
Special Attention of:

All Secretary's Representatives
All Regional Directors for CPD
All CPD Division Directors
Continuums of Care
Grantees of the Supportive Housing Program
Grantees of the Shelter Plus Care Program

Notice: CPD- 12-001
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Cross Reference: 24 CFR Parts 582 and 583 and
42 U.S.C. 11381 et seq.

Subject: **Notice on Limitation on Use of Funds to Serve Persons Defined as Homeless
Under Other Federal Laws**

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PURPOSE

This Notice provides guidance to Continuums of Care (CoC) and recipients of Supportive Housing Program (SHP) and Shelter Plus Care (S+C) program competitive grant funds in FY2011, regarding the limitations imposed in Section 422(j) of the McKinney-Vento Act, as amended by the HEARTH Act. This Notice provides further clarification on information in the Notice of Funding Availability (NOFA) Questions and Answers: A Supplement to the FY2011 CoC Homeless Assistance NOFA and Application. The subject Notice is only applicable to those recipients whose approved FY2011 applications (new or renewal) proposed to serve families with children and/or unaccompanied youth.

A. Background

The Homeless Emergency Assistance and Rapid Transition to Housing (HEARTH) Act (Public Law 111-22), substantially amended and reauthorized the McKinney-Vento Act. HUD is in the process of issuing regulations and developing requirements for the implementation and administration of the CoC program and all other programs amended or authorized by the HEARTH Act. The regulations are being issued and implemented in phases.

On December 5, 2011, HUD published the final rule on the definition of homelessness. This rule integrates the regulation for the definition of “homeless” and the corresponding recordkeeping requirements, and is applicable to the Emergency Solutions Grants program, the Shelter Plus Care program, and the Supportive Housing Program. The final rule provides four categories under which individuals and families may qualify as homeless. These categories are:

1. individuals and families who lack a fixed, regular, and adequate nighttime residence and includes a subset for individuals who resided in an emergency shelter or a place not meant for human habitation, or 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 who are defined as homeless under other federal statutes and 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.

II. LIMITATION ON USE OF FUNDS TO SERVE PERSONS DEFINED AS HOMELESS UNDER OTHER FEDERAL LAWS

A. Statutory Basis

Section 422(j) of the McKinney-Vento Act, as amended by the HEARTH Act provides the statutory basis for the limitation on use of CoC funds to serve persons defined as homeless under other federal laws. The statute states that a collaborative applicant may use not more than 10 percent of funds awarded under the CoC program for any of the types of eligible activities specified in paragraphs (1) through (7) of Section 423(a) to serve families with children and youth defined as homeless under other federal statutes, or homeless families with children and youth defined as homeless under Section 103(a)(6), but only if the applicant demonstrates that the use of such funds is of an equal or greater priority or is equally or more cost effective in meeting the overall goals and objectives of the plan submitted under Section 427(b)(1)(B), especially with respect to children and unaccompanied youth. The 10 percent limitation shall not apply to CoCs in which the rate of homelessness, as calculated in the most recent point in time count, is less than one-tenth of 1 percent of its total population.

B. Final Rule on the Definition of Homeless

The final rule on the Definition of Homeless refers to the population described in Section 103(a)(6) of the McKinney-Vento Act, as amended by the HEARTH Act as Category 3 of the homeless definition. Per the final rule, persons considered homeless under this category are 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 do meet all of the following criteria:

1. 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);
2. 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;
3. Have experienced persistent instability as measured by two or more moves during the 60-day period immediately preceding the date of applying for homeless assistance; and

4. 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.

C. Applicability of Limitation on FY2011 SHP and S+C New and Renewal Projects

The limitation on use of funds to serve persons defined as homeless under other federal laws will be incorporated in the final rule on the CoC program, when published. However, the final rule on the homeless definition is effective January 4, 2012, and therefore affects new and renewal SHP and S+C projects that were awarded in FY2011. It does not apply to existing projects that did not receive renewal funding in FY2011. Further, it only applies to new and renewal projects that proposed to serve families with children and/or unaccompanied youth in their FY2011 application for funding. The target population of a project cannot be changed in order to accommodate this newly eligible group. The new definition will apply to projects when the FY2011 executed grant agreement is effective.

The 10 percent cap will apply to any CoC where the rate of homelessness, as calculated in the most recent Point-in-Time count, is *more* than one-tenth of 1 percent of the total population. Furthermore, after consultation with the designated project grantee(s), CoCs must request permission from HUD to use up to 10 percent of the total funds awarded to a CoC for projects in FY2011 for this purpose. The 10 percent is measured as a percentage of the CoC's total funding, not at the individual project level.

This limitation does not apply to CoCs where the rate of homelessness, as calculated in the most recent Point-in-Time count, is *less* than one-tenth of 1 percent of the total population.

III. DEMONSTRATING PRIORITY FOR THIS POPULATION

A. Requesting Approval to Use Funds for this Purpose

In order for one or more of a CoC's FY2011 projects to be permitted to use funds to serve persons eligible under Category 3 of the homeless definition in § 582.5 and § 583.5, the CoC must be able to demonstrate to HUD that the use of such funds is of an equal or greater priority or is equally or more cost effective in meeting the overall goals and objectives identified in the CoC's FY2011 Exhibit 1 application in regards to children and unaccompanied youth. CoCs must make a formal written request to

the local HUD field office for approval to use any portion of their funds for this purpose. This also applies to those communities whose homeless population is less than one-tenth of 1 percent. No SHP or S+C project shall be permitted to use any of its FY2011 funds to serve Category 3 homeless persons until the CoC has received written permission from HUD. The request must contain the following information to be considered:

1. Section 3A, Objective 5 in the FY2011 Exhibit 1 application asked CoCs to provide short- and long-term planning strategies to decrease the number of homeless households with children. Explain how using funds to serve Category 3 homeless persons will be more cost effective at accomplishing the goals described in this section; and,
2. Section 3C, question 8, asked CoCs to describe the CoCs efforts to address youth homelessness. Explain how using funds to serve Category 3 homeless persons will be more cost effective at accomplishing the goals described in this section; or
3. Describe how and why serving this population is of greater or equal priority for the CoC than serving homeless families with children or unaccompanied youth that are homeless under categories 1, 2, and 4. The CoC must be able to demonstrate this as a priority in the Consolidated Plan(s) and its CoC strategic plan goals.

For 1 and 2 above, in addition to the narrative requested, CoCs must attach a copy of these relevant sections from their FY2011 Exhibit 1. For 3, CoCs must provide the applicable portions of the Consolidated Plan and specifically identify the CoC strategic plan goals. CoCs are also required to identify which project(s) they are proposing be permitted to serve this population. The FY2011 Exhibit 2 application for the applicable project(s) must also be attached as well as a written statement from the grantee(s).

The CoC must also indicate the amount of funds that will be set-aside for this population from each project so that HUD may ensure that the total does not exceed 10 percent. A single project may use more than 10 percent of its funding to serve this population, however the amount may not exceed 10 percent of the CoC's total funding. For example, a CoC was awarded 10 SHP and/or S+C projects in FY2011 for a combined amount of \$1 million. No more than \$100,000 of project funds may be used for this purpose. The CoC may identify a single project or may identify multiple projects; however, in either circumstance, the total combined amount set-aside by all projects may not exceed \$100,000.

Please note, only projects identified in the written request will be authorized to use funds to serve this population.

B. HUD Approval

Requests to use FY2011 grant funds to serve persons defined as homeless under Category 3 of the homeless definition will be reviewed by HUD. In addition to the information provided by the CoC in its request, HUD may also consider other factors such as past performance of the grantees and/or project sponsors with carrying out SHP and S+C program requirements.

IV. RECORDKEEPING

A. General Recordkeeping Requirements

Section 582.301(b) and 583.301(b) of the final rule on the definition of homeless, requires that grantees develop, maintain, and follow written intake procedures to ensure compliance with the homeless definition in § 582.5 and § 583.5, respectively. The procedures must require documentation at intake, of the evidence relied upon to establish and verify homeless status. For Category 3 of the homeless definition, grantees will be required to follow the recordkeeping requirements outlined at § 582.301(b)(4) and § 583.301(b)(4).

B. Recordkeeping Requirements for Limitation of Use of Funds

Grantees that have received approval to use some or all of their FY2011 grant funds to serve persons defined as homeless under Category 3 of the homeless definition will be required to maintain financial records to show that the amount(s) used to serve persons defined as homeless under Category 3 does not exceed the amount HUD approved in the CoC's request for the individual project.