



February 3, 2012

Regulations Division
Office of General Counsel
451 7th Street S.W.
Room 1026
Department of Housing and Urban Development
Washington, DC 20410-0500

Re: Docket No. FR-5474-I-01: Homeless Emergency Assistance and Rapid Transition to Housing: Emergency Solutions Grants Program and Consolidated Plan Conforming Amendments

The Council of State Community Development Agencies (COSCARDA) represents state housing and community development agencies responsible for administering the Department of Housing and Urban Development (HUD) programs, including the Community Development Block Grant (CDBG) program, the HOME Investment Partnerships (HOME) program and the McKinney-Vento Homeless Assistance Programs. On behalf of the members of COSCARDA, I respectfully submit the following comments and questions regarding the proposed rule, *Emergency Solutions Grant Program and Consolidated Plan Conforming Amendments*.

COSCARDA commends HUD for using the experiences of Homeless Prevention and Rapid Re-Housing Program (HPRP) grantees in writing regulations for the new Emergency Solutions Grant (ESG) Program contained in the HEARTH Act. We also thank the HUD Special Needs Assistance Office for attending COSCARDA conferences and listening to suggestions offered by our members during the writing of these regulations.

Small, Rural Shelter Operations

There are provisions in the interim regulations that would be difficult for some state subrecipients, particularly shelter operators in small, rural communities, to meet. These shelter operators may not have the capacity to carry out many of the new administrative and service requirements and may as a result decide to not participate in the ESG program, leading to fewer providers and services for the homeless.

For example, the new requirements for shelter operations, such as area-wide service coordination, assessment of needs, case management and property standards may be beyond the abilities of organizations currently receiving ESG funds. For example, overnight shelters in rural areas and also in urban areas that are run by volunteer church groups in their basements may not be able to undertake the case management on an individual basis, or ensure that the shelter areas

are lead-free. We realize that the HEARTH Act provides additional administrative funds to oversee these types of activities; however, the additional amount will not be sufficient to ensure that these activities are completed as required.

Additional comments regarding small shelter capacity are contained throughout these comments.

Definitions

“At risk of homelessness”: This definition’s references to “economic reasons/hardship” should be further spelled out to make it easier for an intake worker to document. Generally, a housing crisis occurs when there is either 1) a significant drop in income; or 2) a significant spike in household expenses such as utilities, medical bills, etc. Applicants for assistance should provide an explanation of one or the other. **COSCD A asks that HUD provide clarification and technical assistance on acceptable documentation of eligibility and meeting the definition of at risk of homelessness.**

Written Standards of ESG Assistance

HUD is proposing that states must establish and consistently apply written standards for ESG assistance for its subrecipients. The regulation states that the requirements for states differ slightly from those that apply to local governments: written standards for providing ESG assistance may vary by subrecipient, CoC, or the geographic areas over which services are coordinated. COSCDA appreciates HUD’s flexibility that would be provided to states.

Assessment of Participant Needs

HUD is proposing to require that ESG grantees, including state subrecipients, must use the CoC’s centralized and coordinated assessment system to evaluate eligibility. The regulation lists examples of possible systems for states, including a regional approach for larger geographic areas in which “hubs” are created within small geographic areas. COSCDA supports this regional approach as one possible system, and encourages HUD to provide flexibility to states in working with CoCs to develop the assessment system.

The development, however, of the assessment system may become yet another unfunded mandate issued by HUD. Consequently, HUD should clearly allow ESG funds to be spent on facility leasing, acquiring and operating telecommunication and information systems equipment (vital for providing service in a rural area) and insurance.

Coordination with Other Service Programs

Shelter operators would also be required to coordinate with other targeted homeless service and mainstream programs such as youth, education, health services, social services, TANF and public housing programs. Although transitional shelter providers may be able to provide this coordination, many small emergency shelters may not have the capacity to do this successfully.

Under essential services, COSCDA ask that HUD clearly indicate that ESG funds can be used to cover staff and related costs of the shelter provider to coordinate services, for example coordinating services with the local school district homeless liaison to address the education needs of the homeless children staying at the shelter.

Obligation of Funds

HUD is proposing at § 576.203 that cities and urban counties have 180 days to obligate funds while states have only 60 days. Previously, HUD required the states to make all Emergency Shelter Grant funds “available” to its state recipients with 65 days of the date for the grant award by HUD, by either an actual subgrant agreement being signed or a letter committing the funds. Additionally, the amount of time available for states to spend funds has been reduced because the 24 month clock to spend funds will start when states sign their grant agreements with HUD rather than when the funds are awarded to a subrecipient. **COSDA recommends that HUD retain the existing regulatory time requirements for states which include 65 days to commit funds to subrecipients and 24 months to expend funds from the date of those funds being made available to a subrecipient.**

Regarding payments to subrecipients, the rule is requiring recipients to pay allowable costs within 30 days after receiving a complete payment request. This requirement also applies to each subrecipient that is a unit of general purpose local government.

The system in place at the state level has multiple offices/steps involved in the processing and payment of invoices. In order for the state to meet the 30 days will be difficult at best. Some state agency staff persons administering ESG are responsible for multiple programs affecting the ability to process the information within the prescribed 30 days. **COSDA asks that HUD extend the timeframe to at least 45 days.** This would allow staff from each state office/agency an adequate number of days to review and approve the submitted documentation.

In addition, clarification is requested on when the subrecipient (unit of general purpose local government) is required to start the 30-day clock. In order to give the state 30 days to pay and still allow the subrecipient local government a full 30 days from receipt of a request for payment, will require that the subrecipient local government advance the payment before ESG funds are received from the state government. It appears that the supplementary information published with the proposed regulation presumes that units of local government may have better access to funding to support payments as opposed to the local nonprofit agencies who may be cash strapped. Yet, there are many units of general local government that are not able to make payment ahead of the receipt of federal dollars. Therefore, consideration should be given to ensuring that the local units of general local government make payment to the non-profits within 10 days of receipt of the Emergency Solutions Grant funds from the state government.

To further expedite the payment process, **HUD should allow state governments to give access to IDIS for subrecipient local governments to receive the federal funds to make payments to shelter and other nonprofit providers.** However, HUD recently halted this practice and flexibility in the use of IDIS by subrecipient local governments under the Emergency Shelter Grant program and indicated that this restriction will continue for the new ESG. One state using this practice has found that with proper monitoring and oversight, the payment process can be expedited to meet the shortened timelines that HUD is seeking to impose. Even with this IDIS payment alternative, **COSDA recommends clarification of the starting point for the subrecipient clock to allow a reasonable period to respond without having to advance funds from other sources and to give state governments at least 45 days to make payments.**

Administrative Funds

While HUD has increased the admin cap to 7.5%, there are simply not enough funds to cover the items that fall within the Administrative activity for a balance of state implementation. Many states have a model very similar to HPRP with one grantee per region. This grantee will then pass funds through to a variety of partner agencies or existing Supportive Housing program providers. Each level of programming (grantee at the region level and providers at the implementation level) has its own administrative costs. In addition, since the grantee has the responsibility of assuring compliance with its partner agencies, these “compliance activities” (such as monitoring, report review, etc.) as well as costs associated with disbursing funds, adds to the cost of administration. **COSCD A asks that HUD work with Congress to increase the statutory cap on administrative costs to 10% consistent with other housing programs such as the HOME Program.**

Homelessness Prevention Component

It is our understanding that the 30% AMI limit is statutory and would require an amendment from Congress to restore the minimum income cap to the HPRP level of 50%. COSCDA is concerned that the outcomes of households qualified to receive ESG homeless prevention assistance will be well below expectations unless opportunities to move into subsidized housing are greatly expanded. Currently, waitlists are either closed or so long the likelihood that the family will come up to the top before their short-term assistance terminates is remote. Homeless prevention assistance would have been far more effective had it been directed to higher income households with fewer housing barriers. **COSCD A recommends that HUD work with Congress to make a statutory change to allow a higher income level for homelessness prevention.**

Property Standards

COSCD A is concerned that small shelters will not be able to meet some of the new proposed property standards, including the lead-based paint requirements. The regulation at §576.403(a) lists lead-based paint remediation and disclosure regulations. Recent EPA regulations appear to be in conflict with HUD requirements. **COSCD A asks that HUD work with EPA to resolve this conflict and apply rules consistently by both agencies.**

The habitability standards at § 576.403(c) “Minimum standards for permanent housing” would be appropriate when a homeless person is placed in a re-housing situation. To schedule an inspection and require a rental payment agreement for a one-time arrearage payment is excessive and does nothing to discourage landlords from turning out at-risk tenants in favor of clients (and programs) that will pay without all the bureaucratic requirements. If the unit fails and there are no other affordable units in the area, denial of assistance could have the unintended consequence of creating yet another unsheltered homeless person, especially in a rural community where no shelters exist. **COSCD A recommends that the program requirements in § 576.403(c) only apply to rapid re-housing clients or homeless prevention participants that are approved to receive assistance in excess of 3 consecutive months.**

Case Management

COSCD A requests that HUD provide more guidance on how states can oversee a case management system as proposed in the regulation. The requirement for program participants to

meet with a case manager not less than once per month (§ 576.401(e)) would be very burdensome. Program participants who work could jeopardize their jobs by taking so much time off to meet with their case manager. In some cases, participants are involved in other programs with similar meeting requirements. Those in rural areas face transportation and child care problems. Many small agencies only have one case manager on staff and if they fall sick or go on vacation it can throw the entire schedule off and render the program participant out of compliance. **COSDA recommends that the regulation be changed to allow meetings with case managers once every 3 months, consistent with the income and eligibility re-examination requirement. The regulation should also acknowledge use of media such as teleconference or Skype as satisfying this meeting requirement.**

Rental Assistance Agreement

With regard to the new mandatory "rental assistance agreement" between the recipient/subrecipient and the owner of the property (§ 576.106(e)), the required elements or provisions of the agreement are not defined or detailed. **COSDA recommends that HUD should provide a standard form for this agreement or address the content of this new agreement in the final regulation.**

Guidance on Homeless Prevention

HUD should provide more guidance on documentation required for homeless prevention. It is difficult for grantees to document that income does not exist when collecting information from program participants.

Limit on Street Outreach and Emergency Shelter

According to the interim regulations at § 576.100(b), funds used by recipients for outreach and shelters would be limited to the greater of either 60 percent of their total ESG grant or the amount of ESG dollars utilized for these activities in FY2010. Often, state ESG grantees hold competitions to fund shelter activities only once every two years, therefore many states may not have provided funds for shelters or outreach with FY2010 funds. Including FY2009's use of funds may provide a more accurate indicator of their use of and need for these activities. **COSDA asks HUD to change the threshold year to include at least an average of FY2009 and FY2010, and consider allowing the maximum of the two years.**

Transitional Housing

The propose regulation restricts future funding of transitional housing providers to those agencies funded in 2010. Some states have agencies in funding cycles such that they do not receive a grant each year. Those cycles may be every other year or every third year. The wording of this restriction could pose an unintended consequence of preventing an agency that historically received funding that is no longer available to that agency. **COSDA asks that HUD change the regulation to permit funding of any transitional housing provider that previously received funding under the Emergency Shelter Grant program from the state recipient over the past five years.**

Homeless Participation

States need guidance on how homeless persons can be involved in the provision of services or maintenance and operations of a shelter as provided in § 576.405(b) and (c). The language on

these two subsections is somewhat unclear as to whether those subsections are applicable to states. States are unclear on the number of shelter occupants that should participate. **COSCDAs asks that HUD clarify the applicability of these subsections to states.**

FY2011 and FY2012 Application Process: For many states, the application process for the FY2012 ESG program will take place near or during the application process for the second round of FY2011 ESG. HUD should provide guidance on how grantees can best administer two allocations of funds simultaneously.

CoC Regulations:

Under the Consolidated Plan, Housing Market Analysis, will the CoC regulations require each continuum to inventory and submit the inventory of all services for the homeless? Specifically, will the new plan require a detailed inventory and assessment of street outreach, and other essential services?

HMIS:

Can the existing HMIS systems track all of the rapid re-housing clients who are "approaching the end of the re-housing aid"? Will the CoC regulations on the Exhibit 1 Plan require each continuum to capture and report the number of these persons so that the state can report on this population in the Housing Needs Assessment element of the Consolidated Plan?

Given that HMIS is now an eligible component under ESG, can a state fund a subrecipient who would solely use the ESG funds to implement the HMIS? Can the ESG funding be used to fund HMIS just as the SHP program now does?

Other:

The prohibition on involuntary separation of families applicable to ESG funded shelters that serve homeless families with children is a good policy statement, but lacks details. How is the state to enforce compliance? How can this policy be expanded to cover all shelters assisted to move the older shelters to reconfigure space to serve families as an intact unit?

HUD Training: We request that HUD work with state governments and COSCDA to provide conferences and training on a regional basis to clarify provisions in these interim regulations, and to also to provide consistent training on the regulations to HUD regional and field office staff.

Thank you for allowing us to provide comments on the interim regulations. Please do not hesitate to contact me if you need further clarification of our comments.

Sincerely,



Dianne E. Taylor
Executive Director