



HEARTH ACT 2009 AND DOMESTIC VIOLENCE VICTIMS AND PROGRAMS

In May 2009, Congress passed the HEARTH Act (Public Law 111-22, title IV of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11371 et seq.)) to update and reauthorize the federal McKinney-Vento homelessness programs. The law made significant changes and has required substantial guidance from the U.S. Department of Housing and Urban Development (HUD), Special Needs Assistance Program (SNAPS) office. This piece provides a summary of the status of the regulations, links to NNEDV's comments on regulations and highlights key issues for domestic violence victims and advocates.

Status of Regulations

Homeless Definition

- This **final rule** is in effect since January 4, 2013. Can be found at: https://www.onecpd.info/resources/documents/HEARTH_HomelessDefinition_FinalRule.pdf
- *Summary:* Changes to the definition of homeless are significant and determine eligibility for services and resources. The definition includes eligibility for victims fleeing or attempting to flee domestic violence, dating violence, sexual assault or stalking. Documentation and record-keeping requirements pose challenges to victims.

Emergency Solutions Grants Program with conforming amendments to the Consolidated Plan.

- This **interim rule** applies to Second FY11 ESG and beyond. Can be found at <https://www.onecpd.info/esg/esg-law-regulations-and-notices/>
- *Summary:* Emergency Shelters Grants are now Emergency Solution Grants. The program's focus is assist people to quickly regain stability in permanent housing (through prevention and rapid re-housing) after experiencing a housing crisis and/or homelessness
- Summary by NAEH: http://b.3cdn.net/naeh/c0fa51b46afa4b0505_21m6i6yuc.pdf

Continuum of Care Program.

- This **interim rule** is effective August 30, 2012 and applies to all new and renewal CoC FY 2013 projects. Can be found at <https://www.onecpd.info/coc/coc-program-law-regulations-and-notices/>
- *Summary:* This regulation outlines the requirements of the Continuum of Care program and the related coordinated assessment process. Advocates are waiting for the final rule for clarity on the requirements for victim services providers.
- Summary by NAEH: http://b.3cdn.net/naeh/aabad31d19ef3c1641_som6i2f9l.pdf

Homeless Management Information Systems:

- This **proposed rule** is not yet in effect. The comment period has closed and HUD will issue the final rule in the future. <https://www.onecpd.info/resource/1967/hearth-proposed-rule-for-hmis-requirements/>

Rural Housing Stability Assistance and Chronic Homeless Definition:

- This **proposed rule** is not yet in effect. Comment period closed. <https://www.federalregister.gov/articles/2013/03/27/2013-06521/homeless-emergency-assistance-and-rapid-transition-to-housing-rural-housing-stability-assistance>

Note: Interim rules are in effect until a final rule is published. HUD intends to re-open the CoC Program and Emergency Solutions Grants interim rules for public comments after CoCs, recipients, and subrecipients have had an opportunity to administer the program for some time under the interim rule program requirements. While the interim rule is in effect, advocates should document concerns or barriers and communicate such information to NNEDV at advocacy@nnedv.org.

Key issues for Domestic Violence Programs and Victims

- Coordinated assessment
- “Homeless definition” and documentation and record-keeping
- At-risk for homelessness definition
- Maintaining rental assistance when moving due to domestic violence
- Access to Federal records
- Additional definitions and relevant provisions

Coordinated Assessment (interim rule) § 578.7(a)(8)

The Continuum of Care regulations outline the goals and basic requirements of *coordinated assessment* or *centralized intake* process for determining eligibility and providing services through HUD-funded programs.

Objective: Coordinated assessment is meant to help communities systematically assess the needs of program participants and effectively match each individual or family with the most appropriate resources available to address that individual or family’s particular needs.

Basic minimum requirement: The basic minimum requirement of a centralized or coordinated assessment system: is that it covers the geographic area, is easily accessed by individuals and families seeking housing or services, is well advertised, and includes a comprehensive and standardized assessment tool.

The coordinated assessment should be built on a common assessment tool but form will vary from community to community. Some examples of centralized or coordinated assessment systems include: A central location or locations within a geographic area where individuals and families must be present to receive homeless services; a 211 or other hotline system that screens and directly connects callers to appropriate homeless housing/service providers in the area; a “no wrong door” approach in which a homeless family or individual can show up at any homeless service provider in the geographic area but is assessed using the same tool and methodology so that referrals are consistently completed across the Continuum of Care; a specialized team of case workers that provides assessment services to providers within the Continuum of Care; or in larger geographic areas, a regional approach in which “hubs” are created within smaller geographic areas.

Victim services providers: The interim rule proposes allowing domestic violence and other victim service providers to opt out of the coordinated assessment system, citing safety concerns for victims. The interim rule mentions that VSPs should develop and operate separate coordinated assessment systems. Local coordinated assessment systems are required to develop policies to address the needs of victims (§578.7 (a)(8)).

Continued advocacy: Join your local Continuum’s of Care to advocate for victims housing needs: <http://www.hudhre.info/index.cfm?do=viewCocContacts>

Advocates should work in their communities to ensure that coordinated assessment systems meet the needs of victims, maintain confidentiality, reduce trauma, and increase victims' access to housing resources. As victims access both victim service programs and general housing and homelessness programs, these policies must be present in systems that include victim service providers and those that do not.

At a minimum, such coordinated assessment systems must:

- be built on shared tools and standards, not shared databases or other structures that inherently expose victims to unnecessary danger;
- meaningfully and significantly involve victim service providers in their design and implementation;
- proactively address safety and privacy concerns;
- adhere to confidentiality and safety policies with regard to record-keeping or sharing and physical locations;
- and allow direct, immediate access to safe housing for victims.

While victim service providers should be involved in ensuring that the main coordinated assessment is safe for victims, barriers may continue to make participation untenable for victim service providers. Therefore, victim service providers should retain the ability to opt out of participation in coordinated assessment and should not have to develop a parallel system. Of course, domestic violence providers should be given the option to participate fully in their community's single coordinated assessment system, if desired, as long as such participation does not compromise survivor safety and/or violate any confidentiality requirements.

Again, it is imperative that victim advocates are significantly involved in the design of such systems to ensure that victims' needs are considered and addressed.

In any scenario, we remain concerned that the development of coordinated assessment systems may result in policies or practices that jeopardize the confidentiality and safety of individuals and families fleeing domestic and sexual violence. We are concerned:

- that communities will use shared databases with personally identifying information as the foundation for their coordinated assessment, referral and waitlist systems – which will isolate victim service providers and endanger victims who are seeking services beyond victim service providers;
- that the process of determining and documenting eligibility for victims could impede safety and be invasive and traumatizing;
- that evaluations and prioritizations of those obtaining resources, services and supports will be invasive but may also exclude the needs of victims of domestic and sexual violence;
- that the location of coordinated assessment centers may be prohibitive and unsafe for victims; and
- with how victim service providers will continue to be involved in the coordinated assessment, even as they are able to opt out of full participation

Homeless Definition § 91.5 (4)

The McKinney-Vento Law added a category of homelessness to address the needs of victims of domestic violence, dating violence, sexual assault or stalking who are fleeing or attempting to flee. Additionally, there are a number of situations in which domestic violence victims may be considered homeless, which are also discussed below. For more information on the full definition, see:

https://www.onecpd.info/resources/documents/HEARTH_HomelessDefinition_FinalRule.pdf

From the regulation, any individual or family is considered homeless who: § 91.5 (4)

- (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.*

Staying with family and friends is not permanent housing. Many shared situations would be unsafe for the victim because the perpetrator would know where to find her.

From the Preamble: 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.

Additionally, for those victims who do not meet the criteria above, they may be considered homeless if they are unaccompanied youth under 25 years of age, or families with children and youth, who don't qualify under other sections of the definition but: (§ 91.5 (3))

- who are defined as homeless under other federal laws, including section 41403 of the Violence Against Women Act of 1994;
- 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;
- 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 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;

VAWA's definition (42 U.S.C. 14043e-2

(6) the terms "homeless", "homeless individual", and "homeless person" -

(A) mean an individual who lacks a fixed, regular, and adequate nighttime residence; and

(B) includes -

(i) an individual who -

(I) is sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason;

(II) is living in a motel, hotel, trailer park, or campground due to the lack of alternative adequate accommodations;

(III) is living in an emergency or transitional shelter;

(IV) is abandoned in a hospital; or

(V) is awaiting foster care placement;

(ii) an individual who has 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; or

(iii) migratory children (as defined in section 6399 of title 20) who qualify as homeless under this section because the children are living in circumstances described in this paragraph;

Documentation, Recordkeeping (582.301(b)(5))

Determining and documenting eligibility

Outlined below are the documentation requirements with regard to those qualifying as homeless due to domestic violence, dating violence, sexual assault or stalking.

- **Victim service providers:** Must have the individual/head of household certify an oral statement that the victim has no other permanent housing options and lack the resources or support networks to obtain permanent housing. Alternatively, the intake worker can certify the statement.
- **Non-victim service providers require:** 1) oral statement by victim (individual or head of household that s/he has not identified a subsequent residence and lacks the resources or support networks (family, friends, faith-based or other social networks) needed to obtain permanent housing. 2) which is documented by a certification by the individual/head of household – that it is true and complete and 3) in cases where the safety of the individual/family would not be jeopardized, the status must be verified by a written observation by intake worker or a written referral from a third-party (i.e. housing/service provider, social worker, health-care provider, law enforcement agency, legal assistance provider, pastoral counselor or any other organization from who the individual sought assistance re: domestic violence).

HUD regulations prioritize the use of third-party documentation to determine status and eligibility (third-party documentation first, intake worker observations second, and certification from the person seeking assistance third). Regulations clarify, however, that 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. The written referral should not 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.

Concerns: This documentation could be obtained and stored in unsafe ways and that it will be a significant barrier to victims. Though the regulation allows for self-certification in cases where it would be unsafe to obtain third-party verification, this is highly subjective and complicated for those unfamiliar with the dynamics of domestic violence. The act of obtaining the documentation itself can be extremely dangerous. Additionally, storing the documentation in files or in a database exposes the victim to needless risk.

Continued Advocacy: While there is an overarching push for third party documentation, victim service providers should train others in their communities about the dangers in collecting and storing such information. Victim service providers should promote self-certification and promote best practices with respect to obtaining and storing documentation.

Rental assistance § 578.51(3) and Records of reasonable belief of imminent threat of harm § 578.103

A program participants receiving tenant-based rental assistance in permanent housing may retain their rental assistance if they move out of assisted unit into another CoC if s/he is victims of domestic violence, dating violence, sexual assault or stalking and s/he reasonably believes that s/he is imminently threatened by harm from further violence if s/he remains in the assisted dwelling unit. This welcome provision will allow victims to move with their rental assistance, giving many victims a life-saving option that maintains housing.

Summary of provision and documentation:

- Imminent threat of harm must be from *further* domestic violence, dating violence, sexual assault, or stalking, which would include threats from a third party, such as a friend or family member of the perpetrator of the violence.
- Examples of appropriate documentation of the original incident of domestic violence, dating violence, sexual assault, or stalking include written observation by the housing or service provider; a letter or other documentation from a victim service provider, social worker, legal assistance provider, pastoral counselor, mental health provider, or other professional from whom the victim has sought assistance; or medical or dental, court, or law enforcement records. May also consider other documentation such as emails, voicemails, text messages, social media posts, and other communication.
- The interim rule provides that acceptable evidence for both the original violence and the reasonable belief include an oral statement. This oral statement does not need to be verified, but it must be documented by a written certification by the individual or head of household.

Concern: The documentation requirements included in this provision are unnecessary and allow too much discretion on the part of untrained persons. In brief, the collection of these materials would be unprecedented and clearly not necessary when a statement from the victim or the provider is sufficient. The suggestion of these as types of documentation may encourage a record keeping process that is not

consistent and does not have policies for document destruction to maintain the privacy of the victim long after the services are needed. Additionally, the phrase “original incident” doesn’t reflect the dynamics of domestic violence. NNEDV’s comments outline our major concerns and recommendations: INSERT.

Continued Advocacy: Work with local CoCs to help victims maintain rental assistance when moving to other CoCs. Before the rule is final, help housing providers rely on self-certification.

Access to federal records § 578.103 (d)

This section outlines the access to federal records that relate to these funding streams. Many organizations have reported issues with HUD funders wanting to access client personally identifying information.

Continued Advocacy: Victim service providers should continue to redact personally identifying information. Communicate any on-going concerns with NNEDV.

Additional definitions and relevant provisions

Transitional housing means housing, the purpose of which is to facilitate the movement of individuals and families experiencing homelessness to permanent housing within 24 months or such longer period as the Secretary determines necessary." The definition has been expanded to distinguish this type of housing from emergency shelter. The regulatory definition clarifies that, to be transitional housing, program participants must have signed a lease or occupancy agreement that is for a term of at least one month and that ends in 24 months and cannot be extended. This will change practice in some domestic violence programs.

"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.

Victim service provider § 576.2: A private nonprofit organization whose primary mission is to provide services to victims of domestic violence, dating violence, sexual assault, or stalking. This term includes rape crisis centers, battered women's shelters, domestic violence transitional housing programs, and other programs.

Limited housing to specific subpopulation/sex (578.93 (b)(1) and (2): According to the interim rule a recipient or subrecipient may limit housing to a specific subpopulation, so long as admission does not discriminate against any protected class, as well as instances where recipients or subrecipients may limit admission or provide a preference to certain subpopulations of homeless persons and families who need the specialized services provided in the housing. Additionally, the rule states that, in consideration of personal privacy, housing may only be limited to a single sex when such housing consists of a single structure with shared bedrooms or bathing facilities such that the considerations of personal privacy and the physical limitations of the configuration of the housing make it appropriate for the housing to be limited to one sex.

Case management § 576.401 (e) and § 578.37 (F)

Victim service providers are exempt from providing case management.

Consolidated Plan Housing and homeless needs assessment § 91.205 (b)(1)(i)

The plan shall estimate the number and type of families in need of housing assistance including victims of domestic violence, dating violence, sexual assault, and stalking.

Address confidentiality § 576.500 (x)(ii)

The address or location of any domestic violence, dating violence, sexual assault, or stalking shelter project assisted under the ESG will not be made public, except with written authorization of the person responsible for the operation of the shelter

Confidentiality of records for family violence § 91.225 (c)(8)

ESG-funded jurisdictions must certify that the jurisdiction has established and is implementing procedures to ensure the confidentiality of records pertaining to any individual provided family violence prevention or treatment services under any project assisted under the ESG program, including protection against the

release of the address or location of any family violence shelter project, except with the written authorization of the person responsible for the operation of that shelter;

Specific use of ESG funds § 576.102

ESG funds, among other things may be used to provide: ongoing risk assessment and safety planning with victims of domestic violence, dating violence; legal services for domestic violence matters; life skills training and services to special populations (including victim services).

Coordinating with OVW Transitional Housing § 576.400 (b)(12)

The recipient and its subrecipients must coordinate and integrate, to the maximum extent practicable, ESG-funded activities with other programs targeted to homeless people in the area covered by the Continuum of Care or area over which the services are coordinated to provide a strategic, community-wide system to prevent and end homelessness for that area OVW transitional housing.

Written standards for providing Emergency Solutions Grant (ESG) assistance § 576.400 (e)(3)(iii)

Written standards must include: policies and procedures for admission, diversion, referral, and discharge by emergency shelters assisted under ESG, including standards regarding length of stay, if any, and safeguards to meet the safety and shelter needs of special populations, *e.g.*, victims of domestic violence, dating violence, sexual assault, and stalking; and individuals and families who have the highest barriers to housing and are likely to be homeless the longest.