(c) *Limitation on homeless prevention activities.* Limits on the use of assistance for homeless prevention activities established in 42 U.S.C. 11374(a)(4) are applicable even when the unit of local government, territory, or Indian tribe provides some or all of its grant funds to a nonprofit recipient.

§§ 576.22 and 576.23 [Redesignated as § 576.23 and 576.25]

6. Sections 576.22 and 576.23 are redesignated as §§ 576.23 and 576.25, respectively, and are revised to read as follows:

§ 576.23 Limitations—Primarily religious organizations.

(a) *Provision of assistance.* (1) Assistance may be provided under this part to a grantee or recipient that is a primarily religious organization if the primarily religious organization agrees to provide all eligible activities under this program in a manner that is free from religious influences and in accordance with the following principles:

(i) It will not discriminate against any employee or applicant for employment on the basis of religion and will not limit employment or give preference in employment to persons on the basis of religion;

(ii) It will not discriminate against any person applying for shelter or any of the eligible activities under this part on the basis of religion and will not limit such housing or other eligible activities or give preference to persons on the basis of religion; and

(iii) It will provide no religious instruction or counseling, conduct no religious services or worship (not including voluntary nondenominational prayer before meetings), engage in no religious proselytizing, and exert no other religious influence in the provision of shelter and other eligible activities under this part.

(2) HUD may provide reallocated amounts to a recipient that is a primarily religious organization if the assistance will not be used by the organization to acquire a structure (in the case of homeless prevention activities under § 576.21(a)(4)), or to rehabilitate a structure owned by the organization, except as described in paragraph (b) of this section.

(b) *Rehabilitation or conversion of emergency shelters.* Grants may be used to rehabilitate or convert to an emergency shelter a structure that is owned by a primarily religious organization, only if:

(1) The structure (or portion thereof) that is to be renovated, rehabilitated, or converted with HUD assistance has been leased to an existing or newly established wholly secular organization;

(2) The HUD assistance is provided to the secular organization (and not the religious organization) to make the improvements;

(3) The leased structure will be used exclusively for secular purposes available to all persons;

(4) The lease payments paid to the primarily religious organization do not exceed the fair market rent for the structure before the renovation, rehabilitation, or conversion;

(5) The portion of the cost of any improvements that benefit any unleased

portion of the structure will be allocated to, and paid for by, the religious organization; and

(6) The primarily religious organization agrees that if the recipient does not retain the use of the leased premises for wholly secular purposes for the useful life of the improvements, the primarily religious organization will pay to the original grantee (from which the amounts used to renovate, rehabilitate, or convert the building were derived) an amount equal to the residual value of the improvements. A private nonprofit organization must remit to HUD this amount if the organization is the lessee as well as the grantee. The original grantee is expected to use this amount to alleviate homelessness in its jurisdiction, but there is no requirement that funds received after the close of the grant period be used in accordance with the requirements of this part.

(c) *Assistance to a wholly secular private nonprofit organization.* (1) A primarily religious organization may establish a wholly secular private nonprofit organization to serve as a recipient. The secular organization may be eligible to receive all forms of assistance available under this part, subject to the following:

(i) The secular organization must agree to provide shelter and services eligible under this part in a manner that is free from religious influences and in accordance with the principles set forth in paragraph (a)(1) of this section.

(ii) The secular organization may enter into a contract with the religious organization to provide essential services or undertake homeless prevention activities. The religious organization must agree in the contract to carry out its contractual responsibilities in a manner free from religious influences and in accordance with the principles set forth in paragraph (a)(1) of this section.

(iii) The rehabilitation, conversion, or renovation of emergency shelters are subject to the requirements of paragraph (b) of this section.

(2) HUD will not require the religious organization to establish the secular organization before the selection of its application. In such a case, the religious organization may apply on behalf of the secular organization. The application will be reviewed on the basis of the religious organization's financial responsibility and capacity, and its commitment to provide appropriate resources to the secular organization after formation. After formation, a secular organization that is not in existence at the time of the application will be required to demonstrate that it

meets the definition of private nonprofit organization contained in § 576.3. The obligation of funds will be conditioned upon compliance with these requirements.

§ 576.25 Who may carry out eligible activities.

(a) *Generally.* As provided in 42 U.S.C. 11373 eligible activities may be carried out by all State recipients and grantees, except States.

(b) *States.* All of a State's formula allocation, except for administrative costs, must be made available to the following entities:

(1) Units of general local government in the State, which may include formula cities and counties even if such cities and counties receive grant amounts directly from HUD; or

(2) Private nonprofit organizations, in accordance with 42 U.S.C. 11373(c).

(c) *Nonprofit recipients.* Units of general local government, territories, and Indian tribes may distribute all or part of their grant amounts to nonprofit recipients to be used for emergency shelter grant activities.

Subparts C and D—[Removed]

7. Subparts C and D are removed.

Subparts E through H [Redesignated as Subparts C through F]

8. Subparts E through H are redesignated as subparts C through F

Subpart C—Award and Use of Grant Amounts

§ 576.51 [Redesignated as § 576.31]

9. Section 576.51 is redesignated as § 576.31 and is revised to read as follows:

§ 576.31 Application requirements.

(a) *Indian tribes.* After funds are set aside for allocation to Indian tribes under § 576.5, HUD will publish a Notice of Funding Availability (NOFA) in the Federal Register. The NOFA will specify the requirements and procedures applicable to the allocation and competitive awarding of these set-aside funds to eligible Indian tribe applicants.

(b) *States, territories, and formula cities and counties.* To receive emergency shelter grant amounts, a State, territory, or formula city or county must:

(1) Submit documentation required under this part, part 5 of this title, or any other applicable provisions of Federal law; and

(2) Submit and obtain HUD approval of a consolidated plan that includes activities to be funded under this part.

This consolidated plan serves as the jurisdiction's application for funding under this part.

§ 576.52 [Removed]

10. Section 576.52, "Environmental review", is removed.

§ 576.53 [Redesignated as § 576.33 and amended]

11. Section 576.53, "Review and approval of applications", is redesignated as § 576.33 and is amended by removing the reference "576.89" and adding in its place the reference "576.69".

§ 576.55 [Redesignated as § 576.35 and amended]

12. Section 576.55 is redesignated as § 576.35 and is amended by revising (a)(1), (b), and (c), to read as follows:

§ 576.35 Deadlines for using grant amounts.

(a)(1) *States.* Each State must make available to its State recipients all emergency shelter grant amounts that it was allocated under § 576.5 within 65 days of the date of the grant award by HUD. Funds set aside by a State for homeless prevention activities under § 576.21(a)(4) must be made available to State recipients within 180 days of the grant award by HUD.

* * * * *

(b) *Formula cities and counties, territories and Indian tribes—Expenditure of grant funds.* Each formula city or county, territory, and Indian tribe must spend all of the grant amounts it was allocated or awarded under §§ 576.5 or 576.31 within 24 months of the date of the grant award by HUD.

(c) *Failure to meet deadlines.* (1) Any emergency shelter grant amounts that are not made available or obligated within the applicable time periods specified in paragraphs (a)(1) or (b) of this section will be reallocated under § 576.45.

(2) The State must recapture any grant amounts that a State recipient does not obligate and spend within the time periods specified in paragraph (a)(2) of this section. The State, at its option, must make these amounts and other amounts returned to the State (except amounts referred to in § 576.22(b)(6) available as soon as practicable to other units of general local government for use within the time period specified in paragraph (a)(2) of this section or to HUD for reallocation under § 576.45.

Subpart D—Reallocations**§ 576.61 [Redesignated as § 576.41 and amended]**

13. Section 576.61 is redesignated as § 576.41 and is amended by:

- a. Revising the section heading;
- b. Revising paragraphs (b), (d)(1), (d)(2), (e), (f), and (g); and
- c. Revising the heading of paragraph (c) to read as follows:

§ 576.41 Reallocation; lack of approved consolidated plan—formula cities and counties.

* * * * *

(b) *Grantee*. HUD will make available to the State in which the city or county is located the amounts that a city or county referred to in paragraph (a) of this section would have received.

(c) *Notification of availability*. * * *

(d) * * *

(1) Execute a grant agreement with HUD for the fiscal year for which the amounts to be reallocated were initially made available.

(2) If necessary, submit an amendment to its application for that fiscal year for the reallocation amounts it wishes to receive. The amendment must be submitted to the responsible HUD field office no later than 30 days after notification is given to the State under paragraph (c) of this section.

(e) *Amendment review and approval*. (1) Section 576.33 governs the review and approval of application amendments under this section. HUD will endeavor to make grant awards within 30 days of the application amendment deadline, or as soon thereafter as practicable.

(2) Program activities represented by proposed amendments are subject to environmental review under § 576.57 in the same manner as original proposals.

(f) *Deadlines for using reallocated grant amounts*. Section 576.35 governs the use of amounts reallocated under this section.

(g) *Amounts that cannot be reallocated*. Any grant amounts that cannot be reallocated to a State under this section will be reallocated as provided by § 576.43. Amounts that are reallocated under this section, but that are returned or unused, will be reallocated under § 576.45.

§ 576.63 [Redesignated as § 576.43 and amended]

14. Section 576.63 is redesignated as § 576.43 and is amended:

- a. By revising the section heading;
- b. By revising paragraphs (a) and (b);
- c. By revising the first sentence of paragraph (c);
- d. By revising the introductory text of paragraph (d);

- e. By revising paragraph (d)(2);
- f. By removing the parenthetical “(except paragraph (e))” in the introductory text of paragraph (e); and
- g. By revising paragraphs (f), (g), and (h), to read as follows:

§ 576.43 Reallocation of grant amounts; lack of approved Consolidated Plan—States, territories, and Indian tribes.

(a) *Applicability*. This section applies when:

(1) A State, territory, or Indian tribe fails to obtain approval of its consolidated plan within 90 days of the date upon which amounts under this part first become available for allocation in any fiscal year; or

(2) Grant amounts cannot be reallocated to a State under § 576.41.

(b) *Grantees*. (1) HUD will reallocate the amounts that a State or Indian tribe referred to in paragraph (a)(1) of this section would have received:

(i) In accordance with 42 U.S.C. 11373(d)(3); and

(ii) If grant amounts remain, then to territories that demonstrate extraordinary need or large numbers of homeless individuals.

(2) HUD will make available the amounts that a territory under paragraph (a)(1) of this section would have received to other territories that demonstrate extraordinary need or large numbers of homeless individuals.

(c) *Notification of funding availability*. HUD will make reallocations to States and Indian tribes under this section by direct notification or Federal Register notice that will set forth the terms and conditions under which amounts under this section are to be reallocated and grant awards made. In the case of reallocations to territories, the responsible HUD field office will promptly notify each territory of any reallocation amounts under this section and will indicate the terms and conditions under which reallocation amounts are to be made available and grant awards made.

(d) *Eligibility for reallocation amounts*. In order to receive reallocation amounts under this section, the formula city or county, State, territory, or Indian tribe must:

(1) * * *

(2) Execute a grant agreement with HUD for the fiscal year for which the amounts to be reallocated were initially made available.

* * * * *

(f) *Grant amounts*. HUD may make a grant award for less than the amount applied for or for fewer than all of the activities identified in the application amendment.

(g) *Deadlines for using reallocated amounts*. Section 576.35 governs the

use of amounts reallocated under this section.

(h) *Amounts not reallocated*. Any grant amounts that are not reallocated under this section, or that are reallocated, but are unused, will be reallocated under § 576.45(d). Any amounts that are reallocated, but are returned, will be reallocated under § 576.45(c).

§ 576.67 [Redesignated as § 576.45 and amended]

15. Section 576.67 is redesignated as § 576.45, and is amended as follows:

a. In paragraph (c)(1), by italicizing the first sentence and by removing the reference “§ 576.43” and adding in its place the reference “§ 576.5”;

b. By redesignating paragraphs (c) (2) and (3) as paragraphs (c) (3) and (4), respectively;

c. By adding a new paragraph (c)(2);

d. By revising paragraphs (c)(3) and (c)(4), as redesignated;

e. In paragraph (c)(9), by removing the reference to “§ 576.52” and adding in its place a reference to “§ 576.57”;

f. In paragraph (d), by removing the reference to “subpart D” and adding in its place a reference to “§ 576.5”;

g. By revising the heading of paragraph (f); and

h. By revising paragraph (f)(2) to read as follows:

§ 576.45 Reallocation of grant amounts; returned or unused amounts.

* * * * *

(c) * * *

(1) *States and formula cities and counties*. * * *

(2) *Indian tribes*. Returned grant amounts that were allocated to an Indian tribe will be made available to other Indian tribes.

(3) *Territories*. Returned grant amounts that were allocated to a territory will be made available, first, to other territories and, if grant amounts remain, then to States.

(4) *Further reallocation: States, formula cities and counties, territories, and Indian tribes*. HUD will reallocate under paragraph (e) of this section any grant amounts that remain after applying the preceding provisions of paragraph (c) of this section or that are returned to HUD after reallocation under those provisions.

* * * * *

(f) *Definitions—returned or unused grant amounts*. * * *

(2) For purposes of this section, emergency shelter grant amounts are considered “unused” (i.e., Federal deobligation):

(i) When they become available for reallocation by HUD after a grantee has

executed a grant agreement with HUD for those amounts; or

(ii) The amounts remain after reallocation under § 576.43 or paragraph (c) of this section.

Subpart E—Program Requirements

§ 576.71 [Redesignated as § 576.51 and revised]

16. Section 576.71 is redesignated as § 576.51 and is revised to read as follows:

§ 576.51 Matching funds.

(a) *General.* Each grantee, other than a territory, must match the funding provided by HUD under this part as set forth in 42 U.S.C. 11375. The first \$100,000 of any assistance provided to a recipient that is a State is not required to be matched, but the benefit of the unmatched amount must be shared as provided in 42 U.S.C. 11375(c)(4). Matching funds must be provided after the date of the grant award to the grantee. Funds used to match a previous ESG grant may not be used to match a subsequent grant award under this part. A grantee may comply with this requirement by providing the matching funds itself, or through matching funds or voluntary efforts provided by any State recipient or nonprofit recipient (as appropriate).

(b) *Calculating the matching amount.* In calculating the amount of matching funds, in accordance with 42 U.S.C. 11375(a)(3), the time contributed by volunteers shall be determined at the rate of \$5 per hour. For purposes of this paragraph, the grantee will determine the value of any donated material or building, or of any lease, using a method reasonably calculated to establish a fair market value.

§ 576.73 [Redesignated as § 576.53 and amended]

17. Section 576.73 is redesignated as § 576.53, and is amended by revising paragraph (a) and the introductory text of paragraph (b), to read as follows:

§ 576.53 Use as an emergency shelter.

(a)(1) *Restrictions and definition.* Period of use restrictions applicable to assistance provided under this part are governed by 42 U.S.C. 11375(a). Use of grant amounts for developing and implementing homeless prevention activities does not trigger period of use requirements.

(2) For purposes of the requirements under this section, the term *same general population* means either the same types of homeless persons originally served with ESG assistance (i.e., battered spouses, runaway children, families, or mentally ill

individuals), or persons in the same geographic area.

(b) *Calculating the applicable period.* The 3- and 10-year periods applicable under paragraph (a) of this section begin to run:

* * * * *

§ 576.75 [Redesignated as § 576.55]

18. Section 576.75 is redesignated as § 576.55 and is revised to read as follows:

§ 576.55 Building standards.

(a) Any building for which emergency shelter grant amounts are used for conversion, major rehabilitation, rehabilitation, or renovation must meet local government safety and sanitation standards.

(b) For projects of 15 or more units, when rehabilitation costs are:

(1) 75 percent or more of the replacement cost of the building, that project must meet the requirements of § 8.23(a) of this title; or

(2) Less than 75 percent of the replacement cost of the building, that project must meet the requirements of § 8.23(b) of this title.

§ 576.77 [Redesignated as § 576.56]

19. Section 576.77 is redesignated as § 576.56, and is revised to read as follows:

§ 576.56 Homeless assistance and participation.

(a) *Assistance.* (1) Grantees and recipients must assure that homeless individuals and families are given assistance in obtaining:

(i) Appropriate supportive services, including permanent housing, medical health treatment, mental health treatment, counseling, supervision, and other services essential for achieving independent living; and

(ii) Other Federal, State, local, and private assistance available for such individuals.

(2) Requirements to ensure confidentiality of records pertaining to the provision of family violence prevention or treatment services with assistance under this part are set forth in 42 U.S.C. 11375(c)(5).

(3) Grantees and recipients may, in accordance with 42 U.S.C. 11375(e), terminate assistance provided under this part to an individual or family who violates program requirements.

(b) *Participation.* (1) Each unit of local government, Indian tribe, and nonprofit recipient that receives funds under this part must provide for the participation of homeless individuals on its policymaking entity in accordance with 42 U.S.C. 11375(d).

(2) Each State, territory, Indian tribe, unit of local government, and nonprofit recipient that receives funds under this part must involve homeless individuals and families in providing work or services pertaining to facilities or activities assisted under this part, in accordance with 42 U.S.C. 11375(c)(7).

§ 576.79 [Redesignated as § 576.57 and amended]

20. Section 576.79 is redesignated as § 576.57, and is amended as follows:

a. By revising paragraphs (e) and (f);

b. By redesignating paragraph (h) as paragraph (j); and

c. By adding new paragraphs (h) and (i) to read as follows:

§ 576.57 Other Federal requirements.

* * * * *

(e) *Environmental review responsibilities.*—(1) *Generally.* Responsible entities must assess the environmental effects of each application under part 58 of this title. An applicant must include in its application an assurance that the applicant will assume all the environmental review responsibility that would otherwise be performed by HUD as the responsible Federal official under the National Environmental Policy Act of 1969 (NEPA) and related authorities listed in part 58 of this title. The grant award is subject to completion of the environmental responsibilities set out in part 58 of this title within a reasonable time period after notification of the award. This provision does not preclude the applicant from enclosing its environmental certification and Request for Release of Funds with its application.

(2) *Awards to States.* In the case of emergency shelter grants to States that are distributed to:

(i) Units of general local government, the unit of general local government shall be the responsible entity, and the State will assume HUD's functions with regard to the release of funds; or

(ii) Nonprofit organizations, the State shall be the responsible entity, and HUD will perform functions regarding release of funds under part 58 of this title.

(3) *Release of funds.* HUD will not release funds for an eligible activity if the grantee, recipient, or any other party commits emergency shelter grant funds before the grantee submits, and HUD approves, any required Request for Release of Funds.

(f) *Audit.* The financial management systems used by a State, formula city or county, governmental entity, or an Indian tribe that is a grantee under this program must provide for audits in

accordance with part 44 of this title. A private nonprofit organization is subject to the audit requirements of OMB Circular A-133, as set forth in part 45 of this title. (OMB Circulars are available from the Executive Office of the President, Publication Service, 725 17th Street, NW., Suite G-2200, Washington, DC 20503, Telephone, 202-395-7332.)

* * * * *

(h) *Lobbying and disclosure requirements.* The disclosure requirements and prohibitions of 42 U.S.C. 3537a and 3545 and 31 U.S.C. 1352 (the Byrd Amendment), and the implementing regulations at parts 4 and 87 of this title.

(i) *Davis-Bacon Act.* The provisions of the Davis-Bacon Act (40 U.S.C. 276a-276a-5) do not apply to this program.

§ 576.80 [Redesignated as § 576.59]

21. Section 576.80, "Relocation and acquisition", is redesignated as § 576.59.

Subpart F—Grant Administration

§ 576.81 [Redesignated as § 576.61 and amended]

22. Section 576.81 is redesignated as § 576.61, and is amended by revising the

second sentence and adding paragraphs (a) and (b), to read as follows:

§ 576.61 Responsibility for grant administration.

* * * The State, territory, Indian tribe, or unit of local government is responsible for ensuring that its recipients carry out the recipients' emergency shelter grant programs in compliance with all applicable requirements in the case of:

(a) A State making grant amounts available to State recipients; or

(b) A territory, Indian tribe, or unit of general local government distributing grant amounts to nonprofit recipients.

§ 576.83 [Redesignated as § 576.63 and amended]

23. Section 576.83, "Method of payment", is redesignated as § 576.63, and is amended by removing the last sentence.

§ 576.87 [Redesignated as § 576.65]

24. Section 576.87 is redesignated as § 576.65 and is revised to read as follows:

§ 576.65 Recordkeeping.

(a) Each grantee must ensure that records are maintained for a 4-year

period to document compliance with the provisions of this part.

(b) Requirements to ensure confidentiality of records pertaining to the provision of family violence prevention or treatment services with assistance under this part are set forth in 42 U.S.C. 11375(c)(5).

§ 576.89 [Redesignated as § 576.67 and amended]

25. Section 576.89, "Sanctions", is redesignated as § 576.67, and is amended as follows:

a. By removing a reference in paragraph (b) to "§ 576.55(a)(2)" and adding in its place a reference to "§ 576.35(a)(2)"; and

b. By removing references in paragraphs (b) and (c) to "§ 576.67(d)" and adding in their places references to "§ 576.45(d)".

Dated: September 20, 1996.

Andrew Cuomo,

Assistant Secretary for Community Planning and Development.

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