



# AGENDA

## Thursday, October 24, 2013 - 10:00 AM BOARD OF COUNTY COMMISSIONERS

Beginning Board Order No. 2013-83

### I. CALL TO ORDER

- Roll Call
- Pledge of Allegiance

### II. PRESENTATION *(Following are items of interest to the citizens of the County)*

1. Presentation from the County Assessor Regarding the 2013 Property Tax Statements (Bob Vroman)

**III. CITIZEN COMMUNICATION** *(The Chair of the Board will call for statements from citizens regarding issues relating to County government. It is the intention that this portion of the agenda shall be limited to items of County business which are properly the object of Board consideration and may not be of a personal nature. Persons wishing to speak shall be allowed to do so after registering on the blue card provided on the table outside of the hearing room prior to the beginning of the hearing. Testimony is limited to three (3) minutes. Comments shall be respectful and courteous to all.)*

**IV. DISCUSSION ITEMS** *(The following items will be individually presented by County staff or other appropriate individuals. Citizens who want to comment on a discussion item may do so when called on by the Chair.)*

**~NO DISCUSSION ITEMS SCHEDULED**

**V. CONSENT AGENDA** *(The following items are considered to be routine, and therefore will not be allotted individual discussion time on the agenda. Many of these items have been discussed by the Board in Study Session. The items on the Consent Agenda will be approved in one motion unless a Board member requests, before the vote on the motion, to have an item considered at its regular place on the agenda.)*

#### A. Health, Housing & Human Services

- 2 1. Approval to Apply for the State of Oregon, Oregon Health Authority 2013-2015 Behavioral Health Investments Requests for Proposal – *Behavioral Health*
- 3 2. Approval of an Intergovernmental Agreement with Community Development Division and the City of Sandy for Curbs and Sidewalks Improvements – *Community Development*
- 4 3. Approval of a Renewal Grant Agreement from the US Department of Housing and Urban Development, Supportive Housing Program for the HOPE II Leasing Program for the Purpose of Providing Permanent Housing – *Social Services*

**B. Department of Transportation & Development**

- 5 1. Approval of an Urban Growth Management Agreement (UGMA) between Clackamas County and the City of Happy Valley

**C. Elected Officials**

- 6 1. Approval of Previous Business Meeting Minutes – BCC

**D. County Counsel**

- 7 1. Board Order No. \_\_\_\_\_ Authorizing Purchase for Certain Real Property Located at 1102 and 1104 Main Street, Oregon City

**E. Department of Employee Services**

- 8 1. Approval of the Employer Group Contracts from the Providence Health Plan for the Period of January 1, 2013 to December 31, 2013

**VI. COUNTY ADMINISTRATOR UPDATE**

**VII. COMMISSIONERS COMMUNICATION**

**NOTE: Regularly scheduled Business Meetings are televised and broadcast on the Clackamas County Government Channel. These programs are also accessible through the County's Internet site. DVD copies of regularly scheduled BCC Thursday Business Meetings are available for checkout at the Clackamas County Library in Oak Grove by the following Saturday. You may also order copies from any library in Clackamas County or the Clackamas County Government Channel.**

*<http://www.clackamas.us/bcc/business/>*



BOB VROMAN  
COUNTY ASSESSOR

DEPARTMENT OF ASSESSMENT AND TAXATION

DEVELOPMENT SERVICES BUILDING  
150 BEAVERCREEK ROAD | OREGON CITY, OR 97045

October 24, 2013

Board of County Commissioners  
Clackamas County

Members of the Board:

Presentation by the Department of Assessment and Taxation on Property Tax Information

<b>Purpose/Outcomes</b>	To advise and inform on the Certification of the 2013-2014 Property Tax Roll and the mailing of property tax statements.
<b>Dollar Amount and Fiscal Impact</b>	The total 2013-2014 property tax imposed for all tax districts in Clackamas County is \$649,224,335, an increase of 3.16% over last years' total of \$629,332,557.
<b>Funding Source</b>	N/A
<b>Safety Impact</b>	N/A
<b>Duration</b>	The tax year beginning July 1, 2013 and ending June 30, 2014
<b>Previous Board Action</b>	No previous Board Action
<b>Contact Person</b>	Bob Vroman, Clackamas County Assessor and Tax Collector

**BACKGROUND:**

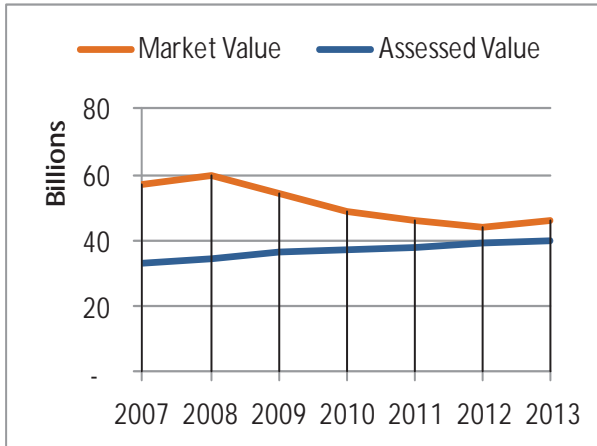
This Assessor thanks the Board of County Commissioners for the opportunity to provide information on the certification of this years' property tax roll. The Department of Assessment and Taxation will mail property tax statements to 169,329 property owners on October 18<sup>th</sup> and 21<sup>st</sup>. An overview of real market value, assessed value and tax will be presented and information will be provided on payment due dates, payment options, appeal timelines and the Assessor's Town Hall schedules.

Respectfully submitted,

Bob Vroman, County Assessor

## Most Market Values Increased Slightly for January 1, 2013

### Market Values up slightly, Taxable Assessed Value grows by 3%



Real Market Value (RMV) on your tax statement is an estimate of the value your property would have sold for as of the January 1, 2013 assessment date. This value does not reflect continuing changes in the market after that date. Your Maximum Assessed Value (MAV) was established by constitutional amendment in 1997 (Measure 50) and, by law, grows 3% annually unless it exceeds the real market value. Property is taxed on the Assessed Value (AV), which is the lesser of real market value or the maximum assessed value. **For most property owners, the maximum assessed value continues to be lower than market value so the 3% increase in assessed value results in an increase in taxes even though the market value may have declined.** New construction, remodeling, or additions are exceptions to the 3% cap and may increase assessed value and taxes more than 3%.

### Oregon's Other Property Tax Limitation

Measure 5 (M-5) limits the amount of tax that can be imposed on a property to \$5 per 1,000 of real market value in the education category and \$10 per 1,000 in the general government category. Bonded debt is excluded from any limitation. As market values declined and assessed values continued to grow, savings to taxpayers from M-5 have grown and correspondingly schools and local governments received less revenue. The reduction in tax from exceeding M-5 limits is described as **compression**. Measure 5 limits are tested on a property by property basis. Compression is dependent on the difference between real market value and the assessed value as well as the tax rates. The amount of compression, if any, will vary between properties. Last year approximately 80% of all accounts had some savings resulting from the Measure 5 limits.

### Special Property Tax Programs

**Senior & Disabled Citizen Deferrals:** You may be able to defer payment of property taxes on your residence if you are 62 years or older, or disabled at any age and receiving Social Security Disability benefits. Certain income limits apply. Applications for next year can be obtained from our office after January 1, 2014 and must be filed by April 15, 2014. Call or visit our website at [www.clackamas.us/at/seniordeferral.html](http://www.clackamas.us/at/seniordeferral.html)

**Disabled Veteran Exemption or Active Duty Military Service Members' Exemption:** Information is available on our website at [www.clackamas.us/at/veteran.html](http://www.clackamas.us/at/veteran.html)

Questions, call 503-655-8671  
 ✉ [propertytaxinfo@clackamas.us](mailto:propertytaxinfo@clackamas.us)  
 Monday—Thursday  
 from 7:00 AM to 6:00 PM

### Town Hall Meetings

The Assessor and his staff will conduct town hall meetings during October and November. Information provided includes current property values, veteran exemptions, senior & disabled citizen property tax deferrals, farm and forestland deferrals, Measure 50 and its effect on future taxes, and value appeals.

<b>CANBY</b> Canby Adult Center 1250 S Ivy Street October 23, 2013 7:00 – 8:30 pm	<b>MILWAUKIE</b> The Milwaukie Center 5440 SE Kellogg Creek Drive October 30, 2013 9:00 – 10:30 am <i>and</i> November 6, 2013 7:00 – 8:30 pm
<b>COLTON</b> High School Media Center 30205 S Wall Street November 13, 2013 7:00 – 8:30 pm	<b>MOLALLA</b> Adult Community Center 315 Kennel Avenue October 28, 2013 7:00 – 8:30 pm
<b>DAMASCUS</b> Community Church 14251 SE Rust Way October 29, 2013 7:00 – 8:30 pm	<b>OREGON CITY</b> Pioneer Community Center 615 5th Street October 22, 2013 7:00 – 8:30 pm
<b>ESTACADA</b> Community Center 200 SW Club House Dr November 5, 2013 7:00 – 8:30 pm	<b>SANDY</b> Community & Senior Center 38348 Pioneer Boulevard November 7, 2013 12:30 – 2:00 pm
<b>GLADSTONE</b> Gladstone Senior Center 1050 Portland Avenue October 23, 2013 9:00 – 10:30 am	<b>WEST LINN</b> Adult Community Center 1180 Rosemont Road November 6, 2013 1:00 – 2:30 pm
<b>LAKE OSWEGO</b> Adult Community Center 505 G Avenue November 5, 2013 2:00 – 3:30 pm	<b>WILSONVILLE</b> Clackamas County Visitor's Center 29600 SW Park Place October 24, 2013 7:00 – 8:30 pm



Bob Vroman,  
Assessor

## Department of Assessment & Taxation

### 2013-2014 Property Tax Statement Information

Office Hours: 7:00 AM to 6:00 PM  
 Monday - Thursday (Closed on Fridays)

All County Offices will be closed on Monday, November 11, 2013 in observance of Veteran's Day

The Assessor's Office will be open from 7:00 AM to 6:00 PM on Friday, November 15<sup>th</sup>, 2013

☎ 503-655-8671

☎ 503-655-8313

[www.clackamas.us/at](http://www.clackamas.us/at)

✉ [propertytaxinfo@clackamas.us](mailto:propertytaxinfo@clackamas.us)

Development Services Building  
 150 Beavercreek Road, Suite 135  
 Oregon City, OR 97045



## Payment Options and Due Dates

### Please Mail Early

Please include payment stubs with your check. **Discounts are lost if payments are not postmarked or received by November 15, 2013.** Your cancelled check is your receipt. **Postdated checks are not timely payments.** All checks are processed as received. Please do not mail cash. Your payment by check authorizes us to process a one-time electronic funds transfer. Make checks payable to Clackamas County Tax Collector or CC Tax. Payments returned for insufficient funds or postage will result in loss of discount. Returned checks will be charged a \$25.00 service fee.

### Pay Your Taxes Online

Payments can also be made online at [www.clackamas.us/at/pay.html](http://www.clackamas.us/at/pay.html) with a credit card, debit card, or e-check. All payments must be submitted on or before the due date. Convenience fees charged by US Bank for online pay services are listed on our website. The online payment process is voluntary. We cannot process payments by phone.

### Payment Due Dates

To receive a discount and avoid interest **payments must be received**, postmarked, transmitted online or delivered by private express carrier **on or before Friday, November 15, 2013.** Interest is charged on any unpaid portion of the first installment *after* November 15, 2013 at the rate of 16% annually. Payments made with electronic bill pay services must be **received** in our office by November 15<sup>th</sup>. Please request payment in advance with your bill pay provider. Credit and debit card payments can only be made online.

### Payment Options

**Full Payment** Receive a 3% discount if paying in full by November 15, 2013  
**2/3 Payment** Receive a 2% discount if paying 2/3 by November 15, 2013; the final 1/3 is due May 15, 2014  
**1/3 Payment** Pay 1/3 by November 15, 2013, 1/3 on February 18, 2014, and the final 1/3 on May 15, 2014

## Appeal Information and New Money Measures

### Appeal Rights to the Board of Property Tax Appeals (BOPTA)

If you have questions regarding the values on your tax statement, please call 503-655-8671; our appraisal staff will be available to discuss any concerns you may have. If you disagree with the values on your statement, you can file an appeal with the Board of Property Tax Appeals (BOPTA) by Tuesday, December 31, 2013. You can contact the County Clerk's office at 503-655-8662 for more information. BOPTA information and appeal forms are available online at [www.clackamas.us/at/proappeals.html](http://www.clackamas.us/at/proappeals.html)

### New Voter Approved Money Measures

- \$0.4003 per 1,000 for new Government Camp Road District
- \$0.0600 per 1,000 for City of Lake Oswego Bond (Boones Ferry Rd)
- \$0.0960 per 1,000 for new Metro Service District Local Option
- \$1.1000 per 1,000 for new Portland Public Schools Bond

## Property Taxes Support Your Local Services

Property taxes in Clackamas County support 133 local government taxing districts, including 18 school districts, 17 cities, 14 fire districts, and the County. Other taxing districts providing services include water districts, public safety districts, the Port of Portland, and Metro.



\* Miscellaneous includes Port, Vector, Cemetery, Water, Parks, and Lighting.

\*\* Service includes Library, Metro, Extension Office, and Sewer

Based on 2012 Data

### Yellow Tax Statements

Receiving a yellow statement means a lender has notified us and they intend to pay the tax. Call your lender if you have questions. A yellow tax statement is a copy for your records.

### Tax Statements are available online

There is a convenient drive-thru payment drop box located onsite and a walk-up payment drop box by the building entrance

### Green Tax Statements

Receiving a green statement means you have property taxes to pay. To receive a discount and avoid interest, payments must be received or postmarked by November 15, 2013. See payment options.

☎ 503-655-8671

[www.clackamas.us/at](http://www.clackamas.us/at)

✉ [propertytaxinfo@clackamas.us](mailto:propertytaxinfo@clackamas.us)



Contact:  
Bob Vroman, Assessor

Phone 503-655-8302  
Fax 503-655-8313

Clackamas County  
Department of Assessment & Taxation  
150 Beaver Creek Road  
Oregon City, OR 97045

# Press Release

## Subject: 2013-2014 Property Tax Information

### Clackamas County Assessor, October 14, 2013

Total real market value in Clackamas County will show the first year over year increase since the economy spiraled downward following the fall of 2008. This is the seventeenth tax year under Oregon's last constitutional property tax limitation that has driven Oregon's property tax system since May 1997. Oregon's rebounding economy and improving real estate market contributed to the highest percentage growth in property tax in the last 3 years.

The total 2013-14 property tax to be collected for all districts in the county is \$649,224,335, an increase of 3.16% over last year's total of \$629,332,557.

The \$19.9 million increase in property taxes is primarily due to taxes generated from new construction, voter approval of one new taxing district, new bond levies, and the required 3% increase to assessed value on most existing property. Tax relief to property owners from Oregon's other constitutional limitation, Measure 5, grew more slowly with increasing real market values. Still, tax reduction under Measure 5's limitations increased from last year's \$18.2 million to \$20.1 million, reaching the highest amount of Measure 5 tax relief since the implementation of Measure 50 in 1997. This tax relief for property owners comes at a cost to taxing districts that receive less revenue as a result of Measure 5 limitations.

Property tax statements will be mailed to 169,329 real and personal property owners on October 18<sup>th</sup> and 21<sup>st</sup>.

Many property owners will still see their taxes increase close to the 3% expected with the typical 3% growth in assessed value. Some will see increases greater than 3% where districts levied more for existing bonded debt or passed new local option or bonded debt levies. Others will see increases less than 3% where taxing districts levied less for bonded debt, paid debt off, or they are seeing savings as a result of Measure 5 limitations. A number of property owners will see tax decreases where real market values have fallen below the maximum assessed value and their assessed value and taxes have decreased.

Regional voters approved the Metropolitan Service District's local option levy that is 9.6 cents per thousand to fund improvement of natural areas and water quality. City of Lake Oswego voters approved new bonded debt with a rate of 6 cents per thousand for Boones Ferry Road Improvements. The Portland Public Schools new bonded debt levy for school improvements and upgrades was approved resulting in a rate of \$1.089 per thousand. Voters in Government Camp approved the creation of a new road district with a permanent rate of 40.03 cents per thousand.

The City of Oregon City levied 25 cents per thousand more of its' permanent rate authority but is still levying less than its full permanent rate. The City of Portland Fire and Police Pension levy increased 17.4 cents per thousand. All Clackamas County residents will see a rate reduction of 10.9 cents per thousand resulting from the ending of the Clackamas Town Center Urban Renewal Plan and its' special levy authority.

### Other Area Changes Impacting Taxes:

**Education Districts levying less for bonded debt** These reduced levies helped offset tax increases from new levies and increases that occur with the 3% increase in assessed value.

District	2012 Rate	2013 Rate	2013 Change
SILVER FALLS SCHOOL	3.3527	2.0758	-1.2769
MOLALLA RIVER SCHOOL	0.2608	0	-0.2608
RIVERDALE SCHOOL	3.3727	3.1135	-0.2592
ESTACADA SCHOOL	1.5583	1.3362	-0.2221
GLADSTONE SCHOOL	4.5492	4.4776	-0.0716
WEST LINN/WILS SCHOOL	3.0162	2.9538	-0.0624
GRESHAM/BARLOW SCHOOL	1.0864	1.0312	-0.0552
NORTH CLACKAMAS SCHOOL	2.2483	2.2151	-0.0332
OREGON TRAIL SCHOOL	2.3840	2.3551	-0.0289

**Education Districts levying more for bonded debt** These increased levies may contribute to higher tax increases than would typically occur with the 3% increase in assessed value.

District	2012 Rate	2013 Rate	2013 Change
CANBY SCHOOL	2.1588	2.3218	0.1630
PORTLAND COMMUNITY COLLEGE	0.3823	0.4514	0.0691

### Districts levying new voter approved money measures

District Name	Type of Levy	Purpose	Rate Increase
<i>Metro Service District</i>	<i>Local Option</i>	<i>Natural Area Improvement and water quality</i>	<i>9.6¢ per 1,000</i>
<i>Portland Public Schools</i>	<i>Bonded Debt</i>	<i>Improve School Facilities</i>	<i>\$1.089 per 1,000</i>
<i>City of Lake Oswego</i>	<i>Bonded Debt</i>	<i>Boones Ferry Road Improvements</i>	<i>6¢ per 1,000</i>
<i>Government Camp Road District</i>	<i>Permanent Rate</i>	<i>Creates New Road District For road maintenance</i>	<i>40.03¢ per 1,000</i>

<b>TYPICAL PROPERTY TAX INCREASES FOR 2013-14*:</b>			
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Beavercreek	2.0%	Milwaukie (City)	2.5%
Boring	1.5%	Milwaukie (Unincorporated North Clackamas Area)	2.5%
Canby (City)	3.25%	Newberg	2.0%
Canby (Rural)	3.5%	Oregon City (City)	4.0%
Carus	3.5%	Oregon City (Rural)	2.0%
Charbonneau	3.0%	Portland (City)	
Colton	2.0%	- Portland Sch. District	9.5%
		- North Clackamas School Dist.	3.5%
Damascus (City)		Redland	2.0%
-Centennial School Dist.	2.5%	Riverdale	1.5%
-Gresham/Barlow School Dist.	2.0%	Sandy (City)	2.0%
-North Clackamas School Dist.	2.5%	Sandy (Rural)	2.0%
-Oregon Trail School Dist.	2.5%		
-Estacada School Dist	2.5%	Sherwood	2.25%
Estacada (City)	1.0%	Sunnyside	2.5%
Estacada (Rural)	0.5%	Tualatin	2.5%
Gladstone (City)		Government Camp	5.0%
-Gladstone School Dist.	2.5%	West Linn (City)	2.5%
-North Clackamas School Dist.	2.5%	West Linn/Wilsonville (Rural)	2.0%
-Oregon City School Dist.	3.5%		
Happy Valley	2.5%	Wilsonville (City)	
Lake Oswego	3.0%	- West Linn/Wilsonville School	2.5%
		- Canby School	3.5%
Molalla (City)	0.5%		
Molalla (Rural)	-0.5%		
Silver Falls School Dist.	-7.0%		
Mulino	-0.5%		

\* **The typical tax increases above reflect property taxes prior to any limitation that may result from Measure 5.** Savings that result from the Measure 5 limits reduce the amount of tax actually imposed and are calculated on a property by property basis. The savings that occur from the Measure 5 limitation is dependent on the ratio of assessed value to real market value and the tax rates of the districts that provide service to a specific area.

Clackamas County will have 93,423 accounts that receive some savings as a result of the Measure 5 limits. 33,847 accounts will see a decrease in taxes from the prior year. The real market value is the assessed value for 39,200 accounts and 29,360 of those accounts are residential, commercial, industrial, or manufactured structure accounts.



## UNDERSTANDING OREGON'S PROPERTY TAX SYSTEM

Oregon's property tax system continues to be driven by a constitutional property tax limitation passed by voters in May of 1997 and still referred to as Measure 50. The constitutional amendment reduced property taxes and fundamentally changed Oregon's property tax system in several ways. It replaced most tax levies with permanent tax rates; it lowered the assessed value of every property to 90% of its 1995-96 assessed value; and it limited assessed value growth to 3% a year as long as real market value exceeded the maximum assessed value established under the system. The system also allows voters to approve additional money measures that may increase their taxes in excess of 3%.

For January 1, 2013, the total real market value of property in Clackamas County including new construction is \$45.9 billion. This is a 4.3% increase from \$44.0 billion in 2012. The assessed value for tax purposes grew from \$38.8 billion to \$40.3 billion, an increase of 3.9%. This is Clackamas County's first increase in the percentage of growth in assessed value since 2007. While the gap between real market value and maximum assessed value has closed, most property taxes are still calculated on an assessed value that is less than real market value.

The average real market value of a single family home in Clackamas County is \$278,680 and the median value is \$235,664. The average taxable value is \$244,842. The assessed value of an average home is equal to about 88% of its real market value. The Assessor's values represent the property values as of the assessment date which is January 1, 2013 and reflect the change in value from January 1, 2012 to January 1, 2013. The value on your tax statement does not reflect changes in the real estate market that have occurred after the assessment date.

Property taxes in Oregon typically increase about 3% each year unless there are significant improvements to the property (new construction) or new voter-approved money measures. **The 3% assessed value increase times the permanent tax rate of each taxing district would limit taxes to a 3% increase.**

Since Measure 50 passed in 1997, market values generally grew much faster than the 3% increase in assessed value required by law. In contrast, market values fell the past 5 years. Even with market value declines, as long as market value was greater than the maximum assessed value, the 3% annual increase in assessed value continued and taxes typically increased about 3%. Properties with new construction, other measure 50 exception value, or in areas with new money measures passed by the voters, can see taxes increase more than the typical 3%.

Some properties also have real market values that fell below the maximum assessed value set by Measure 50 and their taxes were calculated on the real market value. With real market values increasing, these properties can see assessed value increases and tax increases that may exceed 3%, but their taxes will always be calculated on the lesser of real market value or the maximum assessed value for the property.

Property taxes in Clackamas County support 133 local government taxing districts, including 18 school districts, 17 cities, 14 fire districts, and the county. Other taxing districts providing services include water districts, public safety districts, service districts, the Port of Portland, and Metro.

## Property Taxes Support Your Local Services



\* Miscellaneous includes Port, Vector, Cemetery, Water, Parks, and Lighting

\*\* Service includes Library, Metro, Extension Office, and Sewer

## DUE DATES AND APPEALS

The value change notice is part of the tax statement. Taxpayers can file value appeals with the Board of Property Tax Appeals (BOPTA) through December 31, 2013. BOPTA's phone number is 503-655-8662. Full payment of taxes is due by November 15, 2013 to receive the 3% discount. A two percent discount is given if 2/3 payment is received by November 15<sup>th</sup>. No discount is allowed on a 1/3 payment and additional 1/3 payments are due on February 18<sup>th</sup> and May 15, 2014.

## PAYING YOUR TAXES

Our staff is committed to providing high quality public service. We encourage people to pay their taxes early and take advantage of the payment methods most convenient for them. Mail payments early to ensure they are received timely. You can also choose the on-line payment process where e-checks and debit card payments are very affordable (see our website for more information at [www.clackamas.us/at/pay.html](http://www.clackamas.us/at/pay.html)). There is a tax payment drop box located to the left of the main entrance at the Development Services Building. Also, look for signs directing you to our drive thru tax payment drop box located off Library Court beginning November 1<sup>st</sup>.

## LOCATION, OFFICE HOURS and PUBLIC SERVICE:

The Assessor's general office hours are from 7:00 am to 6:00 pm Monday through Thursday **(closed Friday)**

**The office will also be closed Monday, November 11<sup>th</sup> in observance of Veterans Day.**

**The Assessor's office will be open from 7:00 AM to 6:00 PM on Friday, November 15<sup>th</sup> to process tax payments and answer questions.**

Citizens may call 503-655-8671 after hours and leave messages on the recorder or email the office at: [PropertyTaxInfo@clackamas.us](mailto:PropertyTaxInfo@clackamas.us). The Assessor and his staff will conduct 13 town hall meetings between October 22<sup>nd</sup> and November 13<sup>th</sup> to provide information and communicate directly with the citizens. A list of dates and locations is included with the tax statements.

Our office is located in the Development Services Building on the Red Soils Campus at 150 Beaver Creek Road in Oregon City. Clackamas County has brought together departments providing related services like planning and building permits that were previously in various locations. Our goal is customer convenience with one stop shopping in mind. Our office is located on the first floor just inside the main entrance.

<b>CLACKAMAS COUNTY ASSESSOR TOWN HALL SCHEDULE - 2013:</b>
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The Assessor and his staff will conduct 13 town hall meetings between October 22<sup>nd</sup> and November 13<sup>th</sup>. Information provided includes current property values and how established, requirements for veteran's exemptions and senior citizen tax deferral, Measure 50 and its effect on future taxes and the value appeal process.

**CANBY**

Canby Adult Center  
1250 S Ivy Street  
October 23, 2013            7:00 – 8:30 pm

**MILWAUKIE**

The Milwaukie Center  
5440 SE Kellogg Creek Drive  
October 30, 2013            9:00 – 10:30 am  
November 6, 2013            7:00 – 8:30 pm

**COLTON**

Colton High School Media Center  
30205 S Wall Street  
November 13, 2013            7:00 – 8:30 pm

**MOLALLA**

Molalla Adult Community Center  
315 Kennel Avenue  
October 28, 2013            7:00 – 8:30 pm

**DAMASCUS**

Damascus Community Church  
14251 SE Rust Way  
October 29, 2013            7:00 – 8:30 pm

**OREGON CITY**

Pioneer Community Center  
615 5<sup>th</sup> Street  
October 22, 2013            7:00-8:30 pm

**ESTACADA**

Estacada Community Center  
200 SW Club House Drive  
November 5, 2013            7:00 – 8:30 pm

**SANDY**

Sandy Community & Senior Center  
38348 Pioneer Boulevard  
November 7, 2013            12:30 – 2:00 pm

**GLADSTONE**

Gladstone Senior Center  
1050 Portland Avenue  
October 23, 2013            9:00 – 10:30 am

**WEST LINN**

West Linn Adult Community Center  
1180 Rosemont Road  
November 6, 2013            1:00 – 2:30 pm

**LAKE OSWEGO**

Lake Oswego Adult Community Center  
505 G Avenue  
November 5, 2013            2:00 – 3:30 pm

**WILSONVILLE**

Clackamas County Visitor's Center  
29600 SW Park Place  
October 24, 2013            7:00 – 8:30 pm

October 24, 2013

Board of County Commissioners  
Clackamas County

Members of the Board:

Approval to Apply for the State of Oregon, Oregon Health Authority  
2013-2015 Behavioral Health Investments Requests for Proposals

<b>Purpose/Outcomes</b>	The 2013-2015 Legislatively Adopted Budget identifies specific services and system expansions that focus on promoting community health and wellness, keeping children healthy and helping adults with mental illness live successfully in the community.  <b>Investments in Children and Young Adults:</b> Develop programs that emphasize prevention, early identification and intervention, and training and technical assistance for health care providers.  <b>Investments in Strengthening Community Mental Health Services:</b> To help people with mental illness live successfully and independently in the community.
<b>Dollar Amount and Fiscal Impact</b>	The total potential funding amount of all awards statewide is \$21M.
<b>Funding Source</b>	Oregon Health Authority - no County General Funds are involved.
<b>Safety Impact</b>	None
<b>Duration</b>	Funding awards will be effective in January 2014.
<b>Previous Board Action</b>	No previous Board action.
<b>Contact Person</b>	Jill Archer, Director – Behavioral Health Division – (503)742-5336
<b>Contract No.</b>	N/A

**BACKGROUND:**

Clackamas County Behavioral Health Division (CCBHD) is requesting approval to apply for several funding opportunities that have been made available through the State of Oregon, Oregon Health Authority 2013-2015 Behavioral Health Investments.

Oregon is investing in a coordinated system of care for children, youth, adults and families by strengthening partnerships, expanding services and supporting innovation. As the state continues to transform its health care system, Addictions and Mental Health is working with community partners to enhance behavioral health services and support health for all Oregonians.

CCBHD will be applying for funding to develop programs that emphasize prevention, early identification and intervention, and training and technical assistance for health care providers through the following RFP opportunities:

- **Early Assessment and Support Alliance (EASA)** – Total potential funding \$1.8M. This investment will expand the EASA program statewide to provide young adults with early identification and treatment for psychotic disorders.

*Healthy Families. Strong Communities.*

- **School access to mental health services** - Total potential funding \$5M. This investment will enhance the availability of mental health services to students by bringing professionals to schools and by building on existing school-based infrastructure.
- **System of Care and Wrap-around** - Total potential funding \$4M. This investment will increase the availability of wraparound services in the state, providing intensive care coordination for children with emotional and behavioral disorders.

In addition, CCBHD will be applying for funding to help people with mental illness live successfully and independently in the community through the following RFP opportunities:

- **Mental health promotion and prevention** - Total potential funding \$3M. This investment folds mental health promotion and prevention into the existing prevention system so communities can identify early indicators of problems and foster mental health.
- **Jail diversion** - - Total potential funding \$3M. This investment will expand services to keep millions of people with mental illness from unnecessary incarceration in local jails.
- **Supported housing and peer-delivered services** - Total potential funding \$4.2M. This investment will increase supported housing and peer-delivered services for approximately 200 clients with major mental illness.

**RECOMMENDATION:**

Staff recommends Board approval for CCBHD to apply for these funding opportunities and authorizes Cindy Becker, H3S Director, to sign on behalf of Clackamas County.

Respectfully submitted,



Cindy Becker, Director

October 24, 2013

Board of County Commissioner  
 Clackamas County

Members of the Board:

Approval of an Intergovernmental Agreement with Clackamas County  
 Health, Housing & Human Services, Community Development Division and the  
City of Sandy for Curbs and Sidewalks Improvements

<b>Purpose/Outcomes</b>	This Intergovernmental Agreement is to design and construct new curbs and sidewalks in the City of Sandy.
<b>Dollar Amount and Fiscal Impact</b>	The maximum Community Development Block Grant (CDBG) allocation for construction is \$140,000 dollars. These funds are for the current Fiscal Year of 2013-2014. The City of Sandy will provide a minimum of 20% of the construction cost for the project.
<b>Funding Source</b>	Community Development Block Grant Funds (CDBG) - no County General Funds are involved.
<b>Safety Impact</b>	None
<b>Duration</b>	Effective November 1, 2013 and terminates before April 1, 2014
<b>Previous Board Action</b>	None
<b>Contact Person</b>	Steve Kelly – Community Development: 503-650-5665
<b>Contract No.</b>	6469

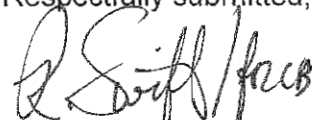
**BACKGROUND:**

The City of Sandy requested CDBG funds from the Community Development Division to construct new curbs and sidewalks along several streets of Sandy. Work would be done on Beers Avenue, Bruns Avenue and Pleasant Street. Community Development Division will provide project coordination. The City of Sandy will provide all engineering services through a private firm. This agreement has been reviewed and approved by County Counsel.

**RECOMMENDATION:**

Staff recommends the Board approve this agreement and authorizes Cindy Becker, H3S Director to sign on behalf of Clackamas County.

Respectfully submitted,

  
 Cindy Becker, Director

**INTERGOVERNMENTAL AGREEMENT  
BETWEEN  
CLACKAMAS COUNTY DEPARTMENT OF  
HEALTH, HOUSING AND HUMAN RESOURCES  
COMMUNITY DEVELOPMENT DIVISION  
AND  
THE CITY OF SANDY**

**I. Purpose**

- A. This Agreement is entered into between Clackamas County, acting by and through its Community Development Division (COUNTY) and the City of Sandy (CITY) for the cooperation of units of local government under the authority of ORS 190.010.
- B. This Agreement provides for the construction of curb, sidewalk, paving and drainage improvements on the following Sandy streets: East side of Bluff Road, Pleasant Street between Meinig Avenue and Revenue Avenue, along Beers Avenue between Pleasant Street and Park Street, and Bruns Avenue between Pleasant Street and Hood Street. The Project is located in the City of Sandy. These improvements are herein referred to as the PROJECT.
- C. The COUNTY has determined that the PROJECT is eligible for Community Development Block Grant (CDBG) funds as a Low-Mod Area Benefit Activity because the targeted PROJECT area in the City of Sandy is a Low-Mod Benefit Area based on Census Tract and Block Group information. See ATTACHMENT A(1) as well as ATTACHMENT A(2) for the PROJECT Map Area.

**II. Scope of Responsibilities**

- A. Under this agreement the responsibilities of the CITY shall be as follows:
  - 1. The CITY shall provide all necessary supervisory and administrative support to assist the COUNTY with the completion of the PROJECT.
  - 2. The CITY shall obtain any easements or approvals necessary to allow access onto private property. Acquisition of any easement shall be obtained pursuant to the federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA).
  - 3. The CITY shall provide engineering services for the design and construction oversight of the PROJECT. Such services shall be provided



at no cost to the COUNTY. The CITY shall assume responsibility for ensuring the following:

- a. The CITY shall hire a registered professional engineer (herein after referred to as Engineer) to prepare all plans and specifications necessary to publicly bid the PROJECT for award to a construction contractor (herein after referred to as Contractor) and provide construction oversight including staking and surveying of the PROJECT.
- b. The CITY shall require the Engineer to indemnify, save harmless and defend the COUNTY, its officers, agents, commissioners and employees from and against all claims and actions, and all expenses incidental to the investigation and defense thereof, arising out of or based upon damage or injuries to persons or property caused by the negligent acts, errors or omissions of the Engineer or the Engineer's employees.
- c. The CITY shall require the Engineer to furnish the COUNTY evidence of commercial general liability insurance in the amount of not less than \$1,000,000 combined single limit per occurrence / \$2,000,000 general annual aggregate for personal injury and property damage for the protection of the COUNTY, its officers, commissioners and employees against liability for damages because of personal injury, bodily injury, death or damage to property, including loss of use thereof, in any way related to this contract. The COUNTY, at its option, may require a complete copy of the above policy.
- d. If the Engineer has the assistance of other persons in the performance of this contract, and the Engineer is a subject employer, the CITY shall require that the Engineer agrees to qualify and remain qualified for the term of this contract as an insured employer under ORS 656. The Engineer shall maintain employer's liability insurance with limits of \$100,000 each accident, \$100,000 disease each employee, and \$500,000 each policy limit.
- e. If any other required liability insurance is arranged on a "claims made" basis, "tail" coverage will be required at the completion of this contract for a duration of thirty-six (36) months or the maximum time period the Engineer's insurer will provide "tail" coverage as subscribed, or continuous "claims made" liability coverage for thirty-six (36) months following the contract completion. Continuous "claims made" coverage will be acceptable in lieu of "tail" coverage provided its retroactive date is on or before the effective date of this contract.

- f. The CITY shall require the Engineer to furnish the COUNTY evidence of business automobile liability insurance in the amount of not less than \$500,000 combined single limit for bodily injury and property damage for the protection of the COUNTY, its officers, commissioners, and employees against liability for damages because of bodily injury, death or damage to property, including loss of use thereof in any way related to this contract. The COUNTY, at its option, may require a complete copy of the above policy.
- g. The CITY shall require the Engineer to furnish the COUNTY evidence of professional liability insurance in the amount of not less than \$1,000,000 combined single limit per occurrence / \$2,000,000 general annual aggregate for malpractice or errors and omissions coverage for the protection of the COUNTY, its officers, commissioners and employees against liability for damages because of personal injury, bodily injury, death or damage to property, including loss of use thereof, and damages because of negligent acts, errors and omissions in any way related to this contract. The COUNTY, at its option, may require a complete copy of the above policy.
- h. The insurance, other than the professional liability insurance, shall include the COUNTY as an expressly scheduled additional insured. Proof of insurance must include a copy of the endorsement showing the COUNTY as a scheduled insured. Such insurance shall provide sixty (60) days written notice to the COUNTY in the event of a cancellation or material change and include a statement that no act on the part of the insured shall affect the coverage afforded to the COUNTY under this insurance. This policy(s) shall be primary insurance as respects to the COUNTY. Any insurance or self-insurance maintained by the COUNTY shall be excess and shall not contribute to it.
- i. The CITY shall ensure that the Responsibilities of the Engineer include, but not be limited to, the following:
  - (i) During construction the Engineer shall endeavor to guard the COUNTY against apparent defects and deficiencies in the permanent work constructed by the Contractor.
  - (ii) All reports and recommendations concerning construction shall be submitted to the COUNTY for their approval. The COUNTY agrees that no decisions affecting construction shall be made without CITY approval.
  - (iii) In the event modifications to the construction contract, which result in an increase in the contract amount, are

made without the prior approval of the COUNTY, CITY shall be solely responsible for these modifications.

- (iv) Notify the County Surveyor of the PROJECT and provide CITY, design engineer, surveyor and contractor contacts.
- (v) File a "Pre-Construction Record of Survey" with the County Surveyor prior to the start of construction in order to identify and preserve the locations of survey monuments identified in public surveys on file in the County Surveyor's Office that may be disturbed or removed during the construction as described in ORS 209.150.
- (vi) File a "Post-Construction Record of Survey" with the County Surveyor after the construction PROJECT is completed. The CITY is responsible to replace any property corner monuments identified in public surveys on file in the County Surveyor's Office that were disturbed or removed during construction as described in ORS 209.150.

- 4. The CITY shall operate and maintain the improvements for public purposes for their useful life subject to the limitations on the expenditure of funds by the CITY as provided by Oregon Statute.
- 5. The CITY shall complete and submit a Performance Measures Report following completion of the PROJECT. (refer to ATTACHMENT A).
- 6. The CITY shall complete and submit a Matching Funds Report following completion of the PROJECT. (refer to ATTACHMENT B).
- 7. Upon completion of the PROJECT the CITY:
  - a. Agrees to accept the improvements; and
  - b. Agrees to become the successor of the Construction Contract.
- 8. The CITY agrees to maintain ownership of the property for the life of the PROJECT.

B. Under this agreement the responsibilities of the COUNTY will be as follows:

- 1. The COUNTY will appropriately bid and contract for construction of the PROJECT and with the advice of the CITY, will approve changes, modifications, or amendments as necessary to serve the public interest.
- 2. In such contracts the COUNTY will assume the rights and responsibilities of the owner of the project. Moreover, the COUNTY will assign a Project Coordinator to perform the following duties:

- a. Provide PROJECT Manual Documents and Bid the PROJECT;
  - b. Award the PROJECT;
  - c. Hire the lowest responsive/ responsible General Contractor;
  - d. Issue the Notice to Proceed to General Contractor;
  - e. Process Pay Request using CDBG funds and SSD funds;
  - f. Conduct on-site interviews of workers for Federal Prevailing Wage Rates for Davis-Bacon as well as review submitted Payroll Forms for the Project;
  - g. Collect all HUD required PROJECT Close-Out Documents;
  - h. Release Retainage to Contractor will occur only after hired engineer and the CITY approve and sign-off on PROJECT after the scope of work has been completed; and
  - i. Relinquish ownership of PROJECT to the CITY.
3. The COUNTY agrees to provide and administer available Federal Community Development Block Grant (CDBG) funds (CFDA 14.218) granted by the U.S. Department of Housing and Urban Development (HUD) to finance the PROJECT.
  4. The COUNTY shall conduct necessary environmental reviews described in 570.604 of the CDBG regulations for compliance with requirements of the CDBG program prior to the start of construction.
  5. The COUNTY shall provide reasonable and necessary staff for administration of the PROJECT.
- C. The COUNTY and CITY agree to jointly review and approve all design, material selection, and contract documents for the PROJECT.

### **III. Budget & Financial**

- A. The COUNTY will apply CDBG funds in the amount of **\$140,000** to the PROJECT. The obligations of the COUNTY are expressly subject to the COUNTY receiving funds from HUD for the PROJECT, and in no event shall the COUNTY'S financial contribution exceed the amount finally granted, released and approved by HUD for this project.
- B. The CITY agrees to contribute the greater of:
  1. Twenty percent (20%) of the total cost of the PROJECT, or
  2. All costs for design and construction which exceed available CDBG funds budgeted for the PROJECT.

3. Allowable match requirements for this PROJECT may be the use of CITY equipment, CITY workers labor, and/ or CITY reimbursable related to the construction PROJECT. Match credit(s) can be given to the CITY from the COUNTY; moreover, the CITY must submit all match credit(s) items as well as receive approval of the list of match credit(s) items. The COUNTY will not reimburse the CITY in the form of a check (\$). See below Part III. D.
- C. In the event the PROJECT can not be completed with available funds the COUNTY and CITY will jointly determine the priorities of the improvements to be made within funding limits.
  - D. The CITY shall be credited towards the matching requirements stated in Part III. B. an amount equal to 15% of the final construction cost for engineering services as detailed in Part II. A. 3. a.
  - E. The CITY agrees to provide funds for the PROJECT to the COUNTY in the following manner:
    1. In the event a construction contractor is entitled to payments for work completed after \$140,000 in CDBG funds have been expended, the COUNTY shall request a transfer of funds from the CITY for the amount necessary to make such payments. The CITY shall transfer funds which exceed available CDBG funds and are owed to a contractor to the COUNTY within thirty (30) consecutive calendar days of a written request.
    2. Upon receipt of written notification from the COUNTY the CITY shall provide payment within thirty (30) consecutive calendar days to the COUNTY the funds necessary to meet the matching contribution requirement in Part III. B. All checks shall be made payable to Clackamas County, include a Project Number and be mailed to the following address:

Attn: Toni Hessevick  
Clackamas County - Finance Office  
Public Services Building  
2051 Kaen Road  
Oregon City, OR 97045
    3. In the event that unforeseeable conditions arise which necessitate the execution of a change in the amount of the construction contract, the CITY and the COUNTY will jointly evaluate the circumstances surrounding the conditions. Upon approval by the CITY and the COUNTY, the COUNTY shall instruct the Engineer to execute a change order.

4. Funds for the change order shall be split evenly between the COUNTY and the CITY subject to the limitations described above.

#### IV. **Liaison Responsibility**

Mike Walker, will act as liaison from the CITY for the PROJECT. Steve Kelly will act as liaison from the COUNTY.

#### V. **Special Requirements**

- A. **Law and Regulations.** The COUNTY and CITY agree to comply with all applicable local, state, and federal ordinances, statutes, laws and regulations.
- B. **Public Contracting Requirements.** To the extent applicable, the provisions of ORS 279B.220, 279B.225, 279B.230, and 279B.235 are incorporated by this reference as though fully set forth.
- C. **Relationship of Parties.** Each party is an independent contractor with regard to the other party. Neither party is an agent or employee of the other. No party or its employees is entitled to participate in a pension plan, insurance, bonus, or similar benefits provided by any other party.
- D. **Indemnification.** Subject to the limits of the Oregon Tort Claims Act, and Oregon Constitution each of the parties agrees to hold harmless and indemnify the others, and their elected and appointed officials, agents, and employees, from and against all claims, demands, and causes of action of any kind or character, including the cost of defense thereof, arising on account of personal injuries, death or damage to property caused by or resulting from their own acts or omissions or those of their officials, agents and employees provided however, upon completion of the improvements, the CITY will assume all responsibility for claims made thereafter against the COUNTY or its officers, agents or employees pertaining to the design and construction of the Project, and will indemnify and defend them therefore.
- E. **Notice.** Each party shall give the other immediate written notice of any action or suit filed or any claim made against the party which may result in litigation in any way related to this Agreement.
- F. **Record and Fiscal Control System.** All payroll and financial records pertaining in whole or in part to this Agreement shall be clearly identified and readily accessible. Such records and documents shall be retained for a period of three (3) years after receipt of final payment under this Agreement; provided that any records and documents that are the subject of audit findings shall be retained for a longer time until such audit findings are resolved.
- G. **Access to Records.** The COUNTY, the State of Oregon and the Federal Government, and their duly authorized representatives shall have access to the

books, documents, papers, and records of the CITY which are directly pertinent to the Agreement for the purpose of making audit, examination, excerpts, and transcripts.

- H. **Debt Limitation.** This Agreement is expressly subject to the debt limitation of Oregon counties set forth in Article XI, Section 10 of the Oregon Constitution, and is contingent upon funds being appropriated therefore. Any provisions herein which would conflict with law are deemed inoperative to that extent. Obligations of the COUNTY are also expressly subject to the COUNTY receiving funds from HUD for this project and in no event shall the COUNTY's financial contribution exceed the amount finally granted, released and approved by HUD for this project.
- I. **Conflict of Interest.** No officer, employee, or agent of the CITY or COUNTY who exercises any functions or responsibilities in connection with the planning and carrying out of the Block Grant Program, or any other person who exercises any functions or responsibilities in connection with the program, shall have any personal financial interest, direct or indirect, in the use of the funds provided pursuant to this Agreement, and the Parties shall take appropriate steps to assure compliance. The Parties will insure that no contractor, subcontractor, contractor's employee or subcontractor's employee has or acquires any interest, direct or indirect, which would conflict in any manner or degree with the performance of his services.
- J. **Insurance.** The CITY will bear the risk of loss from fire, extended coverage, and will purchase and maintain property insurance on all affected CITY property. The CITY will bear the risk of loss from accidents coverable by owner's liability insurance and may, at its option, maintain such insurance. If applicable, the CITY shall be required to maintain flood insurance. Each party agrees to maintain insurance, or self-insurance, in accordance with ORS 30.282, for the duration of this Agreement at levels necessary to protect against public body liability as specified in ORS 30.270.
- K. **Nondiscrimination.** The CITY and the COUNTY agree to comply with all Federal, State, and local laws prohibiting discrimination on the basis of age, sex, marital status, race, creed, color, national origin, familial status, or the presence of any mental or physical handicap. These requirements are specified in ORS chapter 659; Section 109 of the Housing and Community Development Act of 1974; Civil Rights Act of 1964, Title VII; Fair Housing Amendments Act of 1988; Executive Order 11063; Executive Order 11246; and Section 3 of the Housing and Urban Development Act of 1968; all as amended; and the regulations promulgated thereunder.
- L. **Handicapped Accessibility.** The CITY agrees that all improvements made under this Agreement shall comply with standards set for facility accessibility by handicapped persons required by the Architectural Barriers Act of 1968, as amended. Design standards for compliance are contained in 24 CFR 8.31-32 and

the document entitled Uniform Federal Accessibility Standards published by HUD in April, 1988 as a joint effort with other Federal agencies.

- M. **Nonsubstituting for Local Funding.** The CDBG funding made available under this Agreement shall not be utilized by the CITY to reduce substantially the amount of local financial support for community development activities below the level of such support prior to the availability of funds under this Agreement.
- N. **Evaluation.** The CITY agrees to participate with the COUNTY in any evaluation project or performance report, as designed by the COUNTY or the appropriate Federal department, and to make available all information required by any such evaluation process.
- O. **Audits and Inspections.** The CITY will ensure that the COUNTY, the Secretary of HUD, the Comptroller General of the United States, or any of their duly authorized representatives shall have access to all books, accounts, records, reports, files, and other papers or property pertaining to the funds provided under this agreement for the purpose of making surveys, audits, examinations, excerpts, and transcripts.
- P. **Acquisition.** If completion of the project requires acquisition of any real property the parties agree to comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended.
- Q. **Change of Use.** The CITY agrees to comply with applicable change of use provisions contained in 24 CFR 570.505 (refer to Attachment C).
- R. **Reversion of Assets.** Upon expiration or termination of this Agreement, CITY shall transfer to COUNTY any CDBG funds on hand at the time of expiration and any accounts receivable attributable to the use of CDBG funds. Also for any real property under CITY'S control that was acquired or improved in whole or in part with CDBG funds (including CDBG funds provided to CITY in the form of a loan) in excess of \$25,000 or less based on the CDBG amount shall ensure said real property is either:
  - 1. Used to meet one of the National Objectives in CFR 570.208 for the term of this Agreement; or
  - 2. Not used to meet on the National Objectives for the term of this Agreement, in which event, the CITY shall pay to COUNTY an amount equal to the current market value of the property less any portion of the value attributable to expenditures of non-CDBG funds for the acquisition of, or improvement to, the property.

## VI. Amendment



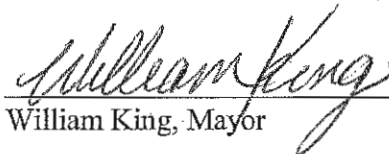
This Agreement may be amended at any time with the concurrence of both Parties. Amendments become a part of this Agreement only after the written amendment has been signed by both Parties.

**VII. Term of Agreement**

- A. This Agreement becomes effective when it is signed by both Parties.
- B. The term of this Agreement is a period beginning when it becomes effective and ending ten (10) years after completion of the PROJECT.
- C. This Agreement may be suspended or terminated prior to the expiration of its term by:
  - 1. Written notice provided to the COUNTY from the CITY before any materials or services for improvements are procured, or;
  - 2. Written notice provided by the COUNTY in accordance with 24 CFR 85.43, included as ATTACHMENT D, resulting from material failure by the CITY to comply with any term of this Agreement, or;
  - 3. Mutual agreement by the COUNTY and CITY in accordance with 24 CFR 85.44.
- D. Upon completion of improvements or upon termination of this Agreement, any unexpended balances of CDBG funds shall remain with the COUNTY.

**CITY OF SANDY**

39250 Pioneer Blvd.  
Sandy, Oregon 97055

  
\_\_\_\_\_  
William King, Mayor

09/06/13  
\_\_\_\_\_  
Date

**CLACKAMAS COUNTY**

Chair John Ludlow  
Commissioner Jim Bernard  
Commissioner Paul Savas  
Commissioner Martha Schrader  
Commissioner Tootie Smith

Signing on Behalf of the Board.

\_\_\_\_\_  
Cindy Becker, Director  
Health, Housing & Human Services  
Department

\_\_\_\_\_  
Date

**ATTACHMENT A(1) - CDBG Performance Measures Report**

FOR THE PERIOD: JULY 1, 2013 TO JUNE 30, 2014

**Project Name: Northside Sidewalk Infill Project (City of Sandy) – CD #53320**

The Service Area for this project is contained within Census Tract 023402 Block Group 2 of the City of Sandy portion of this Block Group is 56.5% Low- and Moderate-Income.

Choose all that apply:

# of persons \_\_\_\_\_ with new access to this Public Facility or Infrastructure Improvement

# of persons \_\_\_\_\_ with improved access to Public Facility or Infrastructure Improvement

# of persons \_\_\_\_\_ with access to this type of Public Facility or Infrastructure Improvement that is No Longer Substandard.

Total Number of persons assisted: \_\_\_\_\_

See Attached Project Map Area:  
**Northside Sidewalk Infill Project**

**ATTACHMENT A(2)**

Other benefits to the service area:

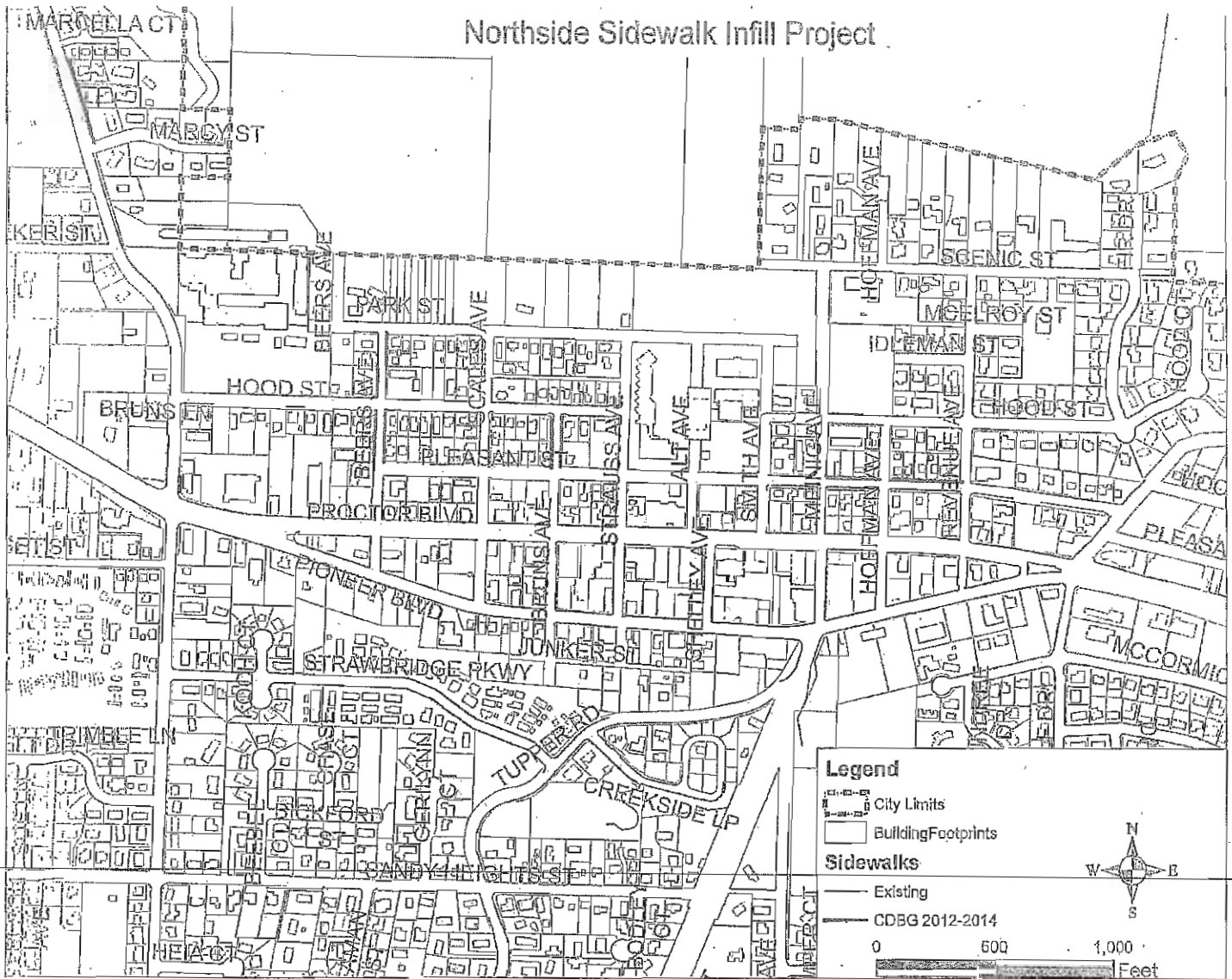
\_\_\_\_\_

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Organization

ATTACHMENT A(2) - Project Map Area



**ATTACHMENT B - CDBG Project Matching Funds Report**

**For reporting to HUD at the end of the year, indicate the specific sources and amounts of matching funds for the Northside Sidewalk Infill Project (City of Sandy):**

2013-14 CDBG Funds	\$140,000 (max.)
--------------------	------------------

<b>SOURCES OF LOCAL MATCH:</b>	
Other Federal (including pass-through funds, e.g. County CDBG, State FEMA, etc.)	
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____

<b>State/Local Governmental Funding (e.g. State Housing Trust Funds, Local Assessment, etc.)</b>	
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____

<b>Private (including recipient) Funding</b>	
Fund Raising/Cash	\$ _____
Loans	\$ _____
Building Value or Lease	\$ _____
Donated Goods	\$ _____
New Staff Salaries	\$ _____
Volunteers (\$5/hr)	\$ _____
Volunteer Medical/Legal	\$ _____
Other _____	\$ _____

Prepared By: (Print name)

\_\_\_\_\_  
 Signature

\_\_\_\_\_  
 Date

## ATTACHMENT C

### Change of Use

#### Excerpt from 24 CFR Part 570

#### **570.505 Use of real property.**

The standards described in this section apply to real property within the recipient's control which was acquired or improved in whole or in part using CDBG funds in excess of \$25,000. These standards shall apply from the date CDBG funds are first spent for the property until five years after closeout of an entitlement recipient's participation in the entitlement CDBG program or, with respect to other recipients, until five years after the closeout of the grant from which the assistance to the property was provided.

(a) A recipient may not change the use or planned use of any such property (including the beneficiaries of such use) from that for which the acquisition or improvement was made unless the recipient provides affected citizens with reasonable notice of, and opportunity to comment on, any proposed change, and either;

(1) The new use of such property qualifies as meeting one of the national objectives in 570.208 (formerly 570.901) and is not a building for the general conduct of government; or

(2) The requirements and paragraph (b) of this section are met.

(b) If the recipient determines, after consultation with affected citizens, that it is appropriate to change the use of the property to a use which does not qualify under paragraph (a)(1) of this section, it may retain or dispose of the property for the changed use if the recipient's CDBG program is reimbursed in the amount of the current fair market value of the property, less any portion of the value attributable to expenditures of non-CDBG funds for acquisition of, and improvements to, the property.

(c) If the change of use occurs after closeout, the provisions governing income from the disposition of the real property in 570.504(b) (4) or (5), as applicable, shall apply to the use of funds reimbursed.

(d) Following the reimbursement of the CDBG program in accordance with paragraph (b) of this section, the property no longer will be subject to any CDBG requirements.

## ATTACHMENT D

### Excerpt from 24 CFR Part 85

#### §85.43 Enforcement.

(a) *Remedies for noncompliance.* If a grantee or subgrantee materially fails to comply with any term of an award, whether stated in a Federal statute or regulation, an assurance, in a State plan or application, a notice of award or elsewhere, the awarding agency may take one or more of the following actions, as appropriate in the circumstances:

- (1) Temporarily withhold cash payments pending correction of the deficiency by the grantee or subgrantee or more severe enforcement action by the awarding agency,
- (2) Disallow (that is, deny both use of funds and matching credit for) all or part of the cost of the activity or action not in compliance,
- (3) Wholly or partly suspend or terminate the current award for the grantee's or subgrantee's program,
- (4) Withhold further awards for the program, or
- (5) Take other remedies that may be legally available.

(b) *Hearings, appeals.* In taking an enforcement action, the awarding agency will provide the grantee or subgrantee an opportunity for such hearing, appeal, or other administrative proceeding to which the grantee or subgrantee is entitled under any statute or regulation applicable to the action involved.

(c) *Effects of suspension and termination.* Costs of grantee or subgrantee resulting from obligations incurred by the grantee or subgrantee during a suspension or after termination of an award are not allowable unless the awarding agency expressly authorizes them in the notice of suspension or termination or subsequently. Other grantee or subgrantee costs during suspension or after

termination which are necessary and not reasonably avoidable are allowable if:

- (1) The costs result from obligations which were properly incurred by the grantee or subgrantee before the effective date of suspension or termination, are not in anticipation of it, and, in the case of a termination, are noncancellable, and,
  - (2) The costs would be allowable if the award were not suspended or expired normally at the end of the funding period in which the termination takes effect.
- (d) *Relationship to Debarment and Suspension.* The enforcement remedies identified in this section, including suspension and termination, do not preclude grantee or subgrantee from being subject to "Debarment and Suspension" under E.O. 12549 (see §85.35).

#### §85.44 Termination for convenience.

Except as provided in §85.43 awards may be terminated in whole or in part only as follows:

- (a) By the awarding agency with the consent of the grantee or subgrantee in which case the two parties shall agree upon the termination conditions, including the effective date and in the case of partial termination, the portion to be terminated, or
- (b) By the grantee or subgrantee upon written notification to the awarding agency, setting forth the reasons for such termination, the effective date, and in the case of partial termination, the portion to be terminated. However, if, in the case of a partial termination, the awarding agency determines that the remaining portion of the award will not accomplish the purposes for which the award was made, the awarding agency may terminate the award in its entirety under either §85.43 or paragraph (a) of this section.

October 24, 2013

Board of Commissioners  
 Clackamas County

Members of the Board:

Approval of a Renewal Grant Agreement from the U.S. Department of Housing and Urban Development, Supportive Housing Program, for the HOPE II Leasing Program for the Purpose of Providing Permanent Housing

<b>Propose/ Outcomes</b>	Approval of a grant agreement with the U.S. Department of Housing and Urban Development (HUD), Supportive Housing Program for the HOPE II Leasing Program for the purpose of providing permanent housing and services for the homeless and chronically homeless.
<b>Dollar Amount and Fiscal Impact</b>	Total amount of the grant award is \$52,746 for a one-year period. The grant requires a 25% match or in-kind contribution which is met through Clackamas County Fund Balance and in-kind services from area providers. No County General Funds are involved.
<b>Funding Source</b>	HUD
<b>Safety Impact</b>	None
<b>Duration</b>	January 1, 2014 to December 31, 2014, with an option for renewal
<b>Previous Board Action</b>	Approval to apply for this grant was approved on December 6, 2012
<b>Contact Person</b>	Brenda Durbin, Director, Social Services Division - 503-655-8641
<b>Contract No.</b>	6329

**Background**

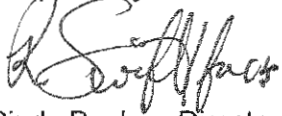
The Social Services Division of the Health, Housing & Human Services Department requests the approval of a grant award agreement from the U.S. Department of Housing and Urban Development, Supportive Housing Program, for the HOPE Leasing Program, for the purpose of providing permanent housing. Homeless and chronically homeless disabled (veteran and non veteran) single adults and families receive support services, case management and housing with the use of these grant funds. This program provides permanent housing by paying for housing deposits and rental assistance. Up to 4 households receive assistance each year.

The grant agreement was approved and signed by HUD on June 26, 2013 and released and transmitted through E-SNAPS on June 27, 2013. Although the effective date on the agreement is June 26, 2013 the startup date for the program year is effective January 1, 2014. The grant agreement was approved by County Counsel on July 2, 2013.

**Recommendation**

We recommend the approval of this grant agreement and that Cindy Becker, Director of Health, Housing & Human Services is authorized to sign all documents necessary to accomplish this action on behalf of the Board of County Commissioners.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "C. Becker", written in a cursive style.

Cindy Becker, Director





U.S. Department of Housing and Urban Development  
Office of Community Planning and Development  
400 SW 6th Avenue  
Suite 700  
Portland, OR 97204

**Tax ID No.:** 93-6002286  
**Project Location:** 419005 (Clackamas County, OR)  
**Grant Number:** OR0141L0E071201  
**Effective Date:** 6/26/2013  
**DUNS No.:** 096992656

### 2012 CONTINUUM OF CARE PROGRAM GRANT AGREEMENT

This Grant Agreement ("this Agreement") is made by and between the United States Department of Housing and Urban Development ("HUD") and Clackamas Dept. Health, Housing & Human Svcs (the "Recipient").

This Agreement is governed by title IV of the McKinney-Vento Homeless Assistance Act 42 U.S.C. 11301 et seq. (the "Act") and the Continuum of Care Program regulation (the "Regulation").

The terms "Grant" or "Grant Funds" mean the funds that are provided under this Agreement. The term "Application" means the application submissions on the basis of which the Grant was approved by HUD, including the certifications, assurances, and any information or documentation required to meet any grant award condition. All other terms shall have the meanings given in the Regulation.

The Application is incorporated herein as part of this Agreement, except that only the project listed, and only in the amount listed on the Scope of Work, is funded by this Agreement. In the event of any conflict between any application provision and any provision contained in this Agreement, this Agreement shall control.

Exhibit 1, the FY2012 Scope of Work, is attached hereto and made a part hereof. If appropriations are available for Continuum of Care grants; and if Recipient applies under a Notice of Funds Availability published by HUD; and, if pursuant to the selection criteria in the Notice of Funds Availability, HUD selects Recipient and the project for renewal, then additional exhibits may be attached to this Agreement. Those additional exhibits, when attached, will also become a part hereof.

The effective date of the Agreement shall be the date of execution by HUD and it is the date use of funds under this Agreement may begin. If the project funded by this Agreement is a new project, Recipient and HUD will set an operating start date in LOCCS for the project, which will be used to track expenditures and to determine when the project is eligible for renewal. If this Agreement renews funding for a project, the term of this Agreement shall begin at the end of the Recipient's final operating year for the grant being renewed, and eligible costs incurred for the project between the end of Recipient's final operating year under the grant being renewed and the execution of this Agreement may be paid with funds from the first operating year of this Agreement.

This Agreement shall remain in effect until termination either 1) by agreement of the parties; 2) by HUD alone, acting under the authority of 24 CFR 578.107; or 3) upon expiration of the final operating year of the project funded under this Agreement.

Recipient agrees:

1. To ensure the operation of the project listed on the Scope of Work in accordance with the provisions of the Act and all requirements of the Regulation;
2. To monitor and report the progress of the project to the Continuum of Care and HUD;
3. To ensure, to the maximum extent practicable, that individuals and families experiencing homelessness are involved, through employment, provision of volunteer services, or otherwise, in constructing, rehabilitating, maintaining, and operating facilities for the project and in providing supportive services for the project;
4. To require certification from any subrecipient that:
  - a. Subrecipient will maintain the confidentiality of records pertaining to any individual or family that was provided family violence prevention or treatment services through the project;
  - b. The address or location of any family violence project assisted with grant funds will not be made public, except with written authorization of the person responsible for the operation of such project;
  - c. Subrecipient will establish policies and practices that are consistent with, and do not restrict, the exercise of rights provided by subtitle B of title VII of the Act and other laws relating to the provision of educational and related services to individuals and families experiencing homelessness;
  - d. In the case of a project that provides housing or services to families, that subrecipient will designate a staff person to be responsible for ensuring that children being served in the program are enrolled in school and connected to appropriate services in the community, including early childhood programs such as Head Start, part C of the Individuals with Disabilities Education Act, and programs authorized under subtitle B of title VII of the Act;
  - e. The subrecipient, its officers, and employees are not debarred or suspended from doing business with the Federal Government; and
  - f. Subrecipient will provide information, such as data and reports, as required by HUD; and
5. To establish such fiscal control and accounting procedures as may be necessary to assure the proper disbursement of, and accounting for grant funds in order to ensure that all financial transactions are conducted, and records maintained in accordance with generally accepted accounting principles, if the Recipient is a Unified Funding Agency;
6. To monitor subrecipient match and report on match to HUD;
7. To take the educational needs of children into account when families are placed in housing and will, to the maximum extent practicable, place families with children as close as possible to their school of origin so as not to disrupt such children's education;
8. To monitor subrecipient at least annually;
9. To use the centralized or coordinated assessment system established by the Continuum of Care as required by §578.7(a)(8). A victim service provider may choose not to use the Continuum of Care's centralized or coordinated assessment system, provided that victim service providers in the area use a centralized or coordinated assessment system that meets HUD's minimum requirements and the victim service provider uses that system instead;
10. To follow the written standards for providing Continuum of Care assistance developed by the Continuum of Care, including the minimum requirements set forth in §578.7(a)(9);

11. Enter into a subrecipient agreement requiring subrecipient to operate the project in accordance with the provisions of this Act and all requirements under 24 CFR 578; and
12. To comply with such other terms and conditions as HUD may have established in the applicable Notice of Funds Availability.

HUD notifications to the Recipient shall be to the address of the Recipient as stated in the Application, unless HUD is otherwise advised in writing. Recipient notifications to HUD shall be to the HUD Field Office executing the Agreement. No right, benefit, or advantage of the Recipient hereunder may be assigned without prior written approval of HUD.

The Agreement constitutes the entire agreement between the parties hereto, and may be amended only in writing executed by HUD and the Recipient.

By signing below, Recipients that are states and units of local government certify that they are following a current HUD approved CHAS (Consolidated Plan).

This agreement is hereby executed on behalf of the parties as follows:

**UNITED STATES OF AMERICA,**  
**Secretary of Housing and Urban Development**

By:



\_\_\_\_\_  
(Signature)

Douglas Carlson, Director

\_\_\_\_\_  
(Typed Name and Title)

June 26, 2013

\_\_\_\_\_  
(Date)

**RECIPIENT**

Clackamas Dept. Health, Housing & Human Svcs

\_\_\_\_\_  
(Name of Organization)

By:

\_\_\_\_\_  
(Signature of Authorized Official)

Cindy Becker, Director

\_\_\_\_\_  
(Typed Name and Title of Authorized Official)

\_\_\_\_\_  
(Date)

Tax ID Number: 93-6002286  
Project Location: 419005 (Clackmas County, OR)  
Grant Number: OR0141L0E071201  
Effective Date: 6/26/2013  
DUNS Number: 096992656

EXHIBIT 1  
SCOPE OF WORK for FY2012 COMPETITION

1. This Agreement is governed by the Continuum of Care program Interim Rule attached hereto and made a part hereof as Exhibit 1a. Upon publication for effect of a Final Rule for the Continuum of Care program, the Final Rule will govern this Agreement instead of the Interim Rule. The project listed on this Exhibit at 3., below, is also subject to the terms of the FY2012 Notice of Funds Availability.
2. The Continuum that designated Recipient to apply for grant funds is not a high-performing community.
3. Recipient is not a Unified Funding Agency and was not the only Applicant the Continuum of Care designated to apply for and receive grant funds and is not the only Recipient for the Continuum of Care that designated it. HUD's total funding obligation for this grant is \$52,746 for project number OR0141L0E071201. In accordance with 24 CFR 578.105(b), Recipient is prohibited from moving more than 10% from one budget line item in a project's approved budget to another without a written amendment to this Agreement. The obligation for this project shall be allocated as follows:

a. CoC Planning cost	\$ 0
b. Acquisition	\$ 0
c. New construction	\$ 0
d. Rehabilitation	\$ 0
e. Leasing	\$ 0
f. Rental assistance	\$ 45,456
g. Supportive services	\$ 6,000
h. Operating costs	\$ 0
i. HMIS	\$ 0
j. Administration	\$ 1,290
4. No funds for new projects may be drawn down by Recipient until HUD has approved site control pursuant to §578.21 and §578.25 and no funds for renewal projects may be drawn down by Recipient before the end date of the project's final operating year under the grant that has been renewed.

**Exhibit 1a**

**Continuum of Care Program Interim Rule**



# FEDERAL REGISTER

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July 31, 2012

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## Part II

### Department of Housing and Urban Development

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24 CFR Part 578

Homeless Emergency Assistance and Rapid Transition to Housing:  
Continuum of Care Program; Interim Final Rule

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

**24 CFR Part 578**

[Docket No. FR-5476-I-01]

RIN 2506-AC29

**Homeless Emergency Assistance and Rapid Transition to Housing: Continuum of Care Program**

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

**ACTION:** Interim rule.

**SUMMARY:** The Homeless Emergency Assistance and Rapid Transition to Housing Act of 2009 (HEARTH Act), enacted into law on May 20, 2009, consolidates three of the separate homeless assistance programs administered by HUD under the McKinney-Vento Homeless Assistance Act into a single grant program, and revises the Emergency Shelter Grants program and renames it the Emergency Solutions Grants program. The HEARTH Act also codifies in law the Continuum of Care planning process, a longstanding part of HUD's application process to assist homeless persons by providing greater coordination in responding to their needs. The HEARTH Act also directs HUD to promulgate regulations for these new programs and processes.

This interim rule focuses on regulatory implementation of the Continuum of Care program, including the Continuum of Care planning process. The existing homeless assistance programs that comprise the Continuum of Care program are the following: the Supportive Housing program, the Shelter Plus Care program, and the Moderate Rehabilitation/Single Room Occupancy (SRO) program. This rule establishes the regulations for the Continuum of Care program, and, through the establishment of such regulations, the funding made available for the Continuum of Care program in the statute appropriating Fiscal Year (FY) 2012 funding for HUD can more quickly be disbursed, consistent with the HEARTH Act requirements, and avoid any disruption in current Continuum of Care activities.

**DATES:** *Effective Date:* August 30, 2012.

*Comment Due Date:* October 1, 2012.

**ADDRESSES:** Interested persons are invited to submit comments regarding this rule to the Regulations Division, Office of General Counsel, 451 7th Street SW., Room 10276, Department of Housing and Urban Development, Washington, DC 20410-0500. Communications must refer to the above

docket number and title. There are two methods for submitting public comments. All submissions must refer to the above docket number and title.

1. *Submission of Comments by Mail.* Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410-0500.

2. *Electronic Submission of Comments.* Interested persons may submit comments electronically through the Federal eRulemaking Portal at [www.regulations.gov](http://www.regulations.gov). HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the [www.regulations.gov](http://www.regulations.gov) Web site can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

**Note:** To receive consideration as public comments, comments must be submitted through one of the two methods specified above. Again, all submissions must refer to the docket number and title of the rule.

*No Facsimile Comments.* Facsimile (FAX) comments are not acceptable.

*Public Inspection of Public Comments.* All properly submitted comments and communications submitted to HUD will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, an advance appointment to review the public comments must be scheduled by calling the Regulations Division at 202-708-3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number through TTY by calling the Federal Relay Service at 800-877-8339. Copies of all comments submitted are available for inspection and downloading at [www.regulations.gov](http://www.regulations.gov).

**FOR FURTHER INFORMATION CONTACT:** Ann Marie Oliva, Director, Office of Special Needs Assistance Programs, Office of Community Planning and Development, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410-7000; telephone number 202-708-4300 (this is not a toll-free number). Hearing- and speech-impaired persons may access this number through TTY by calling the

Federal Relay Service at 800-877-8339 (this is a toll-free number).

**SUPPLEMENTARY INFORMATION:**

**Executive Summary**

*Purpose of and Legal Authority for This Interim Rule*

This interim rule implements the Continuum of Care program authorized by the Homeless Emergency Assistance and Rapid Transition to Housing Act of 2009 (HEARTH Act). Section 1504 of the HEARTH Act directs HUD to establish regulations for this program. (See 42 U.S.C. 11301.) The purpose of the Continuum of Care program is to promote communitywide commitment to the goal of ending homelessness; provide funding for efforts by nonprofit providers, and State and local governments to quickly rehouse homeless individuals and families while minimizing the trauma and dislocation caused to homeless individuals, families, and communities by homelessness; promote access to and effective utilization of mainstream programs by homeless individuals and families; and optimize self-sufficiency among individuals and families experiencing homelessness.

The HEARTH Act streamlines HUD's homeless grant programs by consolidating the Supportive Housing, Shelter Plus Care, and Single Room Occupancy grant programs into one grant program: The Continuum of Care program. Local continuums of care, which are community-based homeless assistance program planning networks, will apply for Continuum of Care grants. By consolidating homeless assistance grant programs and creating the Continuum of Care planning process, the HEARTH Act intended to increase the efficiency and effectiveness of coordinated, community-based systems that provide housing and services to the homeless. Through this interim final rule, HUD will implement the Continuum of Care program by establishing the framework for establishing a local continuum of care and the process for applying for Continuum of Care grants.

*Summary of Major Provisions*

The major provisions of this rulemaking relate to how to establish and operate a Continuum of Care, how to apply for funds under the program, and how to use the funds for projects approved by HUD. These provisions are summarized below.

1. *General Provisions (Subpart A):* The Continuum of Care program includes transitional housing, permanent supportive housing for

disabled persons, permanent housing, supportive services, and Homeless Management Information Systems (HMIS). To implement the program, HUD had to define several key terms. In particular, HUD distinguishes between "Continuum of Care," "applicant," and "collaborative applicant." A "Continuum of Care" is a geographically based group of representatives that carries out the planning responsibilities of the Continuum of Care program, as set out in this regulation. These representatives come from organizations that provide services to the homeless, or represent the interests of the homeless or formerly homeless. A Continuum of Care then designates certain "applicants" as the entities responsible for carrying out the projects that the Continuum has identified through its planning responsibilities. A "Continuum of Care" also designates one particular applicant to be a "collaborative applicant." The collaborative applicant is the only entity that can apply for a grant from HUD on behalf of the Continuum that the collaborative applicant represents.

**2. Establishing and Operating a Continuum of Care (Subpart B):** In order to be eligible for funds under the Continuum of Care program, representatives from relevant organizations within a geographic area must establish a Continuum of Care. The three major duties of a Continuum of Care are to: (1) Operate the Continuum of Care, (2) designate an HMIS for the Continuum of Care, and (3) plan for the Continuum of Care. HUD has delineated certain operational requirements of each Continuum to help measure a Continuum's overall performance at reducing homelessness, in addition to tracking of performance on a project-by-project basis. In addition, each Continuum is responsible for establishing and operating a centralized or coordinated assessment system that will provide a comprehensive assessment of the needs of individuals and families for housing and services. HUD has also defined the minimum planning requirements for a Continuum so that it coordinates and implements a system that meets the needs of the homeless population within its geographic area. Continuums are also responsible for preparing and overseeing an application for funds. Continuums will have to establish the funding priorities for its geographic area when submitting an application.

**3. Application and Grant Award Process (Subpart C):** The Continuum of Care grant award process begins with a determination of a Continuum's maximum award amount. As directed

by statute, HUD has developed a formula for determining award amounts that includes the following factors: A Continuum's Preliminary Pro Rata Need (PPRN) amount; renewal demand; any additional increases in amounts for leasing, rental assistance, and operating costs based on Fair Market Rents, planning and Unified Funding Agency cost funds, and amounts available for bonus dollars. HUD has established selection criteria for determining which applications will receive funding under the Continuum of Care program. Recipients awarded Continuum of Care funds must satisfy several conditions prior to executing their grant agreements. All grants submitted for renewal must also submit an annual performance report. For those applicants not awarded funding, the process also provides an appeals process.

**4. Program Components and Eligible Costs (Subpart D):** Continuum of Care funds may be used for projects under five program components: Permanent housing, transitional housing, supportive services only, HMIS, and, in some limited cases, homelessness prevention. The rule further clarifies how the following activities are considered eligible costs under the Continuum of Care program: Continuum of Care planning activities, Unified Funding Agency costs, acquisition, rehabilitation, new construction, leasing, rental assistance, supportive services, operating costs, HMIS; project administrative costs, relocation costs, and indirect costs.

**5. High-Performing Communities (Subpart E):** HUD will annually, subject to the availability of appropriate data, select those Continuums of Care that best meet application requirements to be designated a high-performing community (HPC). An HPC may use grant funds to provide housing relocation and stabilization services, and short- and/or medium-term rental assistance to individuals and families at risk of homelessness. This is the only time that Continuum of Care funds may be used to serve individuals and families at risk of homelessness.

**6. Program Requirements (Subpart F):** All recipients of Continuum of Care funding must comply with the program regulations and the requirements of the Notice of Funding Availability that HUD will issue each year. Notably, the HEARTH Act requires that all eligible funding costs, except leasing, must be matched with no less than 25 percent cash or in-kind match by the Continuum. Other program requirements of recipients include: Abiding by housing quality standards

and suitable dwelling size, assessing supportive services on an ongoing basis, initiating and completing approved activities and projects within certain timelines, and providing a formal process for termination of assistance to participants who violate program requirements or conditions of occupancy.

**7. Grant Administration (Subpart G):** To effectively administer the grants, HUD will provide technical assistance to those who apply for Continuum of Care funds, as well as those who are selected for Continuum of Care funds. After having been selected for funding, grant recipients must satisfy certain recordkeeping requirements so that HUD can assess compliance with the program requirements. For any amendments to grants after the funds have been awarded, HUD has established a separate amendment procedure. As appropriate, HUD has also established sanctions to strengthen its enforcement procedures.

#### *Benefits and Costs*

This interim rule is intended to help respond to and work toward the goal of eliminating homelessness. This interim rule provides greater clarity and guidance about planning and performance review to the more than 430 existing Continuums of Care that span all 50 states and 6 United States territories. As reported in HUD's Annual Homelessness Assessment Report to Congress, there were approximately 1.59 million homeless persons who entered emergency shelters or transitional housing in FY 2010. HUD serves roughly half that many persons, nearly 800,000 annually, through its three programs that will be consolidated into the Continuum of Care program under the McKinney-Vento Act as amended by the HEARTH Act (i.e., Shelter Plus Care, Supportive Housing Program, Single Room Occupancy). The changes initiated by this interim rule will encourage Continuums of Care to establish formal policies and review procedures, including evaluation of the effectiveness of their projects, by emphasizing performance measurement and developing performance targets for homeless populations. HUD is confident that this systematic review by Continuums of Care will lead to better use of limited resources and more efficient service models, with the end result of preventing and ending homelessness.

The Consolidated and Further Continuing Appropriations Act, 2012 (Pub. L. 112-55) appropriated \$1,593,000,000 for the Continuum of Care and Rural Housing Stability



Assistance programs. Upon publication of this rule, those FY 2012 funds will be available for distribution, as governed by these Continuum of Care regulations.

### I. Background—HEARTH Act

On May 20, 2009, the President signed into law “An Act to Prevent Mortgage Foreclosures and Enhance Mortgage Credit Availability,” which became Public Law 111–22. This law implements a variety of measures directed toward keeping individuals and families from losing their homes. Division B of this law is the HEARTH Act, which consolidates and amends three separate homeless assistance programs carried out under title IV of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11371 *et seq.*) (McKinney-Vento Act) into a single grant program that is designed to improve administrative efficiency and enhance response coordination and effectiveness in addressing the needs of homeless persons. The HEARTH Act codifies in law and enhances the Continuum of Care planning process, the coordinated response to addressing the needs of the homeless, which was established administratively by HUD in 1995. The single Continuum of Care program established by the HEARTH Act consolidates the following programs: The Supportive Housing program, the Shelter Plus Care program, and the Moderate Rehabilitation/Single Room Occupancy program. The Emergency Shelter Grants program is renamed the Emergency Solutions Grants program and is revised to broaden existing emergency shelter and homelessness prevention activities and to add short- and medium-term rental assistance and services to rapidly rehouse homeless people. The HEARTH Act also creates the Rural Housing Stability program to replace the Rural Homelessness Grant program.

HUD commenced the process to implement the HEARTH Act with rulemaking that focused on the definition of “homeless.” HUD published a proposed rule, entitled “Defining Homeless” on April 20, 2010 (75 FR 20541), which was followed by a final rule that was published on December 5, 2011 (76 FR 75994). The Defining Homeless rule clarified and elaborated upon the new McKinney-Vento Act definitions for “homeless” and “homeless individual with a disability.” In addition, the Defining Homeless rule included recordkeeping requirements related to the “homeless” definition. On December 5, 2011, HUD also published an interim rule for the Emergency Solutions Grants program (76 FR 75954). This interim rule

established the program requirements for the Emergency Solutions Grants program and contained corresponding amendments to the Consolidated Plan regulations. On December 9, 2011, HUD continued the process to implement the HEARTH Act, with the publication of the proposed rule titled “Homeless Management Information Systems Requirements” (76 FR 76917), which provides for uniform technical requirements for Homeless Management Information Systems (HMIS), for proper data collection and maintenance of the database, and ensures the confidentiality of the information in the database. Today’s publication of the interim rule for the Continuum of Care program continues HUD’s implementation of the HEARTH Act.

This rule establishes the regulatory framework for the Continuum of Care program and the Continuum of Care planning process, including requirements applicable to the establishment of a Continuum of Care. Prior to the amendment of the McKinney-Vento Act by the HEARTH Act, HUD’s competitively awarded homeless assistance grant funds were awarded to organizations that participate in local homeless assistance program planning networks referred to as a Continuum of Care, a system administratively established by HUD in 1995. A Continuum of Care is designed to address the critical problem of homelessness through a coordinated community-based process of identifying needs and building a system of housing and services to address those needs. The approach is predicated on the understanding that homelessness is not caused merely by a lack of shelter, but involves a variety of underlying, unmet needs—physical, economic, and social.

The HEARTH Act not only codified in law the planning system known as Continuum of Care, but consolidated the three existing competitive homeless assistance grant programs (Supportive Housing, Shelter Plus Care, and Single Room Occupancy) into the single grant program known as the Continuum of Care program. The consolidation of the three existing homeless assistance programs into the Continuum of Care grant program and the codification in law of the Continuum of Care planning process are intended to increase the efficiency and effectiveness of the coordination of the provision of housing and services to address the needs of the homeless. The regulations established by this rule are directed to carrying out this congressional intent.

### II. Overview of Interim Rule

As amended by the HEARTH Act, Subpart C of the McKinney-Vento Homeless Assistance Act establishes the Continuum of Care program. The purpose of the program is to promote communitywide commitment to the goal of ending homelessness; provide funding for efforts by nonprofit providers, and State and local governments to quickly rehouse homeless individuals and families while minimizing the trauma and dislocation caused to homeless individuals, families, and communities by homelessness; promote access to and effective utilization of mainstream programs by homeless individuals and families; and optimize self-sufficiency among individuals and families experiencing homelessness.

This interim rule establishes the Continuum of Care as the planning body responsible for meeting the goals of the Continuum of Care program. Additionally, in order to meet the purpose of the HEARTH Act, established in section 1002(b), and the goals of “Opening Doors: Federal Strategic Plan to Prevent and End Homelessness,” the Continuum of Care must be involved in the coordination of other funding streams and resources—federal, local, or private—of targeted homeless programs and other mainstream resources. In many communities, the Continuum of Care is the coordinating body, while in other communities it is a local Interagency Council on Homelessness (both would be acceptable forms of coordination under this interim rule). As noted earlier, HUD published on December 9, 2011, a proposed rule to establish HMIS regulations in accordance with the HEARTH Act. However, while the HEARTH Act directed that regulations be established for HMIS, HMIS is not new to many HUD grantees. Until regulations for HMIS are promulgated in final, grantees should continue to follow HUD’s existing HMIS instructions and guidance.

The following provides an overview of the proposed rule.

#### *General Provisions (Subpart A)*

*Purpose and scope.* The Continuum of Care program is designed to promote community-wide goals to end homelessness; provide funding to quickly rehouse homeless individuals (including unaccompanied youth) and families while minimizing trauma and dislocation to those persons; promote access to, and effective utilization of, mainstream programs; and optimize self-sufficiency among individuals and

families experiencing homelessness. The program is composed of transitional housing, permanent supportive housing for disabled persons, permanent housing, supportive services, and HMIS.

**Definitions.** The interim rule adopts the definitions of “developmental disability,” “homeless,” “homeless individual,” and “homeless person” established by the December 5, 2011 Defining Homeless final rule. Public comments have already been solicited and additional public comment is not solicited through this rule. The December 5, 2011, final rule was preceded by an April 20, 2010, proposed rule, which sought public comment on these definitions. The final definitions of these terms took into consideration the public comments received on the proposed definitions as set out in the April 20, 2010, proposed rule. This interim rule adopts the definition of “at risk of homelessness” established by the December 5, 2011, the Emergency Solutions Grants program interim rule. The interim rule sought public comment on this definition, and additional public comment is not being sought through this rule.

HUD received valuable public comment on the definition of “chronically homeless,” through the public comment process on the Emergency Solutions Grants program interim rule. Based on public comment, this rule for the Continuum of Care program is not adopting the full definition of “chronically homeless” that was included in the conforming amendments to the Consolidated Plan that were published as a part of the Emergency Solutions Grants program rule. Commenters raised concerns with the meaning of the phrase “where each homeless occasion was at least 15 days.” The concerns raised about this phrase, used for the first time in a definition of “chronically homeless,” has caused HUD to reconsider proceeding to apply a definition that includes this phrase, without further consideration and opportunity for comment. In this rule, HUD therefore amends the definition of “chronically homeless” in the Consolidated Plan regulations to strike this phrase. The removal of this phrase returns the definition to one with which service providers are familiar. The following highlights key definitions used in the Continuum of Care program regulations, and HUD solicits comment on these definitions.

**Applicant** is defined to mean an entity that has been designated by the Continuum of Care as eligible to apply for assistance on behalf of that

Continuum. HUD highlights that the Act does not contain different definitions for “applicant” and “collaborative applicant.” HUD distinguishes between the applicant(s) designated to apply for and carry out projects (the “applicant”) and the collaborative applicant designated to apply for a grant on behalf of the Continuum of Care (the “collaborative applicant”). Please see below for more information on the definition of a collaborative applicant, which is the only entity that may apply for and receive Continuum of Care planning funds.

**Centralized or coordinated assessment system** is defined to mean a centralized or coordinated process designed to coordinate program participant intake, assessment, and provision of referrals. A centralized or coordinated assessment system 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. This definition establishes basic minimum requirements for the Continuum’s centralized or coordinated assessment system.

**Collaborative applicant** is defined to mean an eligible applicant that has been designated by the Continuum of Care to apply for a grant for Continuum of Care planning funds on behalf of the Continuum. As discussed above, the “applicant” is the entity(ies) designated to apply for and carry out projects on behalf of the Continuum. In contrast to the definition of “applicant” above, the collaborative applicant applies for a grant to carry out the planning activities on behalf of the Continuum of Care. The interim rule simplifies the statutory language in order to make the Continuum of Care planning process clear.

HUD highlights that its definition of collaborative applicant does not track the statutory definition, which is found in section 401 of the McKinney-Vento Act. As will be discussed in further detail later in this preamble, the concept of collaborative applicant, its duties and functions, as provided in the statute, is provided for in this rule. However, HUD uses the term Continuum of Care to refer to the organizations that carry out the duties and responsibilities assigned to the collaborative applicant, with the exception of applying to HUD for grant funds. The clarification is necessary in this rule because Continuums of Care are not required to be legal entities, but HUD can enter into contractual agreements with legal entities only.

**Continuum of Care** and **Continuum** are defined to mean the group that is

organized to carry out the responsibilities required under this part and that is composed of representatives of organizations including nonprofit homeless providers, victim service providers, faith-based organizations, governments, businesses, advocates, public housing agencies, school districts, social service providers, mental health agencies, hospitals, universities, affordable housing developers, law enforcement, organizations that serve homeless and formerly homeless veterans, and homeless and formerly homeless persons. These organizations consist of the relevant parties in the geographic area. Continuums are expected to include representation to the extent that the type of organization exists within the geographic area that the Continuum represents and is available to participate in the Continuum. For example, if a Continuum of Care did not have a university within its geographic boundaries, then HUD would not expect the Continuum to have representation from a university within the Continuum.

These organizations carry out the responsibilities and duties established under Subpart B of this interim rule. The Continuum of Care, as noted above, carries out the statutory duties and responsibilities of a collaborative applicant. HUD established the Continuum of Care in 1995. Local grantees and stakeholders are familiar with the Continuum of Care as the coordinating body for homeless services and homelessness prevention activities across the geographic area. Consequently, HUD is maintaining the Continuum of Care terminology, and the rule provides for the duties and responsibilities of a collaborative applicant to be carried out under the name Continuum of Care.

**High-performing community** is defined to mean the geographic area under the jurisdiction of a Continuum of Care that has been designated as a high-performing community by HUD. Section 424 of the McKinney-Vento Act provides that HUD shall designate, on an annual basis, which collaborative applicants represent high-performing communities. Consistent with HUD’s substitution of the term “Continuum of Care” for “collaborative applicant,” the definition of “high-performing community” in this interim rule provides for designation of Continuums of Care that represent geographic areas designated as high-performing communities. The standards for becoming a high-performing community can be found in § 578.65 of this interim

rule and will be discussed later in this preamble.

*Private nonprofit organization* is based on the statutory definition for "private nonprofit organization." The term "private nonprofit organization" is defined in section 424 of the McKinney-Vento Act as follows: "The term 'private nonprofit organization' means an organization: (A) No part of the net earnings of which inures to the benefit of any member, founder, contributor, or individual; (B) that has a voluntary board; (C) that has an accounting system, or has designated a fiscal agent in accordance with requirements established by the Secretary; and (D) that practices nondiscrimination in the provision of assistance.'" In HUD's regulatory definition of "private nonprofit organization," HUD clarifies that the organization's accounting system must be functioning and operated in accordance with generally accepted accounting principles. HUD has included this language to make certain that accounting systems are workable and abide by definite, accurate standards. As reflected in the statutory definition of "private nonprofit organization," HUD may establish requirements for the designation of a fiscal agent. HUD has determined that the fiscal agent, such as a Unified Funding Agency, a term that is also defined in section 424 of the McKinney-Vento Act, must maintain a functioning accounting system for the organization in accordance with generally accepted accounting principles.

*Permanent housing* is consistent with the statutory definition of "permanent housing" in section 401 of the McKinney-Vento Act, but does not track the statutory language. HUD's regulatory definition of "permanent housing" states: "The term 'permanent housing' means community-based housing without a designated length of stay, and includes both permanent supportive housing and rapid re-housing." Additionally, in the regulatory definition of "permanent housing," HUD clarifies that to be permanent housing, "the program participant must be the tenant on a lease for a term of at least one year that is renewable and is terminable only for cause. The lease must be renewable for terms that are a minimum of one month long. HUD has determined that requiring a lease for a term of at least one year that is renewable and terminable only for cause, assists program participants in obtaining stability in housing, even when the rental assistance is temporary. These requirements are consistent with Section 8 requirements.

*Specific request for comment.* HUD specifically requests comment on requiring a lease for a term of at least one year to be considered permanent housing.

*Project* is consistent with the statutory definition of "project" in section 401 of the McKinney-Vento Act, but does not track the statutory language. Section 401 defines "project" as, with respect to activities carried out under subtitle C, eligible activities described in section 423(a), undertaken pursuant to a specific endeavor, such as serving a particular population or providing a particular resource. In HUD's definition of "project" in this interim rule, the eligible activities described in section 423(a) of the McKinney-Vento Act have been identified. In the regulatory text, HUD has clarified that it is a group of one or more of these eligible costs that are identified as a project in an application to HUD for Continuum of Care funds.

*Recipient* is defined to mean an applicant that signs a grant agreement with HUD. HUD's definition of "recipient" is consistent with the statutory definition of "recipient," but does not track the statutory language. Section 424 of the McKinney-Vento Act defines "recipient" as "an eligible entity who—(A) submits an application for a grant under section 422 that is approved by the Secretary; (B) receives the grant directly from the Secretary to support approved projects described in the application; and (C)(i) serves as a project sponsor for the projects; or (ii) awards the funds to project sponsors to carry out the projects." All of the activities specified by the statutory definition are in the rule: (A) and (B) are contained in the definition and (C) is covered in the sections of the rule dealing with what a recipient can do with grant funds.

*Safe haven* is based on the definition of safe haven in the McKinney-Vento Act prior to amendment by the HEARTH Act. Although no longer used in statute, HUD's position is that the term remains relevant for implementation of the Continuum of Care program and, therefore, HUD proposes to include the term in the Continuum of Care program regulations. The term "safe haven" is used for purposes of determining whether a person is chronically homeless. The housing must serve hard-to-reach homeless persons with severe mental illness who came from the streets and have been unwilling or unable to participate in supportive services. In addition, the housing must provide 24-hour residence for eligible persons for an unspecified period, have an overnight capacity limited to 25 or

fewer persons, and provide low-demand services and referrals for the residents.

*Subrecipient* is defined to mean a private nonprofit organization, State or local government, or instrumentality of a State or local government that receives a subgrant from the recipient to operate a project. The definition of "subrecipient" is consistent with the definition of "project sponsor" found in section 401 of the McKinney-Vento Act, but does not track the statutory language. To be consistent with the Emergency Solutions Grants program regulation, and also to ensure that the relationship between the recipient and subrecipient is clear, HUD is using the term subrecipient, instead of project sponsor, throughout this regulation.

*Transitional housing* is based on the definition of "transitional housing" in section 401 of the McKinney-Vento Act, as follows: "The term '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. This distinction is necessitated by the McKinney-Vento Act's explicit distinction between what activities can or cannot be funded under the Continuum of Care program. 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.

*Unified Funding Agency (UFA)* means an eligible applicant selected by the Continuum of Care to apply for a grant for the entire Continuum, which has the capacity to carry out the duties delegated to a UFA in this rule, which is approved by HUD and to which HUD awards a grant. HUD's regulatory definition of UFA departs slightly from the statutory definition. The statutory definition refers to the collaborative applicant. The differences between the statutory definition and HUD's regulatory definition reflect HUD's substitution of Continuum of Care for collaborative applicant.

#### *Establishing and Operating the Continuum of Care (Subpart B)*

*In general.* The statutory authority for the Continuum of Care program is section 422 of the McKinney-Vento Act. As stated under section 1002 of the HEARTH Act, one of the main purposes of the HEARTH Act is to codify the Continuum of Care planning process. Consequently, under this interim rule,

HUD focuses on the rules and responsibilities of those involved in the Continuum of Care planning process and describes how applications and grant funds will be processed.

As discussed earlier in the preamble, HUD's interim rule provides for the duties and functions of the collaborative applicant found in section 401 of the McKinney-Vento Act to be designated to the Continuum of Care, with the exception of applying to HUD for grant funds. HUD chose this approach because the Continuum might not be a legal entity, and therefore cannot enter into enforceable contractual agreements, but is the appropriate body for establishing and implementing decisions that affect the entire geographic area covered by the Continuum, including decisions related to funding. This approach allows the Continuum to retain its duties related to planning and prioritizing need (otherwise designated by statute to the collaborative applicant), while the authority to sign a grant agreement with HUD is designated to an eligible applicant that can enter into a contractual agreement. All of the duties assigned to the Continuum are based on the comparable duties of section 402(f) of the McKinney-Vento Act.

Subpart B of the interim rule identifies how Continuums of Care are established, as well as the required duties and functions of the Continuum of Care.

*Establishing the Continuum of Care.* In order to be eligible for funds under the Continuum of Care program, representatives from relevant organizations within a geographic area must establish a Continuum of Care. As discussed earlier in this preamble, this body is responsible for carrying out the duties identified in this interim regulation. Representatives from relevant organizations include nonprofit homeless assistance providers, victim service providers, faith-based organizations, governments, businesses, advocates, public housing agencies, school districts, social service providers, mental health agencies, hospitals, universities, affordable housing developers, law enforcement, and organizations that serve veterans and homeless and formerly homeless individuals. Where these organizations are located within the geographic area served by the Continuum of Care, HUD expects a representative of the organization to be a part of the Continuum of Care.

*Specific request for comment.* HUD specifically requests comments on requiring Continuums of Care to have a board that makes the decisions for the

Continuum. HUD requires two characteristics for all board compositions. These characteristics are that the Board must be representative of the subpopulations of homeless persons that exist within the geographic area, and include a homeless or formerly homeless person. Continuums will have 2 years from the effective date of the interim rule to establish a board that meets the criteria established in this section. No board member may participate or influence discussions or decisions concerning the award of a grant or other financial benefits for an organization that the member represents.

HUD is considering four additional characteristics for all board compositions for incorporation in the final rule. HUD did not implement them at this stage in order to seek public comment prior to implementing them as requirements. HUD proposes that all boards must have a chair or co-chairs; be composed of an uneven number, serving staggered terms; include members from the public and private sectors; and include a member from at least one Emergency Solutions Grants program (ESG) recipient's agency located within the Continuum's geographic area. HUD is requesting comment on all of these proposed requirements; however, HUD specifically requests comments from Continuums of Care and ESG recipients on the requirement that the Board include an ESG recipient as part of its membership. HUD invites ESG recipients and Continuums to share challenges that will be encountered when implementing this requirement. Ensuring that ESG recipients are represented on the Board is important to HUD; therefore, in communities where ESG recipients and/or Continuums do not feel this requirement is feasible, HUD asks commenters to provide suggestions for how ESG recipients can be involved in the Continuum at one of the core decision-making levels.

*Responsibilities of the Continuum of Care.* The interim rule establishes three major duties for which the Continuum of Care is responsible: To operate the Continuum of Care, to designate an HMIS for the Continuum of Care, and to plan for the Continuum of Care.

This section of the interim rule establishes requirements within these three major duties.

*Operating the Continuum of Care.* The interim rule provides that the Continuum of Care must abide by certain operational requirements. These requirements will ensure the effective management of the Continuum of Care process and ensure that the process is

inclusive and fair. HUD has established eight duties required of the Continuum necessary to effectively operate the Continuum of Care. HUD has established the specific minimum standards for operating and managing a Continuum of Care for two main reasons. First, the selection criteria established under section 427 of the McKinney-Vento Act require HUD to measure the Continuum of Care's performance in reducing homelessness by looking at the overall performance of the Continuum, as opposed to measuring performance project-by-project as was done prior to the enactment of the HEARTH Act. This Continuum of Care performance approach results in cooperation and coordination among providers. Second, because Continuums of Care will have grants of up to 3 percent of Final Pro Rata Need (FPRN) to be used for eligible Continuum of Care planning costs, HUD is requiring more formal decision-making and operating standards for the Continuum of Care. This requirement ensures that the Continuums have appropriate funding to support planning costs.

One of the duties established in this interim rule is the requirement that the Continuum establish and operate a centralized or coordinated assessment system that provides an initial, comprehensive assessment of the needs of individuals and families for housing and services. As detailed in the Emergency Solutions Grants program interim rule published on December 5, 2011, through the administration of the Rapid Re-Housing for Families Demonstration program and the Homelessness Prevention and Rapid Re-Housing program, as well as best practices identified in communities, HUD has learned that centralized or coordinated assessment systems are important in ensuring the success of homeless assistance and homeless prevention programs in communities. In particular, such assessment systems 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.

Therefore, HUD has required, through this interim rule, each Continuum of Care to develop and implement a centralized or coordinated assessment system for its geographic area. Such a system must be designed locally in response to local needs and conditions. For example, rural areas will have significantly different systems than urban ones. While the common thread between typical models is the use of a

common assessment tool, the form, detail, and use of that tool will vary from one community to the next. 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. HUD intends to develop technical assistance materials on a range of centralized and coordinated assessment types, including those most appropriate for rural areas.

HUD recognizes that imposing a requirement for a centralized or coordinated assessment system may have certain costs and risks. Among the risks that HUD wishes specifically to address are the risks facing individuals and families fleeing domestic violence, dating violence, sexual assault, and stalking. In developing the baseline requirements for a centralized or coordinated intake system, HUD is considering whether victim service providers should be exempt from participating in a local centralized or coordinated assessment process, or whether victim service providers should have the option to participate or not.

*Specific request for comment.* HUD specifically seeks comment from Continuum of Care-funded victim service providers on this question. As set forth in this interim rule, each Continuum of Care is to develop a specific policy on how its particular system will address the needs of individuals and families who are fleeing, or attempting to flee, domestic violence, dating violence, sexual assault, or stalking, but who are seeking shelter or services from non-victim service providers. These policies could include reserving private areas at an assessment location for evaluations of individuals or families who are fleeing, or attempting to flee, domestic violence, dating violence, sexual assault, or stalking; a separate "track" within the assessment framework that is specifically designed for domestic

violence victims; or the location of victim service providers with centralized assessment teams.

HUD invites suggestions for ensuring that the requirements it imposes regarding centralized or coordinated assessment systems will best help communities use their resources effectively and best meet the needs of all families and individuals who need assistance. Questions that HUD asks commenters to specifically address are: What barriers to accessing housing/services might a centralized or coordinated intake system pose to victims of domestic violence? How can those barriers be eliminated? What specific measures should be implemented to ensure safety and confidentiality for individuals and families who are fleeing or attempting to flee domestic violence situations? How should those additional standards be implemented to ensure that victims of domestic violence have immediate access to housing and services without increasing the burden on those victims? For communities that already have centralized or coordinated assessment systems in place, are victims of domestic violence and/or domestic violence service providers integrated into that system? Under either scenario (they are integrated into an assessment process or they are not integrated into it), how does your community ensure the safety and confidentiality of this population, as well as access to homeless housing and services? What HUD-sponsored training would be helpful to assist communities in completing the initial assessment of victims of domestic violence in a safe and confidential manner?

In addition to comments addressing the needs of victims of domestic violence, dating violence, sexual assault, and stalking, HUD invites general comments on the use of a centralized or coordinated assessment system, particularly from those in communities that have already implemented one of these systems who can share both what has worked well and how these systems could be improved. HUD specifically seeks comment on any additional risks that a centralized or coordinated assessment system may create for victims of domestic violence, dating violence, sexual assault, or stalking who are seeking emergency shelter services due to immediate danger, regardless of whether they are seeking services through a victim service provider or non-victim service provider.

Another duty set forth in this part, is the requirement to establish and consistently follow written standards

when administering assistance under this part. These requirements, established in consultation with recipients of Emergency Solutions Grants program funds within the geographic area, are intended to coordinate service delivery across the geographic area and assist Continuums of Care and their recipients in evaluating the eligibility of individuals and families consistently and administering assistance fairly and methodically. The written standards can be found in § 578.7(a)(9) of this interim rule.

*Designating and operating an HMIS.* The Continuum of Care is responsible for designating an HMIS and an eligible applicant to manage the HMIS, consistent with the requirements, which will be codified in 24 CFR part 580. This duty is listed under section 402(f)(2) of the McKinney-Vento Act. In addition, the Continuum is responsible for reviewing, revising, and approving a privacy plan, security plan, and data quality plan for the HMIS and ensuring consistent participation of recipients and subrecipients in the HMIS.

*Continuum of Care planning.* The Continuum is responsible for coordinating and implementing a system for its geographic area to meet the needs of the homeless population and subpopulations within the geographic area. The interim rule defines the minimum requirements for this systematic approach under § 578.7(c)(1), such as emergency shelters, rapid rehousing, transitional housing, permanent supportive housing, and prevention strategies. Because there are not sufficient resources available through the Continuum of Care program to prevent and end homelessness, coordination and integration of other funding streams, including the Emergency Solutions Grants program and mainstream resources, is integral to carrying out the Continuum of Care System.

HUD has determined that since the Continuum of Care will be the larger planning organization, the Continuum of Care must develop and follow a Continuum of Care plan that adheres, not only to the requirements being established by this interim rule, but to the requirements and directions of the most recently issued notice of funding availability (NOFA).

While these planning duties are not explicitly provided in section 402(f) of the Act, HUD has included them to facilitate and clarify the Continuum of Care planning process. Consistent with the goals of the HEARTH Act, HUD strives, through this interim rule, to provide a comprehensive, well-

coordinated and clear planning process, which involves the creation of the Continuum of Care and the duties the Continuum of Care will have to fulfill.

Other planning duties for Continuums established in this section of the interim rule are planning for and conducting at least a biennial-point-in-time count of homeless persons within the geographic area, conducting an annual gap analysis of the homeless needs and services available within the geographic area, providing information necessary to complete the Consolidated Plan(s) within the geographic area, and consulting with State and local government Emergency Solutions Grants program recipients within the Continuum of Care on the plan for allocating Emergency Solutions Grants program funds and reporting on and evaluating the performance of Emergency Solutions Grants program recipients and subrecipients.

*Preparing an application for funds.* A major function of the Continuum of Care is preparing and overseeing an application for funds under this part. This section of the interim rule establishes the duties of the Continuum of Care related to the preparation of the application. This section of the interim rule establishes that the Continuum is responsible for designing, operating, and following a collaborative process for the development of applications, as well as approving the submission of applications, in response to a NOFA published by HUD.

The Continuum must also establish priorities for funding projects within the geographic area and determine the number of applications being submitted for funding. As previously noted in this preamble, since the Continuum of Care might not be a legal entity, and therefore may not be able to enter into a contractual agreement with HUD, the Continuum must select one or more eligible applicants to submit an application for funding to HUD on its behalf. If the Continuum of Care is an eligible applicant, the Continuum of Care may submit an application. If the Continuum selects more than one application, the Continuum must select one eligible applicant to be the collaborative applicant. That applicant will collect and combine the required application information from all of the other eligible applicants and for all projects within the geographic area that the Continuum has designated. If only one application is submitted by the collaborative applicant, the collaborative applicant will collect and combine the required application information from all projects within the geographic area that the Continuum has

designated for funding. The collaborative applicant will always be the only applicant that can apply for Continuum of Care planning costs. In the case that there is one application for projects, the recipient of the funds is required to have signed agreements with its subrecipients as set forth in § 578.23(c), and is required to monitor and sanction subrecipients in compliance with § 578.107.

Whether the Continuum of Care submits the application or designates an eligible applicant to submit the application for funding, the Continuum of Care retains all of its duties.

*Unified Funding Agencies.* To be designated as the Unified Funding Agency (UFA) for the Continuum of Care, the Continuum must select the collaborative applicant to apply to HUD to be designated as the UFA for the Continuum. The interim rule establishes the criteria HUD will use when determining whether to designate the collaborative applicant as a UFA. These standards were developed to ensure that collaborative applicants have the capacity to manage the grant and carry out the duties in 578.11(b), and are described below.

The duties of the UFA established in § 578.11 are consistent with the duties set forth in section 402(g) of the Act. Even if the Continuum designates a UFA to submit the application for funding, the Continuum of Care retains all of its duties.

*Remedial actions.* Section 402(c) of the McKinney-Vento Act gives HUD the authority to ensure the fair distribution of grant amounts for this program, such as designating another body as a collaborative applicant, replacing the Continuum of Care for the geographic area, or permitting other eligible entities to apply directly for grants. Section 578.13 of this interim rule addresses the remedial actions that may be taken.

#### *Overview of the Application and Grant Award Process (Subpart C)*

*Eligible applicants.* Under this interim rule, eligible applicants consist of nonprofit organizations, State and local governments, and instrumentalities of local governments. An eligible applicant must have been designated by the Continuum of Care to submit an application for grant funds under this part. The Continuum's designation must state whether the Continuum is designating more than one applicant to apply for funds, and if it is, which applicant is being designated the collaborative applicant. A Continuum of Care that is designating only one applicant for funds must designate that applicant to be the collaborative

applicant. For-profit entities are not eligible to apply for grants or to be subrecipients of grant funds.

Section 401(10) of the McKinney-Vento Act identifies that collaborative applicants may be legal entities, and a legal entity may include a consortium of instrumentalities of a State or local government that has constituted itself as an entity. HUD has not included a consortium in the list of eligible applicants. As noted earlier in this preamble, a Continuum of Care is defined to mean a group that is composed of representatives of organizations across the entire geographic area claimed by the Continuum of Care. A Continuum is able to combine more than one metropolitan city or county into the geographic area that the Continuum represents. In essence, the Continuum of Care acts as a consortium, and it is therefore HUD's position that the inclusion of consortiums in the interim rule would be redundant.

*Determining the Continuum's maximum award amount.* The total amount for which a Continuum of Care is eligible to apply and be awarded is determined through a four-step process, including the following factors: A Continuum's PPRN amount; renewal demand; any additional increases in amounts for leasing, rental assistance, and operating costs based on Fair Market Rents (FMRs); planning and UFA cost funds; and the amounts available for bonus dollars.

Using the formula that will be discussed below, HUD will first determine a Continuum of Care's PPRN amount, as authorized under section 427(b)(2)(B) of the McKinney-Vento Act. This amount is the sum of the PPRN amounts for each metropolitan city, urban county, non-urban county, and insular area claimed by the Continuum of Care as part of its geographic area, excluding any counties applying for, or receiving funds under the Rural Housing Stability Assistance program, the regulations for which will be established in 24 CFR part 579. The PPRN for each of these areas is based upon the "need formula" under § 579.17(a)(2) and (3). Under the McKinney-Vento Act, HUD is required to publish, by regulation, the formula used to establish grant amounts. The need formula under § 579.17(a)(2) and (3) satisfies this requirement, and HUD specifically seeks comment on this formula. HUD will announce the PPRN amounts prior to the publication of the NOFA on its Web site.

To establish the amount on which the need formula is run, HUD will deduct an amount, which will be published in

the NOFA, to be set aside to provide a bonus, and the amount necessary to fund Continuum of Care planning activities and UFA costs from the total funds made available for the program each fiscal year. On this amount, HUD will use the following process to establish an area's PPRN. First, 2 percent of the total funds available shall be allocated among the four insular areas (American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Virgin Islands) based upon the percentage each area received in the previous fiscal year under section 106 of the Housing and Community Development Act of 1974. Second, 75 percent of the remaining funds made available shall be allocated to metropolitan cities and urban counties that have been funded under the Emergency Solutions Grants program (formerly known as the Emergency Shelter Grants program) every year since 2004. Third, the remaining funds made available shall be allocated to Community Development Block Grant (CDBG) metropolitan cities and urban counties that have not been funded under the Emergency Solutions Grants program every year since 2004 and all other counties in the United States and Puerto Rico.

Recognizing that in some federal fiscal years, the amount available for the formula may be less than the amount required to renew all existing projects eligible for renewal in that year for at least one year, HUD has included a method for distributing the reduction of funds proportionally across all Continuums of Care in § 578.17(a)(4) of this interim rule. HUD will publish the total dollar amount that each Continuum will be required to deduct from renewal projects Continuum-wide, and Continuums will have the authority to determine how to administer the cuts to projects across the Continuum.

*Specific request for comment.* HUD specifically requests comment on the method established in § 578.17(a)(4) to reduce the total amount required to renew all projects eligible for renewal in that one year, for at least one year, for each Continuum of Care when funding is not sufficient to renew all projects nationwide for at least one year.

The second step in determining a Continuum's maximum award amount is establishing a Continuum of Care's "renewal demand." The Continuum's renewal demand is the sum of the annual renewal amounts of all projects eligible within the Continuum of Care's geographic area to apply for renewal in that federal fiscal year's competition before any adjustments to rental assistance, leasing, and operating line

items based on changes to the FMRs in the geographic area.

Third, HUD will determine the Continuum of Care's Final Pro Rata Need (FPRN), which is the higher of: (1) PPRN, or (2) renewal demand for the Continuum of Care. The FPRN establishes the base for the maximum award amount for the Continuum of Care.

Fourth, HUD will determine the maximum award amount. The maximum award amount for the Continuum of Care is the FPRN amount plus any additional eligible amounts for Continuum planning; establishing fiscal controls for the Continuum; updates to leasing, operating, and rental assistance line items based on changes to FMR; and the availability of any bonus funding during the competition.

*Application process.* Each fiscal year, HUD will issue a NOFA. All applications, including applications for grant funds, and requests for designation as a UFA or HPC, must be submitted to HUD in accordance with the requirements of the NOFA and contain such information as the NOFA specifies. Applications may request up to the maximum award amount for Continuums of Care.

An applicant that is a State or a unit of general local government must have a HUD-approved, consolidated plan in accordance with HUD's Consolidated Plan regulations in 24 CFR part 91. The applicant must submit a certification that the application for funding is consistent with the HUD-approved consolidated plan(s) in the project's jurisdiction(s). Applicants that are not States or units of general local government must submit a certification that the application for funding is consistent with the jurisdiction's HUD-approved consolidated plan. The certification must be made by the unit of general local government or the State, in accordance with HUD's regulations in 24 CFR part 91, subpart F. The required certification must be submitted by the funding application submission deadline announced in the NOFA.

An applicant may provide assistance under this program only in accordance with HUD subsidy layering requirements in section 102 of the Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3545). In this interim rule, HUD clarifies that the applicant must submit information in its application on other sources of funding the applicant has received, or reasonably expects to receive, for a proposed project or activities.

*Awarding funds.* HUD will review applications in accordance with the guidelines and procedures specified in

the NOFA and award funds to recipients through a national competition based on selection criteria as defined in section 427 of the McKinney-Vento Act. HUD will announce the awards and notify selected applicants of any conditions imposed on the awards.

*Grant agreements.* A recipient of a conditionally awarded grant must satisfy all requirements for obligation of funds; otherwise, HUD will withdraw its offer of the award. These conditions include establishing site control, providing proof of match, complying with environmental review under § 578.31, and documenting financial feasibility within the deadlines under § 578.21(a)(3). HUD has included in the interim rule the deadlines for conditions that may be extended and the reasons for which HUD will consider an extension.

The interim rule requires that site control be established by each recipient receiving funds for acquisition, rehabilitation funding, new construction, or operating costs, or for providing supportive services. HUD has determined that the time to establish site control is 12 months for projects not receiving new construction, acquisition, or rehabilitation funding, as stated under section 426(a) of the McKinney-Vento Act, not 9 months as stated under section 422(d) of the McKinney-Vento Act, for projects receiving operating and supportive service funds. HUD's determination on the time needed to establish site control is based on previous program policy, and the longer time frame takes into consideration the reality of the housing market. Projects receiving acquisition, rehabilitation, or new construction funding must provide evidence of site control no later than 24 months after the announcement of grant awards, as provided under section 422(d) of the McKinney-Vento Act.

The interim rule requires that HUD perform an environmental review for each property as required under HUD's environmental regulations in 24 CFR part 50. All recipients of Continuum of Care program funding under this part must supply all available, relevant information necessary to HUD, and carry out mitigating measures required by HUD. The recipient, its project partners, and its project partner's contractors may not perform any eligible activity for a project under this part, or commit or expend HUD or local funds for such activities until HUD has performed an environmental review and the recipient has received HUD approval of the property agreements.

*Executing grant agreements.* If a Continuum designates more than one applicant for the geographic area, HUD

will enter into a grant agreement with each designated recipient for which an award is announced. If a Continuum designates only one recipient for the geographic area, HUD may enter into one grant agreement with that recipient for new awards, if any; and one grant agreement for renewals and Continuum of Care planning costs and UFA costs, if any. These two grant agreements will cover the entire geographic area, and a default by the recipient under one of these agreements will also constitute a default under the other. If the Continuum is a UFA, HUD will enter into one grant agreement with the UFA for new awards, if any; and one for renewal and Continuum of Care planning costs and UFA costs, if any. Similarly, these two grant agreements will cover the entire geographic area and a default by the recipient under one of those agreements will also constitute a default under the other.

HUD requires the recipient to enter into the agreement described in § 578.23(c). Under this agreement, the grant recipient must agree to ensure that the operation of the project will be in accordance with the McKinney-Veto Act and the requirements under this part. In addition, the recipient must monitor and report the progress of the projects to the Continuum of Care and to HUD. The recipient must ensure that individuals and families experiencing homelessness are involved in the operation of the project, maintain confidentiality of program participants, and monitor and report matching funds to HUD, among other requirements. The recipient must also agree to use the centralized or coordinated assessment system established by the Continuum of Care, unless the recipient or subrecipient is a victim service provider. Victim service providers may choose not to use the centralized or coordinated assessment system provided that all victim service providers in the area use a centralized or coordinated assessment system that meets HUD's minimum requirements. HUD has provided this optional exception because it understands the unique role that victim service providers have within the Continuum of Care.

**Renewals.** The interim rule provides that HUD may fund, through the Continuum of Care program, all projects that were previously eligible under the McKinney-Veto Act prior to the enactment of the HEARTH Act. These projects may be renewed to continue ongoing leasing, operations, supportive services, rental assistance, HMIS, and administration beyond the initial funding period even if those projects

would not be eligible under the Continuum of Care program. For projects that would no longer be eligible under the Continuum of Care program (e.g., safe havens), but which are serving homeless persons; HUD wants to ensure that housing is maintained and that persons do not become homeless because funding is withdrawn.

HUD may renew projects that were submitted on time and in such manner as required by HUD, but did not have a total score that would allow the project to be competitively funded. HUD may choose to exercise this option to ensure that homeless or formerly homeless persons do not lose their housing. The interim rule provides, based on the language in section 421(e) of the McKinney-Veto Act, that HUD may renew the project, upon a finding that the project meets the purposes of the Continuum of Care program, for up to one year and under such conditions as HUD deems appropriate.

**Annual Performance Report.** The interim rule also provides that HUD may terminate the renewal of any grant and require the recipient to repay the renewal grant if the recipient fails to submit a HUD Annual Performance Report (APR) within 90 days of the end of the program year or if the recipient submits an APR that HUD deems unacceptable or shows noncompliance with the requirements of the grant and this part. Section 578.103(e) of the Continuum of Care program regulations further clarifies that recipients receiving grant funds for acquisition, rehabilitation, or new construction are expected to submit APRs for 15 years from the date of initial occupancy or the date of initial service provision, unless HUD provides an exception. The recipient's submission of the APR helps HUD review whether the recipient is carrying out the project in the manner proposed in the application. Recipients agree to submit an APR as a condition of their grant agreement. This requirement allows HUD to ensure that recipients submit APRs on grant agreements that have expired as a condition of receiving approval for a new grant agreement for the renewal project.

**Appeals.** The interim rule provides certain appeal options for applicants that were not awarded funding.

Under section 422(g) of the McKinney-Veto Act, if more than one collaborative applicant submits an application covering the same geographic area, HUD must award funds to the application that scores the highest score based on the selection criteria set forth in section 427 of the Act. Consistent with HUD's use of the term

Continuum of Care in the interim rule where the statute uses collaborative applicant, as explained earlier in the preamble, the interim rule stipulates that if more than one Continuum of Care claims the same geographic area, then HUD will award funds to the Continuum applicant(s) whose application(s) has the highest total score and that no projects from the lower scoring Continuum of Care will be funded (and that any projects submitted with both applications will not be funded). To appeal HUD's decision to fund the competing Continuum of Care, the applicant(s) from the lower-scoring Continuum of Care must file the written appeal in such form and manner as HUD may require within 45 days of the date of HUD's announcement of award.

If an applicant has had a certification of consistency with a consolidated plan withheld, that applicant may appeal such a decision to HUD. HUD has established a procedure to process the appeals and no later than 45 days after the date of receipt of an appeal, HUD will make a decision.

Section 422(h) of the McKinney-Veto Act provides the authority for a solo applicant to submit an application to HUD and be awarded a grant by HUD if it meets the criteria under section 427 of the McKinney-Veto Act. The interim rule clarifies that a solo applicant must submit its application to HUD by the deadline established in the NOFA to be considered for funding. The statute also requires that HUD establish an appeal process for organizations that attempted to participate in the Continuum of Care's process and believe they were denied the right to reasonable participation, as reviewed in the context of the local Continuum's process. An organization may submit a solo application to HUD and appeal the Continuum's decision not to include it in the Continuum's application. If HUD finds that the solo applicant was not permitted to participate in the Continuum of Care process in a reasonable manner, then HUD may award the grant to that solo applicant and may direct the Continuum to take remedial steps to ensure reasonable participation in the future. HUD may also reduce the award to the Continuum's applicant(s).

Section 422(h)(1) of the McKinney-Veto Act requires that "HUD establish a timely appeal procedure for grant amounts awarded or denied under this subtitle to a collaborative application." The interim rule sets an appeal process for denied or decreased funding under § 578.35(c). Applicants that are denied funds by HUD, or that requested more funds than HUD awarded, may appeal



by filing a written appeal within 45 days of the date of HUD's announcement of the award. HUD will notify applicant of its decision on the appeal within 60 days of the date of HUD's receipt of the written appeal.

*Program Components and Eligible Costs (Subpart D)*

*Program components.* The interim rule provides that Continuum of Care funds may be used for projects under five program components: Permanent housing, transitional housing, supportive services only, HMIS, and, in some cases, homelessness prevention. Administrative costs are eligible under all components. Where possible, the components set forth in the Continuum of Care program are consistent with the components set forth under the Emergency Solutions Grants program. This will ease the administrative burden on recipients of both programs and will ensure that reporting requirements and data quality benchmarks are consistently established and applied to like projects. One significant distinction between the Emergency Solutions Grants program and this part can be found in the eligible activities and administration requirements for assistance provided under the rapid rehousing component in this interim rule. The significant differences between this component in the Emergency Solutions Grants program and this part are discussed below.

The interim rule sets forth the costs eligible for each program component in § 578.37(a). The eligible costs for contributing data to the HMIS designated by the Continuum of Care are also eligible under all components.

Consistent with the definition of permanent housing in section 401 of the McKinney-Vento Act and § 578.3 of this interim rule, the permanent housing component is community-based housing without a designated length of stay that permits formerly homeless individuals and families to live as independently as possible. The interim rule clarifies that Continuum of Care funds may be spent on two types of permanent housing: Permanent supportive housing for persons with disabilities (PSH) and rapid rehousing that provides temporary assistance (i.e., rental assistance and/or supportive services) to program participants in a unit that the program participant retains after the assistance ends.

Although the McKinney-Vento Act authorizes permanent housing without supportive services, the interim rule does not. Based on its experience with the Supportive Housing and Shelter Plus Care programs, HUD has

determined that programs should require at least case management for some initial period after exiting homelessness. HUD has imposed the requirement that rapid rehousing include, at a minimum, monthly case management meetings with program participants (except where prohibited by the Violence Against Women Act (VAWA) and the Family Violence Prevention and Services Act (FVPSA)) and allows for a full range of supportive services to be provided for up to 6 months after the rental assistance stops. Many other HUD programs, such as Section 8 and HOME, provide housing without supportive services to low-income individuals and families.

With respect to rapid rehousing, the interim rule provides that funds under this part may be used to provide supportive services and short-term and/or medium-term rental assistance. While the time frames under which a program participant may receive short-term or medium-term rental assistance set forth in this part match the time frames set forth in the Emergency Solutions Grants program, the supportive services available to program participants receiving rapid rehousing assistance under the Continuum of Care program are not limited to housing relocation and stabilization services as they are in the Emergency Solutions Grants program. Program participants receiving rapid rehousing under this part may receive any of the supportive services set forth in § 578.53 during their participation in the program. The Continuum of Care, however, does have the discretion to develop written policies and procedures that limit the services available to program participants that better align the services available to program participants with those set forth in the Emergency Solutions Grants program.

*Specific request for comment.* While HUD's experience with the Supportive Housing and Shelter Plus Care programs is the basis for HUD's determination to require case management for some initial period after exiting homelessness, HUD specifically welcomes comment on other experiences with monthly case management.

The interim rule provides that the HMIS component is for funds that are used by HMIS Leads only. Eligible costs include leasing a structure in which the HMIS is operated, operating funds to operate a structure in which the HMIS is operated, and HMIS costs related to establishing, operating, and customizing a Continuum of Care's HMIS.

As set forth in Section 424(c) of the McKinney-Vento Act, Continuum of Care funds may be used only for the

homelessness prevention component by recipients in Continuums of Care that have been designated HPCs by HUD. Eligible activities are housing relocation and stabilization services, and short- and/or medium-term rental assistance, as set forth in 24 CFR 576.103, necessary to prevent an individual or family from becoming homeless.

*Planning activities.* Under this interim rule, HUD lists eligible planning costs for the Continuum of Care under § 578.39(b) and (c). HUD will allow no more than 3 percent of the FPRN, or a maximum amount to be established by the NOFA, to be used for certain costs. These costs must be related to designing a collaborative process for an application to HUD, evaluating the outcomes of funded projects under the Continuum of Care and Emergency Solutions Grants programs, and participating in the consolidated plan(s) for the geographic area(s). Under section 423 of the McKinney-Vento Act, a collaborative applicant may use no more than 3 percent of total funds made available to pay for administrative costs related to Continuum of Care planning.

HUD is defining "of the total funds made available" to mean FPRN, the higher of PPRN or renewal demand, in the interim rule. HUD has determined that FPRN strikes the correct balance, as it is the higher of PPRN or renewal demand. This will help Continuums of Care (CoC) balance: (1) Having sufficient planning dollars to be successful in its duties and compete for new money (which would be the PPRN), and (2) being able to monitor and evaluate actual projects in operation (and plan for renewal demand). The administrative funds related to CoC planning made available will be added to a CoC's FPRN to establish the CoC's maximum award amount.

*Unified Funding Agency Costs.* Under this interim rule, HUD lists eligible UFA costs in § 578.41(b) and (c). Similar to the cap on planning costs for CoC, HUD will allow no more than 3 percent of the FPRN, or a maximum amount to be established by the NOFA, whichever is less, to be used for UFA costs. This amount is in addition to the amount made available for CoC planning costs. UFA costs include costs associated with ensuring that all financial transactions carried out under the Continuum of Care program are conducted and records maintained in accordance with generally accepted accounting principles, including arranging for an annual survey, audit, or evaluation of the financial records of each project carried out by a subrecipient funded by a grant received through the Continuum of Care program. The funds made

available to UFAs related to establishing fiscal controls will be added to a CoC's FPRN to establish the CoC maximum award amount.

**Leasing.** Under this interim rule, grant funds may be used to pay the costs of leasing a structure or structures, or portions of structures, to provide housing or supportive services. The interim rule further clarifies that leasing means that the lease is between the recipient of funds and the landlord. HUD recognizes that some grantees receiving funds through the Supportive Housing Program may have been using their leasing funds in a manner consistent with the rental assistance requirements established in § 578.51; therefore, since the Continuum of Care program authorizes both leasing and rental assistance, the rule provides for an allowance for projects originally approved to carry out leasing to renew and request funds for rental assistance, so long as the rental assistance meets the requirements in § 578.51. The rule provides that a recipient of a grant awarded under the McKinney-Vento Act, prior to enactment of the HEARTH Act, must apply for leasing if the lease is between the recipient and the landlord, notwithstanding that the grant was awarded prior to the HEARTH Act amendments to the McKinney-Vento Act.

The interim rule provides that leasing funds may not be used to lease units or structures owned by the recipient, subrecipient, their parent organization(s), any other related organization(s), or organizations that are members of a partnership where the partnership owns the structure, unless HUD authorizes an exception for good cause. The interim rule establishes minimum requirements that a request for an exception must include. These exceptions are based on HUD's experience in administering the Homelessness Prevention and Rapid Re-Housing Program (HPRP).

The interim rule establishes that projects for leasing may require that program participants pay an occupancy charge (or in the case of a sublease, rent) of no more than 30 percent of their income. Income must be calculated in accordance with HUD's regulations in 24 CFR 5.609 and 24 CFR 5.611(a). However, the interim rule clarifies that projects may not charge program fees.

**Rental assistance.** Under this interim rule, rental assistance is an eligible cost for permanent and transitional housing, and this rule clarifies that the rental assistance may be short-term, up to 3 months of rent; medium-term, for 3 to 24 months of rent; and long-term, for longer than 24 months of rent. This

section provides that rental assistance may include tenant-based, project-based, or sponsor-based rental assistance. This section also provides that project-based rental assistance may include rental assistance to preserve existing permanent supportive housing for homeless individuals and families. Given that the availability of affordable rental housing has been shown to be a key factor in reducing homelessness, the availability of funding for short-term, medium-term, and long-term rental assistance under both the Emergency Solutions Grants program and the Continuum of Care program is not inefficient use of program funds, but rather effective use of funding for an activity that lowers the number of homeless persons.

As noted in the above discussion of rental housing available for funding under the Continuum of Care program, one eligible form of rental assistance is tenant-based, which allows the program participant to retain rental assistance for another unit. The interim rule limits this retention to within the Continuum of Care boundaries. HUD has determined that Continuum of Care program funds must be used within the Continuum's geographic boundaries. If program participants move outside of the Continuum, the Continuum may pay moving costs, security deposits, and the first month of rent for another unit; however, the Continuum would have to organize assistance with the relevant Continuum of Care for the program participant if rental assistance is to continue. The program participant may be transferred to a rental assistance program in a different Continuum without having to become homeless again. The recipient may also limit the movement of the assistance to a smaller area if this is necessary to coordinate service delivery.

Under this interim rule, the only exception to the limitation for retention of tenant-based rental assistance is for program participants who are victims of domestic violence, dating violence, sexual assault, or stalking. Under the definition of "tenant-based" in the McKinney-Vento Act (section 401(28) of the McKinney-Vento Act), these participants must have complied with all other obligations of the program and reasonably believe that he or she is imminently threatened by harm from further violence if he or she remains in the assisted dwelling unit.

In the interim rule, HUD has clarified that the 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. HUD requires that the program participant provide appropriate documentation of the original incident of domestic violence, dating violence, sexual assault, or stalking, and any evidence of the current imminent threat of harm. 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.

Documentation of reasonable belief of further domestic violence, dating violence, sexual assault, or stalking includes written observation by the housing or service provider; a letter or other written documentation from a victim service provider, social worker, legal assistance provider, pastoral counselor, mental health provider, or other professional from whom the victim has requested assistance; a current restraining order, recent court order, or other court records; or law enforcement reports or records. The housing or service provider may also consider other documentation such as emails, voicemails, text messages, social media posts, and other communication. Because of the particular safety concerns surrounding victims of domestic violence, 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.

This provision is specific to victims of domestic violence, dating violence, sexual assault, and stalking who are receiving tenant-based rental assistance in permanent housing. This interim rule contains other policies for moving program participants receiving any type of assistance under this interim rule, including tenant-based rental assistance, within the Continuum of Care geographic area, or smaller geographic area required by the provider to coordinate service delivery. Moving program participants outside of the geographic area where providers can coordinate service-delivery is administratively difficult for providers and makes it difficult to monitor that program participants have access to, and are receiving, appropriate supportive

services; therefore, moves outside of the geographic area where the provider can effectively deliver and monitor service coordination are allowed only under exceptional circumstances. HUD has established these provisions to provide an exception and to address the challenges that are associated with such a move.

Based on HUD's experience in administering the Shelter Plus Care program, the interim rule includes provisions to clarify when rental payments may continue to be made to a landlord when the program participant no longer resides in the unit. For vacated units, the interim rule provides that assistance may continue for a maximum of 30 days from the end of the month in which the unit was vacated, unless the unit is occupied by another eligible person. A person staying in an institution for less than 90 days is not considered as having vacated the unit. Finally, the recipient may use grant funds, in an amount not to exceed one month's rent, to pay for any damage to housing due to the action of the program participant, one-time, per program participant, per unit. This assistance can be provided only at the time the program participant exits the housing unit.

**Supportive services.** Grant funds may be used to pay eligible costs of supportive services for the special needs of program participants. All eligible costs are eligible to the same extent for program participants who are unaccompanied homeless youth; persons living with Human Immunodeficiency Virus (HIV)/ Acquired Immune Deficiency Syndrome (AIDS) (HIV/AIDS); and victims of domestic violence, dating violence, sexual assault, or stalking. Any cost that is not described as an eligible cost under this interim rule is not an eligible cost of providing supportive services. Eligible costs consist of assistance with moving costs, case management, child care, education services, employment assistance and job training, housing search and counseling services, legal services, life skills training, mental health services, outpatient health services, outreach services, substance abuse treatment services, transportation, and utility deposits.

The definition of "supportive services" in section 401(27) of the McKinney-Vento Act includes the provision of mental health services, trauma counseling, and victim services. HUD has determined that victim services are eligible as supportive services, and are included as eligible program costs in this interim rule. Providers are allowed to provide

services specifically to victims of domestic violence, dating violence, sexual assault, and stalking. The eligible costs for providing victim services are listed as eligible costs in the supportive services funding category. Rather than create a new eligible line item in the project budget, HUD has determined that these costs can be included in the funding categories already established.

**Indirect costs.** Indirect costs are allowed as part of eligible program costs. Programs using indirect cost allocations must be consistent with Office of Management and Budget (OMB) Circulars A-87 and A-122, as applicable. OMB Circular A-87 and the regulations at 2 CFR part 225 pertain to "Cost Principles for State, Local, and Indian Tribal Governments." OMB Circular A-122 and the regulations codified at 24 CFR part 230 pertain to "Cost Principles for Non-Profit Organizations."

**Other costs.** In addition to the eligible costs described in this preamble, the regulation addresses the following other eligible costs: acquisition, rehabilitation, new construction, operating costs, HMIS, project administrative costs, and relocation costs.

#### *High-Performing Communities (Subpart E)*

Section 424 of the McKinney-Vento Act establishes the authority for the establishment of and requirements for HPCs. Applications must be submitted by the collaborative applicant at such time and in such manner as HUD may require and contain such information as HUD determines necessary under § 578.17(b). Applications will be posted on the HUD Web site ([www.hud.gov](http://www.hud.gov)) for public comments. In addition to HUD's review of the applications, interested members of the public will be able to provide comment to HUD regarding the applications.

**Requirements.** The Continuum of Care must use HMIS data (HUD will publish data standards and measurement protocols) to determine that the standards for qualifying as a HPC are met. An applicant must submit a report showing how the Continuum of Care program funds were expended in the prior year, and provide information that the Continuum meets the standards for HPCs.

**Standards.** In order to qualify as an HPC, a Continuum of Care must demonstrate through reliable data that it meets all of the required standards. The interim rule clarifies which standards will be measured with reliable data from a Continuum's HMIS and which standards will be measured through reliable data from other sources and

presented in a narrative form or other format prescribed by HUD.

Continuums must use the HMIS to demonstrate the following measures: (1) That the mean length of homelessness must be less than 20 days for the Continuum's geographic area, or the Continuum's mean length of episodes for individuals and families in similar circumstances was reduced by at least 10 percent from the preceding year; (2) that less than 5 percent of individuals and families that leave homelessness become homeless again any time within the next 2 years, or the percentage of individuals and families in similar circumstances who became homeless again within 2 years after leaving homelessness was decreased by at least 20 percent from the preceding year; and (3) for Continuums of Care that served homeless families with youth defined as homeless under other federal statutes, that 95 percent of those families did not become homeless again within a 2-year period following termination of assistance and that 85 percent of those families achieved independent living in permanent housing for at least 2 years following the termination of assistance.

The McKinney-Vento Act requires that HUD set forth standards for preventing homelessness among the subset of those at the highest risk of becoming homeless among those homeless families and youth defined as homeless under other federal statutes, the third measure above, one of which includes achieving independent living in permanent housing among this population. HUD has set forth the standards of 95 percent and 85 percent. HUD recognizes that these standards are high, but standards are comparable to the other standards in the Act, which are high. It is HUD's position that HPCs should be addressing the needs of those homeless individuals within their communities prior to receiving designation of a HPC and being allowed to spend funds in accordance with § 578.71.

The final standard that the Continuum must use its HMIS data to demonstrate is provided under section 424(d)(4) of the Act. The statute requires each homeless individual or family who sought homeless assistance to be included in the data system used by that community. HUD has defined this as bed-coverage and service-volume coverage rates of at least 80 percent. The documentation that each homeless individual or family who sought homeless assistance be included in the HMIS is not measurable by HUD. This type of standard would be entirely reliant upon self-reporting. Additionally, individuals and families

have the right to decline having their data entered into the HMIS. HUD uses bed-coverage rates and service-volume coverage rates as a proxy for measuring the rate of inclusion of persons who are present for services or housing in the HMIS. This is a measurable standard, and HUD defines the calculation in the HMIS rule; therefore, the measurement will be consistent between Continuums.

Continuums must use reliable data from other sources and presented in a narrative form or other format prescribed by HUD to measure two standards: Community action and renewing HPC status. Section 424(d)(4) of the McKinney-Vento Act establishes another standard for HPCs, which is "community action." This statutory section provides that communities that compose the geographic area must have actively encouraged homeless individuals and families to participate in housing and services available in the geographic area and included each homeless individual or family who sought homeless assistance services in the data system used by that community for determining compliance. HUD has defined "communities that compose the geographic area" to mean the entire geographic area of the Continuum. This definition will also provide consistency of measurement since most of HUD's measurements are across the entire Continuum of Care geographic area. HUD has further defined "actively encourage" within this standard as a comprehensive outreach plan, including specific steps for identifying homeless persons and referring them to appropriate housing and services in that geographic area. The measurement of the last part of this standard, "each homeless individual or family who sought homeless assistance services in the data system used by that community," will be measured using reliable data from an HMIS and has been discussed earlier in this preamble. HUD has determined this will provide clarity and ensure consistent measurement across Continuums.

The interim rule provides that a Continuum of Care that was an HPC in the prior year and used Continuum funds for activities described under § 578.71 must demonstrate that these activities were effective at reducing the number of persons who became homeless in that community, to be renewed as a HPC.

**Selection.** HUD will select up to 10 Continuums of Care each year that best meet the application requirements and the standards set forth in § 578.65. Consistent with section 424 of the McKinney-Vento Act, the interim rule provides a HPC designation for the

grants awarded in the same competition in which the designation is applied for and made. The designation will be for a period of one year.

**Eligible activities.** Recipients and subrecipients in Continuums that have been designated an HPC may use grant funds to provide housing relocation and stabilization services and short- and/or medium-term rental assistance to individuals and families at risk of homelessness as set for in the Emergency Solutions Grants program. All eligible activities discussed in this section must be effective at stabilizing individuals and families in their current housing, or quickly moving such individuals and families to other permanent housing. This is the only time that Continuum of Care funds may be used to serve nonhomeless individuals and families. Recipients and subrecipients using grant funds on these eligible activities must follow the written standards established by the Continuum of Care in § 578.7(a)(9)(v), and the recordkeeping requirements set for the Emergency Solutions Grants program rule.

#### *Program Requirements (Subpart F)*

All recipients of Continuum of Care funding must comply with the program regulations and the requirements of the NOFA issued annually by HUD.

**Matching.** The HEARTH Act allows for a new, simplified match requirement. All eligible funding costs except leasing must be matched with no less than a 25 percent cash or in-kind match. The interim rule clarifies that the match must be provided for the entire grant, except that recipients that are UFAs or are the sole recipient for the Continuum may provide the match on a Continuum-wide basis.

For in-kind match, the governmentwide grant requirements of HUD's regulations in 24 CFR 84.23 (for private nonprofit organizations) and 85.24 (for governments) apply. The regulations in 24 CFR parts 84 and 85 establish uniform administrative requirements for HUD grants. The requirements of 24 CFR part 84 apply to subrecipients that are private nonprofit organizations. The requirements of 24 CFR part 85 apply to the recipient and subrecipients that are units of general purpose local government. The match requirement in 24 CFR 84.23 and in 24 CFR 85.24 applies to administration funds, as well as Continuum of Care planning costs and UFA's financial management costs. All match must be spent on eligible activities as required under subpart D of this interim rule, except that recipients and subrecipients

in HPCs may use match on eligible activities described under § 578.71.

**General operations.** Recipients of grant funds must provide housing or services that comply with all applicable State and local housing codes, licensing requirements, and any other requirements in the project's jurisdiction. In addition, this interim rule clarifies that recipients must abide by housing quality standards and suitable dwelling size. Recipients must also assess supportive services on an ongoing basis, have residential supervision, and provide for participation of homeless individuals as required under section 426(g) of the McKinney-Vento Act.

**Specific request for comment.** With respect to housing quality standards, HUD includes in this rule the longstanding requirement from the Shelter Plus Care program that recipients or subrecipients, prior to providing assistance on behalf of a program participant, must physically inspect each unit to assure that the unit meets housing quality standards. This requirement is designed to ensure that program participants are placed in housing that is suitable for living. Additionally, these requirements are consistent with HUD's physical inspection requirements in its other mainstream rental assistance programs. Notwithstanding that this is a longstanding requirement, HUD welcomes comment on alternatives to inspection of each unit that may be less burdensome but ensure that the housing provided to a program participant is decent, safe, and sanitary.

Under Section 578.75, General Operations, subsection (h), entitled "Supportive Service Agreements," states that recipients and subrecipients may require program participants to take part in supportive services so long as they are not disability-related services, provided through the project as a condition of continued participation in the program. Examples of disability-related services include, but are not limited to, mental health services, outpatient health services, and provision of medication, which are provided to a person with a disability to address a condition caused by the disability.

This provision further states that if the purpose of the project is to provide substance abuse treatment services, recipients and subrecipients may require program participants to take part in such services as a condition of continued participation in the program. For example, if a Continuum of Care recipient operates a transitional housing program with substance abuse treatment

services, the recipient may require program participants to participate in those services. By contrast, in a program that offers services but whose purpose is not substance abuse treatment, a recipient may not require a person who is an alcoholic, for example, to sign a supportive service agreement at initial occupancy stating that he or she will participate in substance abuse treatment services as a condition of occupancy. All program participants must, however, meet all terms and conditions of tenancy, including lease requirements. If, as a result of a person's behavior stemming from substance use, a person violates the terms of the lease, a recipient may consider requiring participation in services or any other action necessary in order for such a person to successfully meet the requirements of tenancy.

Finally, the interim rule clarifies that in units where the qualifying member of the household has died, or has been incarcerated or institutionalized for more than 90 days, assistance may continue until the expiration of the lease in effect at the time of the qualifying member's death, incarceration, or institutionalization.

**Displacement, relocation, and acquisition.** All recipients must ensure that they have taken all reasonable steps to minimize the displacement of persons as a result of projects assisted under this part. This section of the interim rule is substantially revised from the previous programs to increase clarity and comprehension of the directions to recipients and subrecipients in the use of grant funds.

**Timeliness standards.** Recipients must initiate approved activities and projects promptly. Recipients of funds for rehabilitation and new construction must begin construction activities within 9 months of the signing of the grant, and such activities must be completed within 24 months. HUD is providing these requirements to assist communities in meeting the obligation and expenditure deadline historically imposed by the annual HUD appropriations act. HUD may reduce a grant term to a term of one year if implementation delays reduce the amount of funds that can be used during the original grant term.

**Limitation on use of funds.** Recipients of funds provided under this part must abide by any limitations that apply to the use of such funds, such as use of funds for explicitly religious activities.

The limitation on use of funds also addresses limitation on uses where religious activities may be concerned. It is HUD's position that faith-based organizations are able to compete for

HUD funds and participate in HUD programs on an equal footing with other organizations; that no group of applicants competing for HUD funds should be subject, as a matter of discretion, to greater or fewer requirements than other organizations solely because of their religious character or affiliation, or, alternatively, the absence of religious character or affiliation. HUD's general principles regarding the equal participation of such organizations in its programs are codified at 24 CFR 5.109. Program-specific requirements governing faith-based activities are codified in the regulations for the individual HUD programs. (See, for example, 24 CFR 574.300(c), 24 CFR 582.115(c), and 24 CFR 583.150(b).)

HUD's equal participation regulations were prompted by Executive Order 13279, Equal Protection of the Laws for Faith-Based and Community Organizations, issued by President Bush on December 12, 2002, and published in the *Federal Register* on December 16, 2002 (67 FR 77141). Executive Order 13279 set forth principles and policymaking criteria to guide federal agencies in ensuring the equal protection of the laws for faith-based and community organizations. Executive Order 13279 was amended by Executive Order 13559 (Fundamental Principles and Policymaking Criteria for Partnerships With Faith-Based and Other Neighborhood Organizations), issued by President Obama on November 17, 2010, and published in the *Federal Register* on November 22, 2010 (75 FR 71319).

Executive Order 13559 expands on the equal participation principles provided in Executive Order 13279 to strengthen the capacity of faith-based and other neighborhood organizations to deliver services effectively and ensure the equal treatment of program beneficiaries. Executive Order 13559 reiterates a key principle underlying participation of faith-based organizations in federally funded activities and that is that faith-based organizations be eligible to compete for federal financial assistance used to support social service programs and to participate fully in social service programs supported with federal financial assistance without impairing their independence, autonomy, expression outside the programs in question, or religious character.

With respect to program beneficiaries, the Executive Order states that organizations, in providing services supported in whole or in part with federal financial assistance, and in their outreach activities related to such

services, should not be allowed to discriminate against current or prospective program beneficiaries on the basis of religion, a religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice. The Executive Order directs that organizations that engage in explicitly religious activities (including activities that involve overt religious content such as worship, religious instruction, or proselytization) must perform such activities and offer such services outside of programs that are supported with direct federal financial assistance (including through prime awards or subawards), separately in time or location from any such programs or services supported with direct federal financial assistance, and participation in any such explicitly religious activities must be voluntary for the beneficiaries of the social service program supported with such federal financial assistance. For purposes of greater clarity and comprehensibility, the Executive Order uses the term "explicitly religious" in lieu of "inherently religious." The Executive Order further directs that if a beneficiary or prospective beneficiary of a social service program supported by federal financial assistance objects to the religious character of an organization that provides services under the program, that organization shall, within a reasonable time after the date of the objection, refer the beneficiary to an alternative provider.

Executive Order 13559 provides for the establishment of an Interagency Working Group on Faith-Based and Other Neighborhood Partnerships (Working Group) to review and evaluate existing regulations, guidance documents, and policies, and directs the OMB to issue guidance to agencies on uniform implementation following receipt of the Working Group's report. On April 27, 2012, the Working Group issued its report, recommending a model set of regulations and guidance for agencies to adopt.<sup>1</sup>

HUD intends to wait for OMB guidance before initiating any rulemaking directed to broader changes to HUD's existing faith-based regulations, to ensure consistency with faith-based regulations of other federal agencies. However, HUD has revised its regulatory provisions governing faith-based activities to incorporate the principles of Executive Order 13559 pertaining to equal treatment of program beneficiaries and to adopt terminology, such as "explicitly religious" and "overt

<sup>1</sup> The report is available at: <http://www.whitehouse.gov/sites/default/files/uploads/finalfaithbasedworkinggroupreport.pdf>.

religious content," that offers greater clarity to the limitations placed on faith-based organizations when using federal funds for their supportive services. Additionally, HUD is putting in place through this rulemaking the provision of Executive Order 13559 that directs the referral to alternative providers. Executive Order 13559 provides that if a beneficiary or prospective beneficiary of a social service program supported by federal financial assistance objects to the religious character of an organization that provides services under the program, that organization shall, within a reasonable time frame after the date of the objection, refer the beneficiary to an alternative provider. While HUD will benefit from OMB guidance on other provisions of the Executive Order, specifically those which the Working Group is charged to provide recommendations, the "referral" provision of the Executive Order is one that HUD believes it can immediately put in place. HUD may, following receipt of public comment and further consideration of this issue, revise how recipients and subrecipients document the referral to other providers when beneficiaries may assert objections to the original provider. For now, HUD is requiring that any objections and any referrals be documented in accordance with the recordkeeping provisions of § 578.013.

This section of the interim rule also contains limitations on the types of eligible assistance that may not be combined in a single structure or housing unit. As the Continuum of Care substantially increases the types of assistance that may be combined in a project from previous programs, HUD has established standards in this section to provide recipients with clarity about the types of activities that may not be carried out in a single structure or housing unit.

**Termination of assistance.** The interim rule provides that a recipient may terminate assistance to a participant who violates program requirements or conditions of occupancy. The recipient must provide a formal process that recognizes the due process of law. Recipients may resume assistance to a participant whose assistance has been terminated.

Recipients that are providing permanent supportive housing for hard-to-house populations of homeless persons must exercise judgment and examine all circumstances in determining whether termination is appropriate. Under this interim rule, HUD has determined that a participant's assistance should be terminated only in the most severe cases. HUD is carrying

over this requirement from the Shelter Plus Care program.

**Fair Housing and Equal Opportunity requirements.** The Continuum of Care, as well as its members and subrecipients, are required to comply with applicable civil rights laws. Section 578.93, addressing nondiscrimination and equal opportunity requirements, is provided to offer greater direction to recipients and subrecipients on the use of grant funds. Section 578.93(a) states that the nondiscrimination and equal opportunity requirements set forth in 24 CFR 5.105(a) apply. This includes, but is not limited to, the Fair Housing Act, Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973 (Section 504), and title II of the Americans with Disabilities Act.

Section 578.93(b) explains when recipients and subrecipients may exclusively serve a particular subpopulation in transitional or permanent housing. As part of these requirements, recipients must also administer programs and activities receiving federal financial assistance in the most integrated setting appropriate to the needs of qualified individuals with disabilities. This "integration mandate" requires that HUD-funded programs or activities enable individuals with disabilities to interact with nondisabled persons to the fullest extent possible. In reviewing requests for funding through the Continuum of Care NOFA, HUD will be considering each recipient's proposals to provide integrated housing to individuals with disabilities.

There are certain situations in which 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. For example, § 578.93(b)(2) states that the housing may be limited to homeless veterans, so long as admission is not denied based on any membership in a protected class; e.g., homeless veterans with families must be admitted. Similarly, housing may be limited to domestic violence victims and their families or persons who are at risk of institutionalization, so long as admission is not denied based on any membership in a protected class.

Section 578.93(b)(3) states that housing may be limited to families with children.

Section 578.93(b)(1) 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.

Further, §§ 578.93(b)(4) and (5) clearly outline instances when sex offenders or violent offenders may be excluded from housing, and when projects providing sober housing may exclude persons.

HUD's Section 504 regulations permit housing funded under a particular program to be reserved for persons with a specific disability when a federal statute or executive order specifically authorizes such a limitation. Section 578.93(b)(6) states that if the housing is assisted with funds under a federal program that is limited by federal statute or executive order to a specific subpopulation, the housing may be limited to that subpopulation.

Section 578.93(b)(7) provides clarification to recipients of funds under this part as to when a project can limit admission to a specific subpopulation of homeless individuals and families based on the service package offered in the project. To help recipients better understand these requirements, the following paragraphs provide a detailed explanation of the regulatory provision, along with a few examples.

Section 578.93(b)(7) states that recipients may limit admission or provide a preference for the housing to subpopulations of homeless persons and families who need the specialized supportive services that are provided in the housing. The regulation contains the following examples: Substance abuse addiction treatment, domestic violence services, or a high-intensity package designed to meet the needs of hard-to-reach homeless persons. However, § 578.93(b)(7) further states that while the housing may offer services for a particular type of disability, no otherwise eligible individual with a disability, or family that includes an individual with a disability, who may benefit from the services provided may be excluded on the grounds that they do not have a particular disability. Below are general examples to offer guidance on this subsection. Please note that these examples are nonexhaustive, but emphasize that the proper focus is on the services available as part of the Continuum of Care project as opposed to a person's category or subcategory of disability. While these general principles are offered to help clarify this

section, a change in the factual scenario may change the analysis.

One clarifying example is as follows. A private, nonprofit organization or a local government applies for and receives a new grant under this part to provide project-based rental assistance and services, including case management, intensive therapy provided by a psychiatrist, and medication management. The recipient or subrecipient may establish a preference for individuals who are chronically homeless. When filling an opening in the housing, the recipient or subrecipient may target chronically homeless individuals or families, but if there are no such individuals or families either on a waiting list or applying for entrance to the program, the recipient or subrecipient cannot deny occupancy to individuals or families who apply for entrance into the program and who may benefit from the services provided. When filling a vacancy in the housing, the recipient or subrecipient, if presented with two otherwise eligible persons, one who is chronically homeless and one who is not, may give a preference to the chronically homeless individual.

By comparison, § 578.93(b)(6) addresses situations where Continuum of Care funds are combined with HUD funding for housing that may be restricted to a specific disability. For example, if Continuum of Care funds for a specific project are combined with construction or rehabilitation funding for housing from the Housing Opportunities for People With AIDS program, the program may limit eligibility for the project to persons with HIV/AIDS and their families. An individual or a family that includes an individual with a disability may be denied occupancy if the individual or at least one member of the family does not have HIV/AIDS.

In another example, a private, nonprofit organization applies for and receives Continuum of Care funds from a local governmental entity to rehabilitate a five-unit building, and provides services including assistance with daily living and mental health services. While the nonprofit organization intends to target and advertise the project as offering services for persons with developmental disabilities, an individual with a severe psychiatric disability who does not have a developmental disability but who can benefit from these services cannot be denied.

Section 578.93(e) incorporates the "preventing involuntary family separation" requirement set forth in Section 404 of the McKinney-Veto Act

into this interim rule. This provision clarifies, especially for projects where the current policy is to deny the admittance of a boy under the age of 18, that denying admittance to a project based on age and gender is no longer permissible. HUD encourages Continuums of Care to use their centralized or coordinated assessment systems to find appropriate shelter or housing for families with male children under the age of 18.

*Specific request for comment.* HUD specifically seeks comments from Continuum of Care-funded recipients on this requirement. HUD invites comments about the difficulty that recipients are going to experience, if any, in implementing this requirement. In addition to comments about the difficulties, HUD invites communities that have already implemented this requirement locally to describe their methods for use in HUD's technical assistance materials and for posting on the HUD Homeless Resource Exchange.

*Other standards.* In addition to the program requirements described in this preamble, the interim rule sets forth other program requirements by which all recipients of grant funds must abide. These include a limitation on the use of grant funds to serve persons defined as homeless under other federal laws, conflicts of interest standards, and standards for identifying uses of program income.

Additionally, recipients are required to follow other federal requirements contained in this interim rule under § 578.99. These include compliance with such federal requirements as the Coastal Barriers Resources Act, OMB Circulars, HUD's Lead-Based Paint regulations, and audit requirements. The wording of these requirements has been substantially revised from previous programs, with the objective being to increase clarity and comprehension of the directions to recipients and subrecipients in the use of grant funds.

#### *Administration (Subpart G)*

*Technical assistance.* The purpose of technical assistance under the Continuum of Care program is to increase the effectiveness with which Continuums of Care, eligible applicants, recipients, subrecipients, and UFAs implement and administer their Continuum of Care planning process. Technical assistance will also improve the capacity to prepare applications, and prevent the separation of families in projects funded under the Emergency Solutions Grants, Continuum of Care, and Rural Housing Stability Assistance programs. Under this interim rule, technical assistance means the transfer

of skills and knowledge to entities that may need, but do not possess, such skills and knowledge. The assistance may include written information, such as papers, manuals, guides, and brochures; person-to-person exchanges; and training and related costs.

Therefore, as needed, HUD may advertise and competitively select providers to deliver technical assistance. HUD may enter into contracts, grants, or cooperative agreements to implement the technical assistance. HUD may also enter into agreements with other federal agencies when awarding technical assistance funds.

*Recordkeeping requirements.* Grant recipients under the Supportive Housing Program and the Shelter Plus Care program have always been required to show compliance with regulations through appropriate records. However, the existing regulations are not specific about the records to be maintained. The interim rule for the Continuum of Care program elaborates upon the recordkeeping requirements to provide sufficient notice and clarify the documentation that HUD requires for assessing compliance with the program requirements. The recordkeeping requirements for documenting homeless status were published in the December 5, 2011, Defining Homeless final rule. Because these recordkeeping requirements already went through a 60-day comment period, HUD is not seeking further comment on these requirements. Additionally, recordkeeping requirements with similar levels of specificity apply to documentation of "at risk of homelessness" and these requirements can be found in § 576.500(c) of the Emergency Solutions Grants program interim rule published on December 5, 2011. Because the documentation requirements pertaining to "at risk of homelessness" were already subject to a 60-day public comment period, HUD is not seeking additional comment on these requirements. Further requirements are modeled after the recordkeeping requirements for the HOME Investment Partnerships Program (24 CFR 92.508) and other HUD regulations.

Included along with these changes are new or expanded requirements regarding confidentiality, rights of access to records, record retention periods, and reporting requirements. Most significantly, to protect the safety and privacy of all program participants, the Continuum of Care rule broadens the program's confidentiality requirements. The McKinney-Veto Act requires only procedures to ensure the

confidentiality of records pertaining to any individual provided family violence prevention or treatment services under this program. The interim rule requires written procedures to ensure the security and confidentiality of all records containing personally identifying information of any individual or family who applies for and/or receives Continuum of Care assistance.

**Grant and project changes.** The interim rule provides that recipients of grants may not make any significant changes to use of grant funds without prior HUD approval, evidenced by a grant amendment signed by HUD and the recipient. The interim rule provides separate standards for determining when a grant amendment is required for Continuums having only one recipient, including UFAs, and Continuums having more than one recipient. Additionally, the interim rule provides contingencies that must be met before HUD will approve the grant amendment. These contingencies are necessary to ensure that recipients meet the capacity requirements established in the NOFA and to ensure that eligible persons within the geographic area are better served and, since the Continuum of Care program is a competitive program, that the priorities established under the NOFA continue to be met. Any changes to an approved grant or project that do not require a grant amendment, as set forth in this section, must be fully documented in the recipient's or subrecipient's records.

**Sanctions.** The interim rule establishes sanctions based on existing regulations and strengthens the enforcement procedures and array of remedial actions and sanctions for recipients and subrecipients of Continuum of Care funds. These revisions draw from the requirements at 24 CFR 85.43 and other HUD program regulations.

**Close-out.** The interim rule provides that grants must be closed out at the end of their grant term if recipients are not seeking renewal. Section 578.109 of this interim rule specifies the actions that must be taken after the closeout, including grantee submission of financial, final performance, or other reports required by HUD within 90 days of the end of the grant term. Any unused funds must be deobligated and returned to HUD.

The interim rule stipulates, for grants seeking renewal, that failure to submit final performance reports, or other reports required by HUD within 90 days, may cause renewal funds to be withdrawn and grant funds expended on the renewal grant to be repaid.

### III. Regulations for HUD Homeless Assistance Programs Existing Prior to Enactment of HEARTH Act

Because grants are still being administered under the Shelter Plus Care program and the Supportive Housing program, the regulations for these programs in 24 CFR parts 582, and 583, respectively, will remain in the Code of Federal Regulations for the time being. When no more, or very few, grants remain under these programs, HUD will remove the regulations in these parts by a separate rule (if no grants exist) or will replace them with a savings clause, which will continue to govern grant agreements executed prior to the effective date of the HEARTH Act regulations.

### IV. Conforming Regulations

In addition to establishing the new regulations for the Continuum of Care program, HUD is amending the following regulations, which reference the Shelter Plus Care Program and the Supportive Housing Program, to include reference to the Continuum of Care program. These regulations are the regulations pertaining to: (1) Family Income and Family Payment; Occupancy Requirements for Section 8 end Public Housing, Other HUD-Assisted Housing Serving Persons with Disabilities, and Section 8 Project-Based Assistance, the regulations for which are in 24 CFR part 5, subpart F, specifically, § 5.601 (Purpose and Applicability), paragraphs (d) and (e) of this section; § 5.603 (Definitions), specifically the definition of "Responsible Entity;" § 5.617 (Self-Sufficiency Incentives for Persons with Disabilities—Disallowance of Increase in Annual Income), paragraph (a) of this section; (2) Environmental Review Responsibilities for Entities Assuming HUD Environmental Responsibilities, the regulations for which are in 24 CFR part 58, specifically § 58.1 (Purpose and Applicability), paragraph (b)(3) of this section; and (3) the Consolidated Submissions for Community Planning and Development Programs, the regulations for which are in 24 CFR part 91, specifically, § 91.2 (Applicability), paragraph (b) of this section.

### V. Justification for Interim Rulemaking

In accordance with its regulations on rulemaking at 24 CFR part 10, HUD generally publishes its rules for advance public comment.<sup>2</sup> Notice and public

procedures may be omitted, however, if HUD determines that, in a particular case or class of cases, notice and public comment procedure are "impracticable, unnecessary, or contrary to the public interest." (See 24 CFR 10.1.)

In this case, HUD has determined that it would be contrary to the public interest to delay promulgation of the regulations for the Continuum of Care program.<sup>3</sup> Congress has provided funding for this new program in the Consolidated and Further Continuing Appropriations Act, 2012 (Pub. L. 112-55, approved November 18, 2011) (FY 2012 Appropriations Act). The FY 2012 Appropriations Act, under the account for Homeless Assistance Grants, appropriates not less than \$1.593 billion for the Continuum of Care and Rental Housing Stability programs. While many federal programs, including HUD programs, received a reduction in funding in the FY 2012 Appropriations Act, Congress increased funding for HUD's homeless assistance grants, including the Continuum of Care program. Additionally, the Conference Report accompanying the FY 2012 Appropriations Act (House Report 112-284) states in relevant part, as follows: "The conferees express concern that HUD continued to implement pre-HEARTH grant programs in FY 2011, due to a lack of regulations. The conferees direct HUD to publish *at least* interim guidelines for the Emergency Solutions Grants and Continuum of Care programs this fiscal year and to implement the new grant programs as soon as possible so that the updated policies and practices in HEARTH can begin to govern the delivery of homeless assistance funding." (See Conf. Rpt. at page 319. Emphasis added.) Given this congressional direction, HUD is issuing this rule providing for regulations for the Continuum of Care program as an interim rule. Having interim regulations in place will allow HUD to move forward in making FY 2012 funds available to grantees, and avoid a significant delay that would result from issuance, first, of a proposed rule. As

management or personnel or to public property, loans, grants, benefits, or contracts are exempt from the advance notice and public comment requirement of sections 553(b) and (c) of the APA. In its regulations in 24 CFR 10.1, HUD has waived the exemption for advance notice and public comment for matters that relate to public property, loans, grants, benefits, or contracts, and has committed to undertake notice and comment rulemaking for these matters.

<sup>3</sup> Although HUD's regulation in 24 CFR 10.1 provide that HUD will involve public participation in its rulemaking, this regulation also provides that notice and public procedure will be omitted if HUD determines in a particular case or class of cases that notice and public procedure are impracticable, unnecessary, or contrary to the public interest.

<sup>2</sup> The Administrative Procedure Act (5 U.S.C. Subchapter II) (APA), which governs federal rulemaking, provides in section 553(a) that matters involving a military or foreign affairs function of the United States or a matter relating to federal agency



has been discussed in this preamble, the foundation for the Continuum of Care regulations is the criteria and requirements provided in NOFAs for the Continuum of Care Homeless Assistance Grants Competition program, which HUD has funded for more than 10 years. Through the Continuum of Care Homeless Assistance Grants Competition program, HUD provided funding for the Supportive Housing program, the Shelter Plus Care program, and the Section 8 Moderate Rehabilitation Single Room Occupancy program. The HEARTH Act consolidated these three competitive programs into the statutorily established Continuum of Care program, which was established as a single grant program. Interim regulations will provide certainty with respect to funding requirements and eligible expenditures for FY 2012, and the public comment solicited through this interim rule will help inform the public procedures that HUD is contemplating in its regulations in 24 CFR part 10, and this public comment, in turn, will inform the final rule that will follow this interim rule and govern the funding years following FY 2012.

For the reasons stated above, HUD is issuing this rule to take immediate effect, but welcomes all comments on this interim rule and all comments will be taken into consideration in the development of the final rule.

## VI. Findings and Certifications

### Regulatory Review—Executive Orders 12866 and 13563

Under Executive Order 12866 (Regulatory Planning and Review), a determination must be made whether a regulatory action is significant and, therefore, subject to review by the Office of Management and Budget (OMB) in accordance with the requirements of the order. Executive Order 13563 (Improving Regulations and Regulatory Review) directs executive agencies to analyze regulations that are “outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance with what has been learned.” Executive Order 13563 also directs that, where relevant, feasible, and consistent with regulatory objectives, and to the extent permitted by law, agencies are to identify and consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public. This rule was determined to be a “significant regulatory action,” as defined in section 3(f) of Executive Order 12866 (although not an economically significant

regulatory action, as provided under section 3(f)(1) of the Executive Order).

As has been discussed in this preamble, this interim rule establishes the regulations for the Continuum of Care program, which is the HEARTH Act's codification of HUD's long-standing Continuum of Care planning process. The HEARTH Act not only codified in law the planning system known as Continuum of Care, but consolidated the three existing competitive homeless assistance grant programs (Supportive Housing, Shelter Plus Care, and Single Room Occupancy) into the single grant program known as the Continuum of Care program. As discussed in the preceding section of the preamble, HUD funded these three programs for more than 10 years through a NOFA, which was titled the Continuum of Care Homeless Assistance Grants Competition Program. However, the funding of the three competitive grant programs, although done through a single NOFA, delineated the different statutes and regulations that governed each of the three programs (see, for example, HUD's 2008 Continuum of Care NOFA at 73 FR 398450, specifically page 39845). In consolidating these three competitive programs into a single grant program, the HEARTH Act achieves the administrative efficiency that HUD strived to achieve to the extent possible, through its administrative establishment of the Continuum of Care planning process. To the extent permitted by the HEARTH Act and where feasible, the regulations build-in flexibility for grantees, based on experience in administering the Continuum of Care program to date. Given the transition from administrative operation of the Continuum of Care program to statutory operation of the Continuum of Care program, this interim rule would also have no discernible impact upon the economy.

The docket file is available for public inspection in the Regulations Division, Office of the General Counsel, Room 10276, 451 7th Street SW., Washington, DC 20410-0500. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the docket file by calling the Regulations Division at 202-708-3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Relay Service at 800-877-8339.

### Environmental Impact

A Finding of No Significant Impact (FONSI) with respect to the environment has been made in

accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The Finding of No Significant Impact is available for public inspection between the hours of 8 a.m. and 5 p.m. weekdays in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410-0500. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the FONSI by calling the Regulations Division at 202-708-3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Relay Service at 800-877-8339.

### Unfunded Mandates Reform Act

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

### Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. This rule solely addresses the allocation and use of grant funds under the new McKinney-Vento Act homeless assistance programs, as consolidated and amended by the HEARTH Act. As discussed in the preamble, the majority of the regulatory provisions proposed by this rule track the regulatory provisions of the Continuum of Care program, with which prospective recipients of the Supportive Housing program and the Shelter Plus Care program are familiar. Accordingly, the program requirements should raise minimal issues because applicants and grantees are familiar with these requirements, and in response to HUD's solicitations to them on the burden of the requirements for the Supportive Housing program and the Shelter Plus Care program, grantees have not advised that such requirements are burdensome. Therefore, HUD has determined that this rule would not

have a significant economic impact on a substantial number of small entities.

Notwithstanding HUD's determination that this rule will not have a significant effect on a substantial number of small entities, HUD specifically invites comments regarding any less burdensome alternatives to this rule that will meet HUD's objectives as described in this preamble.

Executive Order 13132, Federalism

Executive Order 13132 (entitled "Federalism") prohibits an agency from publishing any rule that has federalism implications if the rule either imposes

substantial direct compliance costs on State and local governments and is not required by statute, or the rule preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This final rule does not have federalism implications and does not impose substantial direct compliance costs on State and local governments nor preempts State law within the meaning of the Executive Order.

Paperwork Reduction Act

The information collection requirements contained in this interim

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

The burden of the information collections in this interim rule is estimated as follows:

REPORTING AND RECORDKEEPING BURDEN

Information collection	Number of respondents	Response frequency (average)	Total annual responses	Burden hours per response	Total annual hours
§ 578.5(a) Establishing the CoC	450	1	450	8.0	3,600
§ 578.5(b) Establishing the Board	450	1	450	5.0	2,250
§ 578.7(a)(1) Hold CoC Meetings	450	2	900	4.0	3,600
§ 578.7(a)(2) Invitation for New Members	450	1	450	1.0	450
§ 578.7(a)(4) Appoint committees	450	2	900	0.5	450
§ 578.7(a)(5) Governance charter	450	1	450	7.0	3,150
§ 578.7(a)(6) and (7) Monitor performance and evaluation	450	4	450	9.0	4,050
§ 578.7(a)(8) Centralized or coordinated assessment system	450	1	450	8.0	3,600
§ 578.7(a)(9) Written standards	450	1	450	5.0	2,250
§ 578.7(b) Designate HMIS	450	1	450	10.0	4,500
§ 578.9 Application for funds	450	1	450	180.0	81,000
§ 578.11(c) Develop CoC plan	450	1	450	9.0	4,050
§ 578.21(c) Satisfying conditions	8,000	1	8,000	4.0	32,000
§ 578.23 Executing grant agreements	8,000	1	8,000	1.0	8,000
§ 578.35(b) Appeal—solo	10	1	10	4.0	40
§ 578.35(c) Appeal—denied or decreased funding	15	1	15	1.0	15
§ 578.35(d) Appeal—compelling CoC	10	1	10	5.0	50
§ 578.35(e) Appeal—Consolidated Plan certification	5	1	5	2.0	10
§ 578.49(a)—Leasing exceptions	5	1	5	1.5	7.5
§ 578.65 HPC Standards	20	1	20	10.0	200
§ 578.75(a)(1) State and local requirements—appropriate service provision	7,000	1	7,000	0.5	3,500
§ 578.75(a)(1) State and local requirements—housing codes	20	1	20	3.0	60
§ 578.75(b) Housing quality standards	72,800	2	145,600	1.0	145,600
§ 578.75(b) Suitable dwelling size	72,800	2	145,600	0.08	11,648
§ 578.75(c) Meals	70,720	1	70,720	0.5	35,360
§ 578.75(e) Ongoing assessment of supportive services	8,000	1	8,000	1.5	12,000
§ 578.75(f) Residential supervision	6,600	3	19,800	0.75	14,850
§ 578.75(g) Participation of homeless individuals	11,500	1	11,500	1.0	11,500
§ 578.75(h) Supportive service agreements	3,000	100	30,000	0.5	15,000
§ 578.77(a) Signed leases/occupancy agreements	104,000	2	208,000	1.0	208,000
§ 578.77(b) Calculating occupancy charges	1,840	200	368,000	0.75	276,000
§ 578.77(c) Calculating rent	2,000	200	400,000	0.75	300,000
§ 578.81(a) Use restriction	20	1	20	0.5	10
§ 578.91(a) Termination of assistance	400	1	400	4.00	1,600
§ 578.91(b) Due process for termination of assistance	4,500	1	4,500	3.0	13,500
§ 578.95(d)—Conflict-of-Interest exceptions	10	1	10	3.0	30
§ 578.103(a)(3) Documenting homelessness	300,000	1	300,000	0.25	75,000
§ 578.103(a)(4) Documenting at risk of homelessness	10,000	1	10,000	0.25	2,500
§ 578.103(a)(5) Documenting imminent threat of harm	200	1	200	0.5	100
§ 578.103(a)(7) Documenting program participant records	350,000	6	2,100,000	0.25	525,000
§ 578.103(a)(7) Documenting case management	8,000	12	96,000	1.0	96,000
§ 578.103(a)(13) Documenting faith-based activities	8,000	1	8,000	1.0	8,000
§ 578.103(b) Confidentiality procedures	11,500	1	11,500	1.0	11,500
§ 578.105(a) Grant/project changes—UFAs	20	2	40	2.0	80
§ 578.105(b) Grant/project changes—multiple project applicants	800	1	800	2.0	1,600
<b>Total</b>					<b>1,921,710.5</b>

In accordance with 5 CFR 1320.8(d)(1), HUD is soliciting comments from members of the public and affected agencies concerning this collection of information to:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions HUD, including whether the information will have practical utility;

(2) Evaluate the accuracy of HUD's estimate of the burden of the proposed collection of information;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology; *e.g.*, permitting electronic submission of responses.

Interested persons are invited to submit comments regarding the information collection requirements in this rule. Comments must refer to the proposal by name and docket number (FR-5476-I-01) and be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503, Fax: (202) 395-6947, and Reports Liaison Officer, Office of the Assistant Secretary for Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street SW., Room 7233, Washington, DC 20410-7000.

Interested persons may submit comments regarding the information collection requirements electronically through the Federal eRulemaking Portal at <http://www.regulations.gov>. HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the <http://www.regulations.gov> Web site can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

#### List of Subjects in 24 CFR Part 578

Community facilities, Continuum of Care, Emergency solutions grants, Grant programs—housing and community development, Grant program—social programs, Homeless, Rural housing, Reporting and recordkeeping requirements, Supportive housing

programs—housing and community development, Supportive services.

Accordingly, for the reasons described in the preamble, HUD adds part 578 to subchapter C of chapter V of subtitle B of 24 CFR to read as follows:

### PART 578—CONTINUUM OF CARE PROGRAM

#### Subpart A—General Provisions

Sec.

578.1 Purpose and scope.

578.3 Definitions.

#### Subpart B—Establishing and Operating a Continuum of Care

578.5 Establishing the Continuum of Care.

578.7 Responsibilities of the Continuum of Care.

578.9 Preparing an application for funds.

578.11 Unified Funding Agency.

578.13 Remedial action.

#### Subpart C—Application and Grant Award Process

578.15 Eligible applicants.

578.17 Overview of application and grant award process.

578.19 Application process.

578.21 Awarding funds.

578.23 Executing grant agreements.

578.25 Site control.

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578.31 Environmental review.

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#### Subpart D—Program Components and Eligible Costs

578.37 Program components and uses of assistance.

578.39 Continuum of Care planning activities.

578.41 Unified Funding Agency costs.

578.43 Acquisition.

578.45 Rehabilitation.

578.47 New construction.

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578.51 Rental assistance.

578.53 Supportive services.

578.55 Operating costs.

578.57 Homeless Management Information System.

578.59 Project administrative costs.

578.61 Relocation costs.

578.63 Indirect costs.

#### Subpart E—High-Performing Communities

578.65 Standards.

578.67 Publication of application.

578.69 Cooperation among entities.

578.71 HPC-eligible activities.

#### Subpart F—Program Requirements

578.73 Matching requirements.

578.75 General operations.

578.77 Calculating occupancy charges and rent.

578.79 Limitation on transitional housing.

578.81 Term of commitment, repayment of grants, and prevention of undue benefits.

578.83 Displacement, relocation, and acquisition.

578.85 Timeliness standards.

578.87 Limitation on use of funds.

578.89 Limitation on use of grant funds to serve persons defined as homeless under other federal laws.

578.91 Termination of assistance to program participants.

578.93 Fair Housing and Equal Opportunity.

578.95 Conflicts of interest.

578.97 Program income.

578.99 Applicability of other federal requirements.

#### Subpart G—Grant Administration

578.101 Technical assistance.

578.103 Recordkeeping requirements.

578.105 Grant and project changes.

578.107 Sanctions.

578.109 Closeout.

Authority: 42 U.S.C. 11371 *et seq.*, 42 U.S.C. 3535(d).

#### Subpart A—General Provisions

##### § 578.1 Purpose and scope.

(a) The Continuum of Care program is authorized by subtitle C of title IV of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11381–11389).

(b) The program is designed to:

(1) Promote communitywide commitment to the goal of ending homelessness;

(2) Provide funding for efforts by nonprofit providers, States, and local governments to quickly rehouse homeless individuals (including unaccompanied youth) and families, while minimizing the trauma and dislocation caused to homeless individuals, families, and communities by homelessness;

(3) Promote access to and effective utilization of mainstream programs by homeless individuals and families; and

(4) Optimize self-sufficiency among individuals and families experiencing homelessness.

##### § 578.3 Definitions.

As used in this part:

*Act* means the McKinney-Vento Homeless Assistance Act as amended (42 U.S.C. 11371 *et seq.*).

*Annual renewal amount* means the amount that a grant can be awarded on an annual basis when renewed. It includes funds only for those eligible activities (operating, supportive services, leasing, rental assistance, HMIS, and administration) that were funded in the original grant (or the original grant as amended), less the unrenovable activities (acquisition, new construction, rehabilitation, and any administrative costs related to these activities).

*Applicant* means an eligible applicant that has been designated by the Continuum of Care to apply for assistance under this part on behalf of that Continuum.

*At risk of homelessness.* (1) An individual or family who:

(i) Has an annual income below 30 percent of median family income for the area, as determined by HUD;

(ii) Does not have sufficient resources or support networks, e.g., family, friends, faith-based or other social networks, immediately available to prevent them from moving to an emergency shelter or another place described in paragraph (1) of the "Homeless" definition in this section; and

(iii) Meets one of the following conditions:

(A) Has moved because of economic reasons two or more times during the 60 days immediately preceding the application for homelessness prevention assistance;

(B) Is living in the home of another because of economic hardship;

(C) Has been notified in writing that their right to occupy their current housing or living situation will be terminated within 21 days of the date of application for assistance;

(D) Lives in a hotel or motel and the cost of the hotel or motel stay is not paid by charitable organizations or by federal, State, or local government programs for low-income individuals;

(E) Lives in a single-room occupancy or efficiency apartment unit in which there reside more than two persons, or lives in a larger housing unit in which there reside more than 1.5 people per room, as defined by the U.S. Census Bureau;

(F) Is exiting a publicly funded institution, or system of care (such as a health-care facility, a mental health facility, foster care or other youth facility, or correction program or institution); or

(G) Otherwise lives in housing that has characteristics associated with instability and an increased risk of homelessness, as identified in the recipient's approved consolidated plan;

(2) A child or youth who does not qualify as "homeless" under this section, but qualifies as "homeless" under section 387(3) of the Runaway and Homeless Youth Act (42 U.S.C. 5732a(3)), section 637(11) of the Head Start Act (42 U.S.C. 9832(11)), section 41403(6) of the Violence Against Women Act of 1994 (42 U.S.C. 14043e-2(6)), section 330(h)(5)(A) of the Public Health Service Act (42 U.S.C. 254b(h)(5)(A)), section 3(m) of the Food and Nutrition Act of 2008 (7 U.S.C. 2012(m)), or section 17(b)(15) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(b)(15)); or

(3) A child or youth who does not qualify as "homeless" under this

section, but qualifies as "homeless" under section 725(2) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(2)), and the parent(s) or guardian(s) of that child or youth if living with her or him.

*Centralized or coordinated assessment system* means a centralized or coordinated process designed to coordinate program participant intake assessment and provision of referrals. A centralized or coordinated assessment system 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.

*Chronically homeless.* (1) An individual who:

(i) Is homeless and lives in a place not meant for human habitation, a safe haven, or in an emergency shelter; and

(ii) Has been homeless and living or residing in a place not meant for human habitation, a safe haven, or in an emergency shelter continuously for at least one year or on at least four separate occasions in the last 3 years; and

(iii) Can be diagnosed with one or more of the following conditions: substance use disorder, serious mental illness, developmental disability (as defined in section 102 of the Developmental Disabilities Assistance Bill of Rights Act of 2000 (42 U.S.C. 15002)), post-traumatic stress disorder, cognitive impairments resulting from brain injury, or chronic physical illness or disability;

(2) An individual who has been residing in an institutional care facility, including a jail, substance abuse or mental health treatment facility, hospital, or other similar facility, for fewer than 90 days and met all of the criteria in paragraph (1) of this definition, before entering that facility; or

(3) A family with an adult head of household (or if there is no adult in the family, a minor head of household) who meets all of the criteria in paragraph (1) of this definition, including a family whose composition has fluctuated while the head of household has been homeless.

*Collaborative applicant* means the eligible applicant that has been designated by the Continuum of Care to apply for a grant for Continuum of Care planning funds under this part on behalf of the Continuum.

*Consolidated plan* means the HUD-approved plan developed in accordance with 24 CFR 91.

*Continuum of Care and Continuum* means the group organized to carry out the responsibilities required under this

part and that is composed of representatives of organizations, including nonprofit homeless providers, victim service providers, faith-based organizations, governments, businesses, advocates, public housing agencies, school districts, social service providers, mental health agencies, hospitals, universities, affordable housing developers, law enforcement, organizations that serve homeless and formerly homeless veterans, and homeless and formerly homeless persons to the extent these groups are represented within the geographic area and are available to participate.

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

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

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

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

(iii) Is likely to continue indefinitely;

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

(A) Self-care;

(B) Receptive and expressive language;

(C) Learning;

(D) Mobility;

(E) Self-direction;

(F) Capacity for independent living;

(G) Economic self-sufficiency.

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

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

*Eligible applicant* means a private nonprofit organization, State, local government, or instrumentality of State and local government.

*Emergency shelter* is defined in 24 CFR part 576.

*Emergency Solutions Grants (ESG)* means the grants provided under 24 CFR part 576.

*Fair Market Rent (FMR)* means the Fair Market Rents published in the Federal Register annually by HUD.

*High-performing community (HPC)* means a Continuum of Care that meets the standards in subpart E of this part and has been designated as a high-performing community by HUD.

*Homeless* means:

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

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

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

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

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

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

(ii) No subsequent residence has been identified; and

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

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

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

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

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

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

(4) Any individual or family who:

(i) Is fleeing, or is attempting to flee, domestic violence, dating violence, sexual assault, stalking, or other dangerous or life-threatening conditions that relate to violence against the individual or a family member, including a child, that has either taken place within the individual's or family's primary nighttime residence or has made the individual or family afraid to return to their primary nighttime residence;

(ii) Has no other residence; and

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

*Homeless Management Information System (HMIS)* means the information system designated by the Continuum of Care to comply with the HMIS requirements prescribed by HUD.

*HMIS Lead* means the entity designated by the Continuum of Care in accordance with this part to operate the Continuum's HMIS on its behalf.

*Permanent housing* means community-based housing without a designated length of stay, and includes both permanent supportive housing and rapid rehousing. To be permanent housing, the program participant must be the tenant on a lease for a term of at least one year, which is renewable for terms that are a minimum of one month long, and is terminable only for cause.

*Permanent supportive housing* means permanent housing in which supportive services are provided to assist homeless persons with a disability to live independently.

*Point-in-time count* means a count of sheltered and unsheltered homeless persons carried out on one night in the last 10 calendar days of January or at such other time as required by HUD.

*Private nonprofit organization* means an organization:

(1) No part of the net earnings of which inure to the benefit of any member, founder, contributor, or individual;

(2) That has a voluntary board;

(3) That has a functioning accounting system that is operated in accordance with generally accepted accounting principles, or has designated a fiscal agent that will maintain a functioning accounting system for the organization in accordance with generally accepted accounting principles; and

(4) That practices nondiscrimination in the provision of assistance.

A private nonprofit organization does not include governmental organizations, such as public housing agencies.

*Program participant* means an individual (including an unaccompanied youth) or family who is assisted with Continuum of Care program funds.

*Project* means a group of eligible activities, such as HMIS costs, identified as a project in an application to HUD for Continuum of Care funds and includes a structure (or structures) that is (are) acquired, rehabilitated, constructed, or leased with assistance provided under this part or with respect to which HUD provides rental assistance or annual payments for operating costs, or supportive services under this subtitle.

*Recipient* means an applicant that signs a grant agreement with HUD.

*Safe haven* means, for the purpose of defining chronically homeless, supportive housing that meets the following:

(1) Serves hard to reach homeless persons with severe mental illness who came from the streets and have been unwilling or unable to participate in supportive services;

(2) Provides 24-hour residence for eligible persons for an unspecified period;

(3) Has an overnight capacity limited to 25 or fewer persons; and

(4) Provides low-demand services and referrals for the residents.

*State* means each of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Virgin Islands.

*Subrecipient* means a private nonprofit organization, State, local government, or instrumentality of State or local government that receives a

subgrant from the recipient to carry out a project.

*Transitional housing* means housing, where all program participants have signed a lease or occupancy agreement, the purpose of which is to facilitate the movement of homeless individuals and families into permanent housing within 24 months or such longer period as HUD determines necessary. The program participant must have a lease or occupancy agreement for a term of at least one month that ends in 24 months and cannot be extended.

*Unified Funding Agency (UFA)* means an eligible applicant selected by the Continuum of Care to apply for a grant for the entire Continuum, which has the capacity to carry out the duties in § 578.11(b), which is approved by HUD and to which HUD awards a grant.

*Victim service provider* means 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.

## Subpart B—Establishing and Operating a Continuum of Care

### § 578.5 Establishing the Continuum of Care.

(a) *The Continuum of Care.* Representatives from relevant organizations within a geographic area shall establish a Continuum of Care for the geographic area to carry out the duties of this part. Relevant organizations include nonprofit homeless assistance providers, victim service providers, faith-based organizations, governments, businesses, advocates, public housing agencies, school districts, social service providers, mental health agencies, hospitals, universities, affordable housing developers, law enforcement, and organizations that serve veterans and homeless and formerly homeless individuals.

(b) *The board.* The Continuum of Care must establish a board to act on behalf of the Continuum using the process established as a requirement by § 578.7(a)(3) and must comply with the conflict-of-interest requirements at § 578.95(b). The board must:

(1) Be representative of the relevant organizations and of projects serving homeless subpopulations; and

(2) Include at least one homeless or formerly homeless individual.

(c) *Transition.* Continuums of Care shall have 2 years after August 30, 2012

to comply with the requirements of paragraph (b) of this section.

### § 578.7 Responsibilities of the Continuum of Care.

(a) *Operate the Continuum of Care.*

The Continuum of Care must:

(1) Hold meetings of the full membership, with published agendas, at least semi-annually;

(2) Make an invitation for new members to join publicly available within the geographic area at least annually;

(3) Adopt and follow a written process to select a board to act on behalf of the Continuum of Care. The process must be reviewed, updated, and approved by the Continuum at least once every 5 years;

(4) Appoint additional committees, subcommittees, or workgroups;

(5) In consultation with the collaborative applicant and the HMIS Lead, develop, follow, and update annually a governance charter, which will include all procedures and policies needed to comply with subpart B of this part and with HMIS requirements as prescribed by HUD; and a code of conduct and recusal process for the board, its chair(s), and any person acting on behalf of the board;

(6) Consult with recipients and subrecipients to establish performance targets appropriate for population and program type, monitor recipient and subrecipient performance, evaluate outcomes, and take action against poor performers;

(7) Evaluate outcomes of projects funded under the Emergency Solutions Grants program and the Continuum of Care program, and report to HUD;

(8) In consultation with recipients of Emergency Solutions Grants program funds within the geographic area, establish and operate either a centralized or coordinated assessment system that provides an initial, comprehensive assessment of the needs of individuals and families for housing and services. The Continuum must develop a specific policy to guide the operation of the centralized or coordinated assessment system on how its system will address the needs of individuals and families who are fleeing, or attempting to flee, domestic violence, dating violence, sexual assault, or stalking, but who are seeking shelter or services from nonvictim service providers. This system must comply with any requirements established by HUD by Notice.

(9) In consultation with recipients of Emergency Solutions Grants program funds within the geographic area, establish and consistently follow written standards for providing

Continuum of Care assistance. At a minimum, these written standards must include:

(i) Policies and procedures for evaluating individuals' and families' eligibility for assistance under this part;

(ii) Policies and procedures for determining and prioritizing which eligible individuals and families will receive transitional housing assistance;

(iii) Policies and procedures for determining and prioritizing which eligible individuals and families will receive rapid rehousing assistance;

(iv) Standards for determining what percentage or amount of rent each program participant must pay while receiving rapid rehousing assistance;

(v) Policies and procedures for determining and prioritizing which eligible individuals and families will receive permanent supportive housing assistance; and

(vi) Where the Continuum is designated a high-performing community, as described in subpart G of this part, policies and procedures set forth in 24 CFR 576.400(e)(3)(vi), (e)(3)(vii), (e)(3)(viii), and (e)(3)(ix).

(b) *Designating and operating an HMIS.* The Continuum of Care must:

(1) Designate a single Homeless Management Information System (HMIS) for the geographic area;

(2) Designate an eligible applicant to manage the Continuum's HMIS, which will be known as the HMIS Lead;

(3) Review, revise, and approve a privacy plan, security plan, and data quality plan for the HMIS.

(4) Ensure consistent participation of recipients and subrecipients in the HMIS; and

(5) Ensure the HMIS is administered in compliance with requirements prescribed by HUD.

(c) *Continuum of Care planning.* The Continuum must develop a plan that includes:

(1) Coordinating the implementation of a housing and service system within its geographic area that meets the needs of the homeless individuals (including unaccompanied youth) and families. At a minimum, such system encompasses the following:

(i) Outreach, engagement, and assessment;

(ii) Shelter, housing, and supportive services;

(iii) Prevention strategies.

(2) Planning for and conducting, at least biennially, a point-in-time count of homeless persons within the geographic area that meets the following requirements:

(i) Homeless persons who are living in a place not designed or ordinarily used as a regular sleeping accommodation for

humans must be counted as unsheltered homeless persons.

(ii) Persons living in emergency shelters and transitional housing projects must be counted as sheltered homeless persons.

(iii) Other requirements established by HUD by Notice.

(3) Conducting an annual gaps analysis of the homeless needs and services available within the geographic area;

(4) Providing information required to complete the Consolidated Plan(s) within the Continuum's geographic area;

(5) Consulting with State and local government Emergency Solutions Grants program recipients within the Continuum's geographic area on the plan for allocating Emergency Solutions Grants program funds and reporting on and evaluating the performance of Emergency Solutions Grants program recipients and subrecipients.

#### § 578.9 Preparing an application for funds.

(a) The Continuum must:

(1) Design, operate, and follow a collaborative process for the development of applications and approve the submission of applications in response to a NOFA published by HUD under § 578.19 of this subpart;

(2) Establish priorities for funding projects in the geographic area;

(3) Determine if one application for funding will be submitted for all projects within the geographic area or if more than one application will be submitted for the projects within the geographic area;

(i) If more than one application will be submitted, designate an eligible applicant to be the collaborative applicant that will collect and combine the required application information from all applicants and for all projects within the geographic area that the Continuum has selected funding. The collaborative applicant will also apply for Continuum of Care planning activities. If the Continuum is an eligible applicant, it may designate itself;

(ii) If only one application will be submitted, that applicant will be the collaborative applicant and will collect and combine the required application information from all projects within the geographic area that the Continuum has selected for funding and apply for Continuum of Care planning activities;

(b) The Continuum retains all of its responsibilities, even if it designates one or more eligible applicants other than itself to apply for funds on behalf of the Continuum. This includes approving the Continuum of Care application.

#### § 578.11 Unified Funding Agency.

(a) *Becoming a Unified Funding Agency.* To become designated as the Unified Funding Agency (UFA) for a Continuum, a collaborative applicant must be selected by the Continuum to apply to HUD to be designated as the UFA for the Continuum.

(b) *Criteria for designating a UFA.* HUD will consider these criteria when deciding whether to designate a collaborative applicant a UFA:

(1) The Continuum of Care it represents meets the requirements in § 578.7;

(2) The collaborative applicant has financial management systems that meet the standards set forth in 24 CFR 84.21 (for nonprofit organizations) and 24 CFR 85.20 (for States);

(3) The collaborative applicant demonstrates the ability to monitor subrecipients; and

(4) Such other criteria as HUD may establish by NOFA.

(c) *Requirements.* HUD-designated UFAs shall:

(1) Apply to HUD for funding for all of the projects within the geographic area and enter into a grant agreement with HUD for the entire geographic area.

(2) Enter into legally binding agreements with subrecipients, and receive and distribute funds to subrecipients for all projects within the geographic area.

(3) Require subrecipients to establish fiscal control and accounting procedures as necessary to assure the proper disbursement and accounting for federal funds in accordance with the requirements of 24 CFR parts 84 and 85 and corresponding OMB circulars.

(4) Obtain approval of any proposed grant agreement amendments by the Continuum of Care before submitting a request for an amendment to HUD.

#### § 578.13 Remedial action.

(a) If HUD finds that the Continuum of Care for a geographic area does not meet the requirements of the Act or its implementing regulations, or that there is no Continuum for a geographic area, HUD may take remedial action to ensure fair distribution of grant funds within the geographic area. Such measures may include:

(1) Designating a replacement Continuum of Care for the geographic area;

(2) Designating a replacement collaborative applicant for the Continuum's geographic area; and

(3) Accepting applications from other eligible applicants within the Continuum's geographic area.

(b) HUD must provide a 30-day prior written notice to the Continuum and its

collaborative applicant and give them an opportunity to respond.

#### Subpart C—Application and Grant Award Process

##### § 578.15 Eligible applicants.

(a) *Who may apply.* Nonprofit organizations, States, local governments, and instrumentalities of State or local governments are eligible to apply for grants.

(b) *Designation by the Continuum of Care.* Eligible applicant(s) must have been designated by the Continuum of Care to submit an application for grant funds under this part. The designation must state whether the Continuum is designating more than one applicant to apply for funds and, if it is, which applicant is being designated as the collaborative applicant. If the Continuum is designating only one applicant to apply for funds, the Continuum must designate that applicant to be the collaborative applicant.

(c) *Exclusion.* For-profit entities are not eligible to apply for grants or to be subrecipients of grant funds.

##### § 578.17 Overview of application and grant award process.

(a) *Formula.* (1) After enactment of the annual appropriations act for each fiscal year, and issuance of the NOFA, HUD will publish, on its Web site, the Preliminary Pro Rata Need (PPRN) assigned to metropolitan cities, urban counties, and all other counties.

(2) HUD will apply the formula used to determine PPRN established in paragraph (a)(3) of this section, to the amount of funds being made available under the NOFA. That amount is calculated by:

(i) Determining the total amount for the Continuum of Care competition in accordance with section 413 of the Act or as otherwise directed by the annual appropriations act;

(ii) From the amount in paragraph (a)(2)(i) of this section, deducting the amount published in the NOFA as being set aside to provide a bonus to geographic areas for activities that have proven to be effective in reducing homelessness generally or for specific subpopulations listed in the NOFA or achieving homeless prevention and independent living goals established in the NOFA and to meet policy priorities set in the NOFA; and

(iii) Deducting the amount of funding necessary for Continuum of Care planning activities and UFA costs.

(3) PPRN is calculated on the amount determined under paragraph (a)(2) of this section by using the following formula:

(i) Two percent will be allocated among the four insular areas (American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Virgin Islands) on the basis of the ratio of the population of each insular area to the population of all insular areas.

(ii) Seventy-five percent of the remaining amount will be allocated, using the Community Development Block Grant (CDBG) formula, to metropolitan cities and urban counties that have been funded under either the Emergency Shelter Grants or Emergency Solutions Grants programs in any one year since 2004.

(iii) The amount remaining after the allocation under paragraphs (a)(1) and (2) of this section will be allocated, using the CDBG formula, to metropolitan cities and urban counties that have not been funded under the Emergency Solutions Grants program in any year since 2004 and all other counties in the United States and Puerto Rico.

(4) If the calculation in paragraph (a)(2) of this section results in an amount less than the amount required to renew all projects eligible for renewal in that year for at least one year, after making adjustments proportional to increases in fair market rents for the geographic area for leasing, operating, and rental assistance for permanent housing, HUD will reduce, proportionately, the total amount required to renew all projects eligible for renewal in that year for at least one year, for each Continuum of Care. HUD will publish, via the NOFA, the total dollar amount that every Continuum will be required to deduct from renewal projects Continuum-wide.

(b) *Calculating a Continuum of Care's maximum award amount.* (1) *Establish the PPRN amount.* First, HUD will total the PPRN amounts for each metropolitan city, urban county, other county, and insular area claimed by the Continuum as part of its geographic area, excluding any counties applying for or receiving funding from the Rural Housing Stability Assistance program under 24 CFR part 579.

(2) *Establishing renewal demand.* Next, HUD will determine the renewal demand within the Continuum's geographic area. Renewal demand is the sum of the annual renewal amounts of all projects within the Continuum eligible to apply for renewal in that fiscal year's competition, before any adjustments to rental assistance, leasing, and operating line items based on FMR changes.

(3) *Establishing FPRN.* The higher of PPRN or renewal demand for the Continuum of Care is the FPRN, which

is the base for the maximum award amount for the Continuum.

(4) *Establishing the maximum award amount.* The maximum award amount for the Continuum is the FPRN amount plus any additional eligible amounts for Continuum planning; UFA costs; adjustments to leasing, operating and rental assistance line items based on changes to FMR; and available bonuses.

#### § 578.19 Application process.

(a) *Notice of Funding Availability.* After enactment of the annual appropriations act for the fiscal year, HUD will issue a NOFA in accordance with the requirements of 24 CFR part 4.

(b) *Applications.* All applications to HUD, including applications for grant funds and requests for designation as a UFA or HPC, must be submitted at such time and in such manner as HUD may require, and contain such information as HUD determines necessary. At a minimum, an application for grant funds must contain a list of the projects for which it is applying for funds; a description of the projects; a list of the projects that will be carried out by subrecipients and the names of the subrecipients; a description of the subpopulations of homeless or at risk of homelessness to be served by projects; the number of units to be provided and/or the number of persons to be served by each project; a budget request by project; and reasonable assurances that the applicant, or the subrecipient, will own or have control of a site for the proposed project not later than the expiration of the 12-month period beginning upon notification of an award for grant assistance.

#### § 578.21 Awarding funds.

(a) *Selection.* HUD will review applications in accordance with the guidelines and procedures provided in the NOFA and will award funds to recipients through a national competition based on selection criteria as defined in section 427 of the Act.

(b) *Announcement of awards.* HUD will announce awards and notify selected applicants of any conditions imposed on awards. Conditions must be satisfied before HUD will execute a grant agreement with the applicant.

(c) *Satisfying conditions.* HUD will withdraw an award if the applicant does not satisfy all conditions imposed on it. Correcting all issues and conditions attached to an award must be completed within the time frame established in the NOFA. Proof of site control, match, environmental review, and the documentation of financial feasibility must be completed within 12 months of the announcement of the award, or 24

months in the case of funds for acquisition, rehabilitation, or new construction. The 12-month deadline may be extended by HUD for up to 12 additional months upon a showing of compelling reasons for delay due to factors beyond the control of the recipient or subrecipient.

#### § 578.23 Executing grant agreements.

(a) *Deadline.* No later than 45 days from the date when all conditions are satisfied, the recipient and HUD must execute the grant agreement.

(b) *Grant agreements.* (1) *Multiple applicants for one Continuum.* If a Continuum designates more than one applicant for the geographic area, HUD will enter into a grant agreement with each designated applicant for which an award is announced.

(2) *One applicant for a Continuum.* If a Continuum designates only one applicant for the geographic area, after awarding funds, HUD may enter into a grant agreement with that applicant for new awards, if any, and one grant agreement for renewals, Continuum of Care planning, and UFA costs, if any. These two grants will cover the entire geographic area. A default by the recipient under one of those grant agreements will also be a default under the other.

(3) *Unified Funding Agencies.* If a Continuum is a UFA that HUD has approved, then HUD will enter into one grant agreement with the UFA for new awards, if any, and one grant agreement for renewals, Continuum of Care planning and UFA costs, if any. These two grants will cover the entire geographic area. A default by the UFA under one of those grant agreements will also be a default under the other.

(c) *Required agreements.* Recipients will be required to sign a grant agreement in which the recipient agrees:

(1) To ensure the operation of the project(s) in accordance with the provisions of the McKinney-Veto Act and all requirements under 24 CFR part 578;

(2) To monitor and report the progress of the project(s) to the Continuum of Care and HUD;

(3) To ensure, to the maximum extent practicable, that individuals and families experiencing homelessness are involved, through employment, provision of volunteer services, or otherwise, in constructing, rehabilitating, maintaining, and operating facilities for the project and in providing supportive services for the project;

(4) To require certification from all subrecipients that:



(i) Subrecipients will maintain the confidentiality of records pertaining to any individual or family that was provided family violence prevention or treatment services through the project;

(ii) The address or location of any family violence project assisted under this part will not be made public, except with written authorization of the person responsible for the operation of such project;

(iii) Subrecipients will establish policies and practices that are consistent with, and do not restrict, the exercise of rights provided by subtitle B of title VII of the Act and other laws relating to the provision of educational and related services to individuals and families experiencing homelessness;

(iv) In the case of projects that provide housing or services to families, that subrecipients will designate a staff person to be responsible for ensuring that children being served in the program are enrolled in school and connected to appropriate services in the community, including early childhood programs such as Head Start, part C of the Individuals with Disabilities Education Act, and programs authorized under subtitle B of title VII of the Act;

(v) The subrecipient, its officers, and employees are not debarred or suspended from doing business with the Federal Government; and

(vi) Subrecipients will provide information, such as data and reports, as required by HUD; and

(5) To establish such fiscal control and accounting procedures as may be necessary to assure the proper disbursement of, and accounting for grant funds in order to ensure that all financial transactions are conducted, and records maintained in accordance with generally accepted accounting principles, if the recipient is a UFA;

(6) To monitor subrecipient match and report on match to HUD;

(7) To take the educational needs of children into account when families are placed in housing and will, to the maximum extent practicable, place families with children as close as possible to their school of origin so as not to disrupt such children's education;

(8) To monitor subrecipients at least annually;

(9) To use the centralized or coordinated assessment system established by the Continuum of Care as set forth in § 578.7(a)(8). A victim service provider may choose not to use the Continuum of Care's centralized or coordinated assessment system, provided that victim service providers in the area use a centralized or coordinated assessment system that

meets HUD's minimum requirements and the victim service provider uses that system instead;

(10) To follow the written standards for providing Continuum of Care assistance developed by the Continuum of Care, including the minimum requirements set forth in § 578.7(a)(9);

(11) Enter into subrecipient agreements requiring subrecipients to operate the project(s) in accordance with the provisions of this Act and all requirements under 24 CFR part 578; and

(12) To comply with such other terms and conditions as HUD may establish by NOFA.

#### § 578.25 Site control.

(a) *In general.* When grant funds will be used for acquisition, rehabilitation, new construction, operating costs, or to provide supportive services, the recipient or subrecipient must demonstrate that it has site control within the time frame established in section § 578.21 before HUD will execute a grant agreement. This requirement does not apply to funds used for housing that will eventually be owned or controlled by the individuals or families served or for supportive services provided at sites not operated by the recipient or subrecipient.

(b) *Evidence.* Acceptable evidence of site control is a deed or lease. If grant funds will be used for acquisition, acceptable evidence of site control will be a purchase agreement. The owner, lessee, and purchaser shown on these documents must be the selected applicant or intended subrecipient identified in the application for assistance.

(c) *Tax credit projects.* (1) Applicants that plan to use the low-income housing tax credit authorized under 26 U.S.C. 42 to finance a project must prove to HUD's satisfaction that the applicant or subrecipient identified in the application is in control of the limited partnership or limited liability corporation that has a deed or lease for the project site.

(i) To have control of the limited partnership, the applicant or subrecipient must be the general partner of the limited partnership or have a 51 percent controlling interest in that general partner.

(ii) To have control of the limited liability company, the applicant or subrecipient must be the sole managing member.

(2) If grant funds are to be used for acquisition, rehabilitation, or new construction, the recipient or subrecipient must maintain control of the partnership or corporation and must

ensure that the project is operated in compliance with law and regulation for 15 years from the date of initial occupancy or initial service provision. The partnership or corporation must own the project site throughout the 15-year period. If grant funds were not used for acquisition, rehabilitation, or new construction, then the recipient or subrecipient must maintain control for the term of the grant agreement and any renewals thereof.

#### § 578.27 Consolidated plan.

(a) *States or units of general local government.* An applicant that is a State or a unit of general local government must have a HUD-approved, complete or abbreviated, consolidated plan in accordance with 24 CFR part 91. The applicant must submit a certification that the application for funding is consistent with the HUD-approved consolidated plan(s) for the jurisdiction(s) in which the proposed project will be located. Funded applicants must certify in a grant agreement that they are following the HUD-approved consolidated plan.

(b) *Other applicants.* Applicants that are not States or units of general local government must submit a certification by the jurisdiction(s) in which the proposed project will be located that the applicant's application for funding is consistent with the jurisdiction's HUD-approved consolidated plan. The certification must be made by the unit of general local government or the State, in accordance with the consistency certification provisions under 24 CFR part 91, subpart F. If the jurisdiction refuses to provide a certification of consistency, the applicant may appeal to HUD under § 578.35.

(c) *Timing of consolidated plan certification submissions.* The required certification that the application for funding is consistent with the HUD-approved consolidated plan must be submitted by the funding application submission deadline announced in the NOFA.

#### § 578.29 Subsidy layering.

HUD may provide assistance under this program only in accordance with HUD subsidy layering requirements in section 102 of the Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3545) and 24 CFR part 4, subpart A. An applicant must submit information in its application on other sources of governmental assistance that the applicant has received, or reasonably expects to receive, for a proposed project or activities. HUD's review of this information is intended to prevent excessive public assistance for

proposed project or activities by combining (layering) assistance under this program with other governmental housing assistance from federal, State, or local agencies, including assistance such as tax concessions or tax credits.

#### § 578.31 Environmental review.

(a) Activities under this part are subject to environmental review by HUD under 24 CFR part 50. The recipient or subrecipient shall supply all available, relevant information necessary for HUD to perform, for each property, any environmental review required by 24 CFR part 50. The recipient or subrecipient must carry out mitigating measures required by HUD or select an alternate eligible property. HUD may eliminate from consideration any application that would require an Environmental Impact Statement.

(b) The recipient or subrecipient, its project partners, and their contractors may not acquire, rehabilitate, convert, lease, repair, dispose of, demolish, or construct property for a project under this part, or commit or expend HUD or local funds for such eligible activities under this part, until HUD has performed an environmental review under 24 CFR part 50 and the recipient or subrecipient has received HUD approval of the property.

#### § 578.33 Renewals.

(a) *In general.* Awards made under this part and title IV of the Act, as in effect before August 30, 2012 (the Supportive Housing Program and the Shelter Plus Care program), may be renewed to continue ongoing leasing, operations, supportive services, rental assistance, HMIS, and administration beyond the initial funding period. To be considered for funding, recipients must submit a request in a form specified by HUD, must meet the requirements of this part, and must submit the request within the time frame established by HUD.

(b) *Length of renewal.* HUD may award up to 3 years of funds for supportive services, leasing, HMIS, and operating costs. Renewals of tenant-based and sponsor-based rental assistance may be for up to one year of rental assistance. Renewals of project-based rental assistance may be for up to 15 years of rental assistance, subject to availability of annual appropriations.

(c) *Assistance available.* (1) Assistance during each year of a renewal period may be for:

(i) Up to 100 percent of the amount for supportive services and HMIS costs in the final year of the prior funding period;

(ii) Up to 100 percent of the amount for leasing and operating in the final year of the prior funding period adjusted in proportion to changes in the FMR for the geographic area; and

(iii) For rental assistance, up to 100 percent of the result of multiplying the number and unit size(s) in the grant agreement by the number of months in the renewal grant term and the applicable FMR.

(d) *Review criteria.* (1) Awards made under title IV of the Act, as in effect before August 30, 2012 are eligible for renewal in the Continuum of Care program even if the awardees would not be eligible for a new grant under the program, so long as they continue to serve the same population and the same number of persons or units in the same type of housing as identified in their most recently amended grant agreement signed before August 30, 2012. Grants will be renewed if HUD receives a certification from the Continuum that there is a demonstrated need for the project, and HUD finds that the project complied with program requirements applicable before August 30, 2012. For purposes of meeting the requirements of this part, a project will continue to be administered in accordance with 24 CFR 582.330, if the project received funding under the Shelter Plus Care program, or 24 CFR 583.325, if the project received funding under the Supportive Housing Program.

(2) *Renewal of awards made after August 30, 2012.* Review criteria for competitively awarded renewals made after August 30, 2012 will be described in the NOFA.

(e) *Unsuccessful projects.* HUD may renew a project that was eligible for renewal in the competition and was part of an application that was not funded despite having been submitted on time, in the manner required by HUD, and containing the information required by HUD, upon a finding that the project meets the purposes of the Continuum of Care program. The renewal will not exceed more than one year and will be under such conditions as HUD deems appropriate.

(f) *Annual Performance Report condition.* HUD may terminate the renewal of any grant and require the recipient to repay the renewal grant if:

(1) The recipient fails to timely submit a HUD Annual Performance Report (APR) for the grant year immediately prior to renewal; or

(2) The recipient submits an APR that HUD deems unacceptable or shows noncompliance with the requirements of the grant and this part.

#### § 578.35 Appeal.

(a) *In general.* Failure to follow the procedures or meet the deadlines established in this section will result in denial of the appeal.

(b) *Solo applicants.* (1) *Who may appeal.* Nonprofits, States, and local governments, and instrumentalities of State or local governments that attempted to participate in the Continuum of Care planning process in the geographic area in which they operate, that believe they were denied the right to participate in a reasonable manner, and that submitted a solo application for funding by the application deadline established in the NOFA, may appeal the decision of the Continuum to HUD.

(2) *Notice of intent to appeal.* The solo applicant must submit a written notice of intent to appeal, with a copy to the Continuum, with their funding application.

(3) *Deadline for submitting proof.* No later than 30 days after the date that HUD announces the awards, the solo applicant shall submit in writing, with a copy to the Continuum, all relevant evidence supporting its claim, in such manner as HUD may require by Notice.

(4) *Response from the Continuum of Care.* The Continuum shall have 30 days from the date of its receipt of the solo applicant's evidence to respond to HUD in writing and in such manner as HUD may require, with a copy to the solo applicant.

(5) *Decision.* HUD will notify the solo applicant and the Continuum of its decision within 60 days of receipt of the Continuum's response.

(6) *Funding.* If HUD finds that the solo applicant was not permitted to participate in the Continuum of Care planning process in a reasonable manner, then HUD may award a grant to the solo applicant when funds next become available and may direct the Continuum of Care to take remedial steps to ensure reasonable participation in the future. HUD may also reduce the award to the Continuum's applicant(s).

(c) *Denied or decreased funding.* (1) *Who may appeal.* Eligible applicants that are denied funds by HUD, or that requested more funds than HUD awarded to them, may appeal the award by filing a written appeal, in such form and manner as HUD may require by Notice, within 45 days of the date of HUD's announcement of the award.

(2) *Decision.* HUD will notify the applicant of its decision on the appeal within 60 days of HUD's receipt of the written appeal. HUD will reverse a decision only when the applicant can show that HUD error caused the denial or decrease.

(3) *Funding.* Awards and increases to awards made upon appeal will be made from next available funds.

(d) *Competing Continuums of Care.*

(1) *In general.* If more than one Continuum of Care claims the same geographic area, HUD will award funds to the Continuum applicant(s) whose application(s) has the highest total score. No projects will be funded from the lower scoring Continuum. No projects that are submitted in two or more competing Continuum of Care applications will be funded.

(2) *Who may appeal.* The designated applicant(s) for the lower scoring Continuum may appeal HUD's decision to fund the application(s) from the competing Continuum by filing a written appeal, in such form and manner as HUD may require by Notice, within 45 days of the date of HUD's announcement of the award.

(3) *Decision.* HUD will notify the applicant(s) of its decision on the appeal within 60 days of the date of HUD's receipt of the written appeal. HUD will reverse a decision only upon a showing by the applicant that HUD error caused the denial.

(e) *Consolidated plan certification.* (1) *In general.* An applicant may appeal to HUD a jurisdiction's refusal to provide a certification of consistency with the Consolidated Plan.

(2) *Procedure.* The applicant must submit a written appeal with its application to HUD and send a copy of the appeal to the jurisdiction that denied the certification of consistency. The appeal must include, at a minimum:

(i) A copy of the applicant's request to the jurisdiction for the certification of consistency with the Consolidated Plan;

(ii) A copy of the jurisdiction's response stating the reasons for denial, including the reasons the proposed project is not consistent with the jurisdiction's Consolidated Plan in accordance with 24 CFR 91.500(c); and

(iii) A statement of the reasons why the applicant believes its project is consistent with the jurisdiction's Consolidated Plan.

(3) *Jurisdiction response.* The jurisdiction that refused to provide the certification of consistency with the jurisdiction's Consolidated Plan shall have 10 days after receipt of a copy of the appeal to submit a written explanation of the reasons originally given for refusing to provide the certification and a written rebuttal to any claims made by the applicant in the appeal.

(4) *HUD review.* (i) HUD will issue its decision within 45 days of the date of HUD's receipt of the jurisdiction's

response. As part of its review, HUD will consider:

(A) Whether the applicant submitted the request to the appropriate political jurisdiction; and

(B) The reasonableness of the jurisdiction's refusal to provide the certificate.

(ii) If the jurisdiction did not provide written reasons for refusal, including the reasons why the project is not consistent with the jurisdiction's Consolidated Plan in its initial response to the applicant's request for a certification, HUD will find for the applicant without further inquiry or response from the political jurisdiction.

**Subpart D—Program Components and Eligible Costs**

**§ 578.37 Program components and uses of assistance.**

(a) Continuum of Care funds may be used to pay for the eligible costs listed in § 578.39 through § 578.63 when used to establish and operate projects under five program components: permanent housing; transitional housing; supportive services only; HMIS; and, in some cases, homelessness prevention. Although grant funds may be used by recipients and subrecipients in all components for the eligible costs of contributing data to the HMIS designated by the Continuum of Care, only HMIS Leads may use grant funds for an HMIS component. Administrative costs are eligible for all components. All components are subject to the restrictions on combining funds for certain eligible activities in a single project found in § 578.87(c). The eligible program components are:

(1) *Permanent housing (PH).*

Permanent housing is community-based housing, the purpose of which is to provide housing without a designated length of stay. Grant funds may be used for acquisition, rehabilitation, new construction, leasing, rental assistance, operating costs, and supportive services. PH includes:

(i) *Permanent supportive housing for persons with disabilities (PSH).* PSH can only provide assistance to individuals with disabilities and families in which one adult or child has a disability. Supportive services designed to meet the needs of the program participants must be made available to the program participants.

(ii) *Rapid rehousing.* Continuum of Care funds may provide supportive services, as set forth in § 578.53, and/or short-term (up to 3 months) and/or medium-term (for 3 to 24 months) tenant-based rental assistance, as set forth in § 578.51(c), as necessary to help

a homeless individual or family, with or without disabilities, move as quickly as possible into permanent housing and achieve stability in that housing. When providing short-term and/or medium-term rental assistance to program participants, the rental assistance is subject to § 578.51(a)(1), but not § 578.51(a)(1)(i) and (ii); (a)(2); (c) and (f) through (j); and (l)(1). These projects:

(A) Must follow the written policies and procedures established by the Continuum of Care for determining and prioritizing which eligible families and individuals will receive rapid rehousing assistance, as well as the amount or percentage of rent that each program participant must pay.

(B) May set a maximum amount or percentage of rental assistance that a program participant may receive, a maximum number of months that a program participant may receive rental assistance, and/or a maximum number of times that a program participant may receive rental assistance. The recipient or subrecipient may also require program participants to share in the costs of rent. For the purposes of calculating rent for rapid rehousing, the rent shall equal the sum of the total monthly rent for the unit and, if the tenant pays separately for utilities, the monthly allowance for utilities (excluding telephone) established by the public housing authority for the area in which the housing is located.

(C) Limit rental assistance to no more than 24 months to a household.

(D) May provide supportive services for no longer than 6 months after rental assistance stops.

(E) Must re-evaluate, not less than once annually, that the program participant lacks sufficient resources and support networks necessary to retain housing without Continuum of Care assistance and the types and amounts of assistance that the program participant needs to retain housing. The recipient or subrecipient may require each program participant receiving assistance to notify the recipient or subrecipient of changes in the program participant's income or other circumstances (e.g., changes in household composition) that affect the program participant's need for assistance. When notified of a relevant change, the recipient or subrecipient must reevaluate the program participant's eligibility and the amount and types of assistance that the program participant needs.

(F) Require the program participant to meet with a case manager not less than once per month to assist the program participant in ensuring long-term housing stability. The project is exempt

from this requirement if the Violence Against Women Act of 1994 (42 U.S.C. 13925 *et seq.*) or the Family Violence Prevention and Services Act (42 U.S.C. 10401 *et seq.*) prohibits the recipient carrying out the project from making its housing conditional on the participant's acceptance of services.

(2) *Transitional Housing (TH).*

Transitional housing facilitates the movement of homeless individuals and families to PH within 24 months of entering TH. Grant funds may be used for acquisition, rehabilitation, new construction, leasing, rental assistance, operating costs, and supportive services.

(3) *Supportive Service Only (SSO).*

Funds may be used for acquisition, rehabilitation, relocation costs, or leasing of a facility from which supportive services will be provided, and supportive services in order to provide supportive services to unsheltered and sheltered homeless persons for whom the recipient or subrecipient is not providing housing or housing assistance. SSO includes street outreach.

(4) *HMIS.* Funds may be used by HMIS Leads to lease a structure in which the HMIS is operated or as operating funds to operate a structure in which the HMIS is operated, and for other costs eligible in § 578.57.

(5) *Homelessness prevention.* Funds may be used by recipients in Continuums of Care-designated high-performing communities for housing relocation and stabilization services, and short- and/or medium-term rental assistance, as described in 24 CFR 578.105 and 24 CFR 578.106, that are necessary to prevent an individual or family from becoming homeless.

(b) *Uses of assistance.* Funds are available to pay for the eligible costs listed in § 578.39 through § 578.63 when used to:

- (1) Establish new housing or new facilities to provide supportive services;
- (2) Expand existing housing and facilities in order to increase the number of homeless persons served;
- (3) Bring existing housing and facilities into compliance with State and local government health and safety standards, as described in § 578.87;
- (4) Preserve existing permanent housing and facilities that provide supportive services;
- (5) Provide supportive services for residents of supportive housing or for homeless persons not residing in supportive housing;
- (6) Continue funding permanent housing when the recipient has received funding under this part for leasing, supportive services, operating costs, or rental assistance;

(7) Establish and operate an HMIS or comparable database; and

(8) Establish and carry out a Continuum of Care planning process and operate a Continuum of Care.

(c) *Multiple purposes.* Structures used to provide housing, supportive housing, supportive services, or as a facility for HMIS activities may also be used for other purposes. However, assistance under this part will be available only in proportion to the use of the structure for supportive housing or supportive services. If eligible and ineligible activities are carried out in separate portions of the same structure or in separate structures, grant funds may not be used to pay for more than the actual cost of acquisition, construction, or rehabilitation of the portion of the structure or structures used for eligible activities. If eligible and ineligible activities are carried out in the same structure, the costs will be prorated based on the amount of time that the space is used for eligible versus ineligible activities.

**§ 578.39 Continuum of Care planning activities.**

(a) *In general.* Collaborative applicants may use up to 3 percent of their FPRN, or a maximum amount to be established by the NOFA, for costs of:

- (1) Designing and carrying out a collaborative process for the development of an application to HUD;
- (2) Evaluating the outcomes of projects for which funds are awarded in the geographic area under the Continuum of Care and the Emergency Solutions Grants programs; and

(3) Participating in the consolidated plan(s) for the geographic area(s).

(b) *Continuum of Care planning activities.* Eligible planning costs include the costs of:

- (1) Developing a communitywide or regionwide process involving the coordination of nonprofit homeless providers, victim service providers, faith-based organizations, governments, businesses, advocates, public housing agencies, school districts, social service providers, mental health agencies, hospitals, universities, affordable housing developers, law enforcement, organizations that serve veterans, and homeless and formerly homeless individuals;
- (2) Determining the geographic area that the Continuum of Care will serve;
- (3) Developing a Continuum of Care system;
- (4) Evaluating the outcomes of projects for which funds are awarded in the geographic area, including the Emergency Solutions Grants program;

(5) Participating in the consolidated plan(s) of the jurisdiction(s) in the geographic area; and

(6) Preparing and submitting an application to HUD on behalf of the entire Continuum of Care membership, including conducting a sheltered and unsheltered point-in-time count and other data collection as required by HUD.

(c) *Monitoring costs.* The costs of monitoring recipients and subrecipients and enforcing compliance with program requirements are eligible.

**§ 578.41 Unified Funding Agency costs.**

(a) *In general.* UFAs may use up to 3 percent of their FPRN, or a maximum amount to be established by the NOFA, whichever is less, for fiscal control and accounting costs necessary to assure the proper disbursement of, and accounting for, federal funds awarded to subrecipients under the Continuum of Care program.

(b) *UFA costs.* UFA costs include costs of ensuring that all financial transactions carried out under the Continuum of Care program are conducted and records are maintained in accordance with generally accepted accounting principles, including arranging for an annual survey, audit, or evaluation of the financial records of each project carried out by a subrecipient funded by a grant received through the Continuum of Care program.

(c) *Monitoring costs.* The costs of monitoring subrecipients and enforcing compliance with program requirements are eligible for costs.

**§ 578.43 Acquisition.**

Grant funds may be used to pay up to 100 percent of the cost of acquisition of real property selected by the recipient or subrecipient for use in the provision of housing or supportive services for homeless persons.

**§ 578.45 Rehabilitation.**

(a) *Use.* Grant funds may be used to pay up to 100 percent of the cost of rehabilitation of structures to provide housing or supportive services to homeless persons.

(b) *Eligible costs.* Eligible rehabilitation costs include installing cost-effective energy measures, and bringing an existing structure to State and local government health and safety standards.

(c) *Ineligible costs.* Grant funds may not be used for rehabilitation of leased property.

**§ 578.47 New construction.**

(a) *Use.* Grant funds may be used to:

- (1) Pay up to 100 percent of the cost of new construction, including the

building of a new structure or building an addition to an existing structure that increases the floor area by 100 percent or more, and the cost of land associated with that construction, for use as housing.

(2) If grant funds are used for new construction, the applicant must demonstrate that the costs of new construction are substantially less than the costs of rehabilitation or that there is a lack of available appropriate units that could be rehabilitated at a cost less than new construction. For purposes of this cost comparison, costs of rehabilitation or new construction may include the cost of real property acquisition.

(b) *Ineligible costs.* Grant funds may not be used for new construction on leased property.

#### § 578.49 Leasing.

(a) *Use.* (1) Where the recipient or subrecipient is leasing the structure, or portions thereof, grant funds may be used to pay for 100 percent of the costs of leasing a structure or structures, or portions thereof, to provide housing or supportive services to homeless persons for up to 3 years. Leasing funds may not be used to lease units or structures owned by the recipient, subrecipient, their parent organization(s), any other related organization(s), or organizations that are members of a partnership, where the partnership owns the structure, unless HUD authorized an exception for good cause.

(2) Any request for an exception must include the following:

(i) A description of how leasing these structures is in the best interest of the program;

(ii) Supporting documentation showing that the leasing charges paid with grant funds are reasonable for the market; and

(iii) A copy of the written policy for resolving disputes between the landlord and tenant, including a recusal for officers, agents, and staff who work for both the landlord and tenant.

(b) *Requirements.* (1) *Leasing structures.* When grants are used to pay rent for all or part of a structure or structures, the rent paid must be reasonable in relation to rents being charged in the area for comparable space. In addition, the rent paid may not exceed rents currently being charged by the same owner for comparable unassisted space.

(2) *Leasing individual units.* When grants are used to pay rent for individual housing units, the rent paid must be reasonable in relation to rents being charged for comparable units, taking into account the location, size,

type, quality, amenities, facilities, and management services. In addition, the rents may not exceed rents currently being charged for comparable units, and the rent paid may not exceed HUD-determined fair market rents.

(3) *Utilities.* If electricity, gas, and water are included in the rent, these utilities may be paid from leasing funds. If utilities are not provided by the landlord, these utility costs are an operating cost, except for supportive service facilities. If the structure is being used as a supportive service facility, then these utility costs are a supportive service cost.

(4) *Security deposits and first and last month's rent.* Recipients and subrecipients may use grant funds to pay security deposits, in an amount not to exceed 2 months of actual rent. An advance payment of the last month's rent may be provided to the landlord in addition to the security deposit and payment of the first month's rent.

(5) *Occupancy agreements and subleases.* Occupancy agreements and subleases are required as specified in § 578.77(a).

(6) *Calculation of occupancy charges and rent.* Occupancy charges and rent from program participants must be calculated as provided in § 578.77.

(7) *Program income.* Occupancy charges and rent collected from program participants are program income and may be used as provided under § 578.97.

(8) *Transition.* Beginning in the first year awards are made under the Continuum of Care program, renewals of grants for leasing funds entered into under the authority of title IV, subtitle D of the Act as it existed before May 20, 2009, will be renewed either as grants for leasing or as rental assistance, depending on the characteristics of the project. Leasing funds will be renewed as rental assistance if the funds are used to pay rent on units where the lease is between the program participant and the landowner or sublessor. Projects requesting leasing funds will be renewed as leasing if the funds were used to lease a unit or structure and the lease is between the recipient or subrecipient and the landowner.

#### § 578.51 Rental assistance.

(a) *Use.* (1) Grant funds may be used for rental assistance for homeless individuals and families. Rental assistance cannot be provided to a program participant who is already receiving rental assistance, or living in a housing unit receiving rental assistance or operating assistance through other federal, State, or local sources.

(i) The rental assistance may be short-term, up to 3 months of rent; medium-term, for 3 to 24 months of rent; or long-term, for longer than 24 months of rent and must be administered in accordance with the policies and procedures established by the Continuum as set forth in § 578.7(a)(9) and this section.

(ii) The rental assistance may be tenant-based, project-based, or sponsor-based, and may be for transitional or permanent housing.

(2) Grant funds may be used for security deposits in an amount not to exceed 2 months of rent. An advance payment of the last month's rent may be provided to the landlord, in addition to the security deposit and payment of first month's rent.

(b) *Rental assistance administrator.* Rental assistance must be administered by a State, unit of general local government, or a public housing agency.

(c) *Tenant-based rental assistance.* Tenant-based rental assistance is rental assistance in which program participants choose housing of an appropriate size in which to reside. When necessary to facilitate the coordination of supportive services, recipients and subrecipients may require program participants to live in a specific area for their entire period of participation, or in a specific structure for the first year and in a specific area for the remainder of their period of participation. Program participants who are receiving rental assistance in transitional housing may be required to live in a specific structure for their entire period of participation in transitional housing.

(1) Up to 5 years worth of rental assistance may be awarded to a project in one competition.

(2) Program participants who have complied with all program requirements during their residence retain the rental assistance if they move within the Continuum of Care geographic area.

(3) Program participants who have complied with all program requirements during their residence and who have been a victim of domestic violence, dating violence, sexual assault, or stalking, and who reasonably believe they are imminently threatened by harm 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), if they remain in the assisted unit, and are able to document the violence and basis for their belief, may retain the rental assistance and move to a different Continuum of Care geographic area if they move out of the

assisted unit to protect their health and safety.

(d) *Sponsor-based rental assistance.* Sponsor-based rental assistance is provided through contracts between the recipient and sponsor organization. A sponsor may be a private, nonprofit organization, or a community mental health agency established as a public nonprofit organization. Program participants must reside in housing owned or leased by the sponsor. Up to 5 years worth of rental assistance may be awarded to a project in one competition.

(e) *Project-based rental assistance.* Project-based rental assistance is provided through a contract with the owner of an existing structure, where the owner agrees to lease the subsidized units to program participants. Program participants will not retain rental assistance if they move. Up to 15 years of rental assistance may be awarded in one competition.

(f) *Grant amount.* The amount of rental assistance in each project will be based on the number and size of units proposed by the applicant to be assisted over the grant period. The amount of rental assistance in each project will be calculated by multiplying the number and size of units proposed by the FMR of each unit on the date the application is submitted to HUD, by the term of the grant.

(g) *Rent reasonableness.* HUD will only provide rental assistance for a unit if the rent is reasonable. The recipient or subrecipient must determine whether the rent charged for the unit receiving rental assistance is reasonable in relation to rents being charged for comparable unassisted units, taking into account the location, size, type, quality, amenities, facilities, and management and maintenance of each unit. Reasonable rent must not exceed rents currently being charged by the same owner for comparable unassisted units.

(h) *Payment of grant.* (1) The amount of rental assistance in each project will be reserved for rental assistance over the grant period. An applicant's request for rental assistance in each grant is an estimate of the amount needed for rental assistance. Recipients will make draws from the grant funds to pay the actual costs of rental assistance for program participants.

(2) For tenant-based rental assistance, on demonstration of need:

(i) Up to 25 percent of the total rental assistance awarded may be spent in any year of a 5-year grant term; or

(ii) A higher percentage if approved in advance by HUD, if the recipient provides evidence satisfactory to HUD that it is financially committed to

providing the housing assistance described in the application for the full 5-year period.

(3) A recipient must serve at least as many program participants as shown in its application for assistance.

(4) If the amount in each grant reserved for rental assistance over the grant period exceeds the amount that will be needed to pay the actual costs of rental assistance, due to such factors as contract rents being lower than FMRs and program participants being able to pay a portion of the rent, recipients or subrecipients may use the excess funds for covering the costs of rent increases, or for serving a greater number of program participants.

(i) *Vacancies.* If a unit assisted under this section is vacated before the expiration of the lease, the assistance for the unit may continue for a maximum of 30 days from the end of the month in which the unit was vacated, unless occupied by another eligible person. No additional assistance will be paid until the unit is occupied by another eligible person. Brief periods of stays in institutions, not to exceed 90 days for each occurrence, are not considered vacancies.

(j) *Property damage.* Recipients and subrecipients may use grant funds in an amount not to exceed one month's rent to pay for any damage to housing due to the action of a program participant. This shall be a one-time cost per participant, incurred at the time a participant exits a housing unit.

(k) *Resident rent.* Rent must be calculated as provided in § 578.77. Rents collected from program participants are program income and may be used as provided under § 578.97.

(l) *Leases.* (1) *Initial lease.* For project-based, sponsor-based, or tenant-based rental assistance, program participants must enter into a lease agreement for a term of at least one year, which is terminable for cause. The leases must be automatically renewable upon expiration for terms that are a minimum of one month long, except on prior notice by either party.

(2) *Initial lease for transitional housing.* Program participants in transitional housing must enter into a lease agreement for a term of at least one month. The lease must be automatically renewable upon expiration, except on prior notice by either party, up to a maximum term of 24 months.

#### § 578.53 Supportive services.

(a) *In general.* Grant funds may be used to pay the eligible costs of supportive services that address the special needs of the program

participants. If the supportive services are provided in a supportive service facility not contained in a housing structure, the costs of day-to-day operation of the supportive service facility, including maintenance, repair, building security, furniture, utilities, and equipment are eligible as a supportive service.

(1) Supportive services must be necessary to assist program participants obtain and maintain housing.

(2) Recipients and subrecipients shall conduct an annual assessment of the service needs of the program participants and should adjust services accordingly.

(b) *Duration.* (1) For a transitional housing project, supportive services must be made available to residents throughout the duration of their residence in the project.

(2) Permanent supportive housing projects must provide supportive services for the residents to enable them to live as independently as is practicable throughout the duration of their residence in the project.

(3) Services may also be provided to former residents of transitional housing and current residents of permanent housing who were homeless in the prior 6 months, for no more than 6 months after leaving transitional housing or homelessness, respectively, to assist their adjustment to independent living.

(4) Rapid rehousing projects must require the program participant to meet with a case manager not less than once per month as set forth in § 578.37(a)(1)(ii)(F), to assist the program participant in maintaining long-term housing stability.

(c) *Special populations.* All eligible costs are eligible to the same extent for program participants who are unaccompanied homeless youth; persons living with HIV/AIDS; and victims of domestic violence, dating violence, sexual assault, or stalking.

(d) *Ineligible costs.* Any cost that is not described as an eligible cost under this section is not an eligible cost of providing supportive services using Continuum of Care program funds. Staff training and the costs of obtaining professional licenses or certifications needed to provide supportive services are not eligible costs.

(e) *Eligible costs.*

(1) *Annual Assessment of Service Needs.* The costs of the assessment required by § 578.53(a)(2) are eligible costs.

(2) *Assistance with moving costs.* Reasonable one-time moving costs are eligible and include truck rental and hiring a moving company.

(3) *Case management.* The costs of assessing, arranging, coordinating, and monitoring the delivery of individualized services to meet the needs of the program participant(s) are eligible costs. Component services and activities consist of:

- (i) Counseling;
- (ii) Developing, securing, and coordinating services;
- (iii) Using the centralized or coordinated assessment system as required under § 578.23(c)(9).
- (iv) Obtaining federal, State, and local benefits;
- (v) Monitoring and evaluating program participant progress;
- (vi) Providing information and referrals to other providers;
- (vii) Providing ongoing risk assessment and safety planning with victims of domestic violence, dating violence, sexual assault, and stalking; and
- (viii) Developing an individualized housing and service plan, including planning a path to permanent housing stability.

(4) *Child care.* The costs of establishing and operating child care, and providing child-care vouchers, for children from families experiencing homelessness, including providing meals and snacks, and comprehensive and coordinated developmental activities, are eligible.

(i) The children must be under the age of 13, unless they are disabled children.

(ii) Disabled children must be under the age of 18.

(iii) The child-care center must be licensed by the jurisdiction in which it operates in order for its costs to be eligible.

(5) *Education services.* The costs of improving knowledge and basic educational skills are eligible.

(i) Services include instruction or training in consumer education, health education, substance abuse prevention, literacy, English as a Second Language, and General Educational Development (GED).

(ii) Component services or activities are screening, assessment and testing; individual or group instruction; tutoring; provision of books, supplies, and instructional material; counseling; and referral to community resources.

(6) *Employment assistance and job training.* The costs of establishing and operating employment assistance and job training programs are eligible, including classroom, online and/or computer instruction, on-the-job instruction, services that assist individuals in securing employment, acquiring learning skills, and/or increasing earning potential. The cost of

providing reasonable stipends to program participants in employment assistance and job training programs is also an eligible cost.

(i) Learning skills include those skills that can be used to secure and retain a job, including the acquisition of vocational licenses and/or certificates.

(ii) Services that assist individuals in securing employment consist of:

- (A) Employment screening, assessment, or testing;
- (B) Structured job skills and job-seeking skills;
- (C) Special training and tutoring, including literacy training and pre-vocational training;
- (D) Books and instructional material;
- (E) Counseling or job coaching; and
- (F) Referral to community resources.

(7) *Food.* The cost of providing meals or groceries to program participants is eligible.

(8) *Housing search and counseling services.* Costs of assisting eligible program participants to locate, obtain, and retain suitable housing are eligible.

(i) Component services or activities are tenant counseling; assisting individuals and families to understand leases; securing utilities; and making moving arrangements.

(ii) Other eligible costs are:

(A) Mediation with property owners and landlords on behalf of eligible program participants;

(B) Credit counseling, accessing a free personal credit report, and resolving personal credit issues; and

(C) The payment of rental application fees.

(9) *Legal services.* Eligible costs are the fees charged by licensed attorneys and by person(s) under the supervision of licensed attorneys, for advice and representation in matters that interfere with the homeless individual or family's ability to obtain and retain housing.

(i) Eligible subject matters are child support; guardianship; paternity; emancipation; legal separation; orders of protection and other civil remedies for victims of domestic violence, dating violence, sexual assault, and stalking; appeal of veterans and public benefit claim denials; landlord tenant disputes; and the resolution of outstanding criminal warrants.

(ii) Component services or activities may include receiving and preparing cases for trial, provision of legal advice, representation at hearings, and counseling.

(iii) Fees based on the actual service performed (i.e., fee for service) are also eligible, but only if the cost would be less than the cost of hourly fees. Filing fees and other necessary court costs are also eligible. If the subrecipient is a

legal services provider and performs the services itself, the eligible costs are the subrecipient's employees' salaries and other costs necessary to perform the services.

(iv) Legal services for immigration and citizenship matters and issues related to mortgages and homeownership are ineligible. Retainer fee arrangements and contingency fee arrangements are ineligible.

(10) *Life skills training.* The costs of teaching critical life management skills that may never have been learned or have been lost during the course of physical or mental illness, domestic violence, substance abuse, and homelessness are eligible. These services must be necessary to assist the program participant to function independently in the community. Component life skills training are the budgeting of resources and money management, household management, conflict management, shopping for food and other needed items, nutrition, the use of public transportation, and parent training.

(11) *Mental health services.* Eligible costs are the direct outpatient treatment of mental health conditions that are provided by licensed professionals. Component services are crisis interventions; counseling; individual, family, or group therapy sessions; the prescription of psychotropic medications or explanations about the use and management of medications; and combinations of therapeutic approaches to address multiple problems.

(12) *Outpatient health services.* Eligible costs are the direct outpatient treatment of medical conditions when provided by licensed medical professionals including:

(i) Providing an analysis or assessment of an individual's health problems and the development of a treatment plan;

(ii) Assisting individuals to understand their health needs;

(iii) Providing directly or assisting individuals to obtain and utilize appropriate medical treatment;

(iv) Preventive medical care and health maintenance services, including in-home health services and emergency medical services;

(v) Provision of appropriate medication;

(vi) Providing follow-up services; and

(vii) Preventive and noncosmetic dental care.

(13) *Outreach services.* The costs of activities to engage persons for the purpose of providing immediate support and intervention, as well as identifying

potential program participants, are eligible.

(i) Eligible costs include the outreach worker's transportation costs and a cell phone to be used by the individual performing the outreach.

(ii) Component activities and services consist of: initial assessment; crisis counseling; addressing urgent physical needs, such as providing meals, blankets, clothes, or toiletries; actively connecting and providing people with information and referrals to homeless and mainstream programs; and publicizing the availability of the housing and/or services provided within the geographic area covered by the Continuum of Care.

(14) *Substance abuse treatment services.* The costs of program participant intake and assessment, outpatient treatment, group and individual counseling, and drug testing are eligible. Inpatient detoxification and other inpatient drug or alcohol treatment are ineligible.

(15) *Transportation.* Eligible costs are:

(i) The costs of program participant's travel on public transportation or in a vehicle provided by the recipient or subrecipient to and from medical care, employment, child care, or other services eligible under this section.

(ii) Mileage allowance for service workers to visit program participants and to carry out housing quality inspections;

(iii) The cost of purchasing or leasing a vehicle in which staff transports program participants and/or staff serving program participants;

(iv) The cost of gas, insurance, taxes, and maintenance for the vehicle;

(v) The costs of recipient or subrecipient staff to accompany or assist program participants to utilize public transportation; and

(vi) If public transportation options are not sufficient within the area, the recipient may make a one-time payment on behalf of a program participant needing car repairs or maintenance required to operate a personal vehicle, subject to the following:

(A) Payments for car repairs or maintenance on behalf of the program participant may not exceed 10 percent of the Blue Book value of the vehicle (Blue Book refers to the guidebook that compiles and quotes prices for new and used automobiles and other vehicles of all makes, models, and types);

(B) Payments for car repairs or maintenance must be paid by the recipient or subrecipient directly to the third party that repairs or maintains the car; and

(C) The recipients or subrecipients may require program participants to

share in the cost of car repairs or maintenance as a condition of receiving assistance with car repairs or maintenance.

(16) *Utility deposits.* This form of assistance consists of paying for utility deposits. Utility deposits must be a one-time fee, paid to utility companies.

(17) *Direct provision of services.* If the service described in paragraphs (e)(1) through (e)(16) of this section is being directly delivered by the recipient or subrecipient, eligible costs for those services also include:

(i) The costs of labor or supplies, and materials incurred by the recipient or subrecipient in directly providing supportive services to program participants; and

(ii) The salary and benefit packages of the recipient and subrecipient staff who directly deliver the services.

#### § 578.55 Operating costs.

(a) *Use.* Grant funds may be used to pay the costs of the day-to-day operation of transitional and permanent housing in a single structure or individual housing units.

(b) *Eligible costs.* (1) The maintenance and repair of housing;

(2) Property taxes and insurance;

(3) Scheduled payments to a reserve for replacement of major systems of the housing (provided that the payments must be based on the useful life of the system and expected replacement cost);

(4) Building security for a structure where more than 50 percent of the units or area is paid for with grant funds;

(5) Electricity, gas, and water;

(6) Furniture; and

(7) Equipment.

(c) *Ineligible costs.* Program funds may not be used for rental assistance and operating costs in the same project. Program funds may not be used for the operating costs of emergency shelter and supportive service-only facilities. Program funds may not be used for the maintenance and repair of housing where the costs of maintaining and repairing the housing are included in the lease.

#### § 578.57 Homeless Management Information System.

(a) *Eligible costs.* (1) The recipient or subrecipient may use Continuum of Care program funds to pay the costs of contributing data to the HMIS designated by the Continuum of Care, including the costs of:

(i) Purchasing or leasing computer hardware;

(ii) Purchasing software or software licenses;

(iii) Purchasing or leasing equipment, including telephones, fax machines, and furniture;

(iv) Obtaining technical support;

(v) Leasing office space;

(vi) Paying charges for electricity, gas, water, phone service, and high-speed data transmission necessary to operate or contribute data to the HMIS;

(vii) Paying salaries for operating HMIS, including:

(A) Completing data entry;

(B) Monitoring and reviewing data quality;

(C) Completing data analysis;

(D) Reporting to the HMIS Lead;

(E) Training staff on using the HMIS;

and

(F) Implementing and complying with HMIS requirements;

(viii) Paying costs of staff to travel to and attend HUD-sponsored and HUD-approved training on HMIS and programs authorized by Title IV of the McKinney-Vento Homeless Assistance Act;

(ix) Paying staff travel costs to conduct intake; and

(x) Paying participation fees charged by the HMIS Lead, as authorized by HUD, if the recipient or subrecipient is not the HMIS Lead.

(2) If the recipient or subrecipient is the HMIS Lead, it may also use Continuum of Care funds to pay the costs of:

(i) Hosting and maintaining HMIS software or data;

(ii) Backing up, recovering, or repairing HMIS software or data;

(iii) Upgrading, customizing, and enhancing the HMIS;

(iv) Integrating and warehousing data, including development of a data warehouse for use in aggregating data from subrecipients using multiple software systems;

(v) Administering the system;

(vi) Reporting to providers, the Continuum of Care, and HUD; and

(vii) Conducting training on using the system, including traveling to the training.

(3) If the recipient or subrecipient is a victim services provider, or a legal services provider, it may use Continuum of Care funds to establish and operate a comparable database that complies with HUD's HMIS requirements.

(b) *General restrictions.* Activities funded under this section must comply with the HMIS requirements.

#### § 578.59 Project administrative costs.

(a) *Eligible costs.* The recipient or subrecipient may use up to 10 percent of any grant awarded under this part, excluding the amount for Continuum of Care Planning Activities and UFA costs, for the payment of project administrative costs related to the planning and execution of Continuum



of Care activities. This does not include staff and overhead costs directly related to carrying out activities eligible under § 578.43 through § 578.57, because those costs are eligible as part of those activities. Eligible administrative costs include:

(1) *General management, oversight, and coordination.* Costs of overall program management, coordination, monitoring, and evaluation. These costs include, but are not limited to, necessary expenditures for the following:

(i) Salaries, wages, and related costs of the recipient's staff, the staff of subrecipients, or other staff engaged in program administration. In charging costs to this category, the recipient may include the entire salary, wages, and related costs allocable to the program of each person whose primary responsibilities with regard to the program involve program administration assignments, or the pro rata share of the salary, wages, and related costs of each person whose job includes any program administration assignments. The recipient may use only one of these methods for each fiscal year grant. Program administration assignments include the following:

(A) Preparing program budgets and schedules, and amendments to those budgets and schedules;

(B) Developing systems for assuring compliance with program requirements;

(C) Developing agreements with subrecipients and contractors to carry out program activities;

(D) Monitoring program activities for progress and compliance with program requirements;

(E) Preparing reports and other documents directly related to the program for submission to HUD;

(F) Coordinating the resolution of audit and monitoring findings;

(G) Evaluating program results against stated objectives; and

(H) Managing or supervising persons whose primary responsibilities with regard to the program include such assignments as those described in paragraph (a)(1)(i)(A) through (G) of this section.

(ii) Travel costs incurred for monitoring of subrecipients;

(iii) Administrative services performed under third-party contracts or agreements, including general legal services, accounting services, and audit services; and

(iv) Other costs for goods and services required for administration of the program, including rental or purchase of equipment, insurance, utilities, office

supplies, and rental and maintenance (but not purchase) of office space.

(2) *Training on Continuum of Care requirements.* Costs of providing training on Continuum of Care requirements and attending HUD-sponsored Continuum of Care trainings.

(3) *Environmental review.* Costs of carrying out the environmental review responsibilities under § 578.31.

(b) *Sharing requirement.* (1) *UFAs.* If the recipient is a UFA that carries out a project, it may use up to 10 percent of the grant amount awarded for the project on project administrative costs. The UFA must share the remaining project administrative funds with its subrecipients.

(2) *Recipients that are not UFAs.* If the recipient is not a UFA, it must share at least 50 percent of project administrative funds with its subrecipients.

#### § 578.61 Relocation costs.

(a) *In general.* Relocation costs under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 are eligible.

(b) *Eligible relocation costs.* Eligible costs are costs to provide relocation payments and other assistance to persons displaced by a project assisted with grant funds in accordance with § 578.83.

#### § 578.63 Indirect costs.

(a) *In general.* Continuum of Care funds may be used to pay indirect costs in accordance with OMB Circulars A-87 or A-122, as applicable.

(b) *Allocation.* Indirect costs may be allocated to each eligible activity as provided in subpart D, so long as that allocation is consistent with an indirect cost rate proposal developed in accordance with OMB Circulars A-87 or A-122, as applicable.

(c) *Expenditure limits.* The indirect costs charged to an activity subject to an expenditure limit under §§ 578.39, 578.41, and 578.59 must be added to the direct costs charged for that activity when determining the total costs subject to the expenditure limits.

### Subpart E—High-Performing Communities

#### § 578.65 Standards.

(a) *In general.* The collaborative applicant for a Continuum may apply to HUD to have the Continuum be designated a high-performing community (HPC). The designation shall be for grants awarded in the same competition in which the designation is applied for and made.

(b) *Applying for HPC designation.* The application must be submitted at such

time and in such manner as HUD may require, must use HMIS data where required to show the standards for qualifying are met, and must contain such information as HUD requires, including at a minimum:

(1) A report showing how the Continuum of Care program funds received in the preceding year were expended;

(2) A specific plan for how grant funds will be expended; and

(3) Information establishing that the Continuum of Care meets the standards for HPCs.

(c) *Standards for qualifying as an HPC.* To qualify as an HPC, a Continuum must demonstrate through:

(1) Reliable data generated by the Continuum of Care's HMIS that it meets all of the following standards:

(i) *Mean length of homelessness.* Either the mean length of episode of homelessness within the Continuum's geographic area is fewer than 20 days, or the mean length of episodes of homelessness for individuals or families in similar circumstances was reduced by at least 10 percent from the preceding federal fiscal year.

(ii) *Reduced recidivism.* Of individuals and families who leave homelessness, less than 5 percent become homeless again at any time within the next 2 years; or the percentage of individuals and families in similar circumstances who become homeless again within 2 years after leaving homelessness was decreased by at least 20 percent from the preceding federal fiscal year.

(iii) *HMIS coverage.* The Continuum's HMIS must have a bed coverage rate of 80 percent and a service volume coverage rate of 80 percent as calculated in accordance with HUD's HMIS requirements.

(iv) *Serving families and youth.* With respect to Continuum that served homeless families and youth defined as homeless under other federal statutes in paragraph (3) of the definition of homeless in § 576.2:

(A) 95 percent of those families and youth did not become homeless again within a 2-year period following termination of assistance; or

(B) 85 percent of those families achieved independent living in permanent housing for at least 2 years following termination of assistance.

(2) Reliable data generated from sources other than the Continuum's HMIS that is provided in a narrative or other form prescribed by HUD that it meets both of the following standards:

(i) *Community action.* All the metropolitan cities and counties within the Continuum's geographic area have a

comprehensive outreach plan, including specific steps for identifying homeless persons and referring them to appropriate housing and services in that geographic area.

(ii) *Renewing HPC status.* If the Continuum was designated an HPC in the previous federal fiscal year and used Continuum of Care grant funds for activities described under § 578.71, that such activities were effective at reducing the number of individuals and families who became homeless in that community.

#### § 578.67 Publication of application.

HUD will publish the application to be designated an HPC through the HUD Web site, for public comment as to whether the Continuum seeking designation as an HPC meets the standards for being one.

#### § 578.69 Cooperation among entities.

An HPC must cooperate with HUD in distributing information about its successful efforts to reduce homelessness.

#### § 578.71 HPC-eligible activities.

In addition to using grant funds for the eligible costs described in subpart D of this part, recipients and subrecipients in Continuums of Care designated as HPCs may also use grant funds to provide housing relocation and stabilization services and short- and/or medium-term rental assistance to individuals and families at risk of homelessness as set forth in 24 CFR 576.103 and 24 CFR 576.104, if necessary to prevent the individual or family from becoming homeless. Activities must be carried out in accordance with the plan submitted in the application. When carrying out housing relocation and stabilization services and short- and/or medium-term rental assistance, the written standards set forth in § 578.7(a)(9)(v) and recordkeeping requirements of 24 CFR 576.500 apply.

### Subpart F—Program Requirements

#### § 578.73 Matching requirements.

(a) *In general.* The recipient or subrecipient must match all grant funds, except for leasing funds, with no less than 25 percent of funds or in-kind contributions from other sources. For Continuum of Care geographic areas in which there is more than one grant agreement, the 25 percent match must be provided on a grant-by-grant basis. Recipients that are UFAs or are the sole recipient for their Continuum, may provide match on a Continuum-wide basis. Cash match must be used for the costs of activities that are eligible under

subpart D of this part, except that HPCs may use such match for the costs of activities that are eligible under § 578.71.

(b) *Cash sources.* A recipient or subrecipient may use funds from any source, including any other federal sources (excluding Continuum of Care program funds), as well as State, local, and private sources, provided that funds from the source are not statutorily prohibited to be used as a match. The recipient must ensure that any funds used to satisfy the matching requirements of this section are eligible under the laws governing the funds in order to be used as matching funds for a grant awarded under this program.

(c) *In-kind contributions.* (1) The recipient or subrecipient may use the value of any real property, equipment, goods, or services contributed to the project as match, provided that if the recipient or subrecipient had to pay for them with grant funds, the costs would have been eligible under Subpart D, or, in the case of HPCs, eligible under § 578.71.

(2) The requirements of 24 CFR 84.23 and 85.24 apply.

(3) Before grant execution, services to be provided by a third party must be documented by a memorandum of understanding (MOU) between the recipient or subrecipient and the third party that will provide the services. Services provided by individuals must be valued at rates consistent with those ordinarily paid for similar work in the recipient's or subrecipient's organization. If the recipient or subrecipient does not have employees performing similar work, the rates must be consistent with those ordinarily paid by other employers for similar work in the same labor market.

(i) The MOU must establish the unconditional commitment, except for selection to receive a grant, by the third party to provide the services, the specific service to be provided, the profession of the persons providing the service, and the hourly cost of the service to be provided.

(ii) During the term of the grant, the recipient or subrecipient must keep and make available, for inspection, records documenting the service hours provided.

#### § 578.75 General operations.

(a) *State and local requirements.* (1) Housing and facilities constructed or rehabilitated with assistance under this part must meet State or local building codes, and in the absence of State or local building codes, the International Residential Code or International Building Code (as applicable to the type

of structure) of the International Code Council.

(2) Services provided with assistance under this part must be provided in compliance with all applicable State and local requirements, including licensing requirements.

(b) *Housing quality standards.* Housing leased with Continuum of Care program funds, or for which rental assistance payments are made with Continuum of Care program funds, must meet the applicable housing quality standards (HQS) under 24 CFR 982.401 of this title, except that 24 CFR 982.401(j) applies only to housing occupied by program participants receiving tenant-based rental assistance. For housing rehabilitated with funds under this part, the lead-based paint requirements in 24 CFR part 35, subparts A, B, J, and R apply. For housing that receives project-based or sponsor-based rental assistance, 24 CFR part 35, subparts A, B, H, and R apply. For residential property for which funds under this part are used for acquisition, leasing, services, or operating costs, 24 CFR part 35, subparts A, B, K, and R apply.

(1) Before any assistance will be provided on behalf of a program participant, the recipient, or subrecipient, must physically inspect each unit to assure that the unit meets HQS. Assistance will not be provided for units that fail to meet HQS, unless the owner corrects any deficiencies within 30 days from the date of the initial inspection and the recipient or subrecipient verifies that all deficiencies have been corrected.

(2) Recipients or subrecipients must inspect all units at least annually during the grant period to ensure that the units continue to meet HQS.

(c) *Suitable dwelling size.* The dwelling unit must have at least one bedroom or living/sleeping room for each two persons.

(1) Children of opposite sex, other than very young children, may not be required to occupy the same bedroom or living/sleeping room.

(2) If household composition changes during the term of assistance, recipients and subrecipients may relocate the household to a more appropriately sized unit. The household must still have access to appropriate supportive services.

(d) *Meals.* Each recipient and subrecipient of assistance under this part who provides supportive housing for homeless persons with disabilities must provide meals or meal preparation facilities for residents.

(e) *Ongoing assessment of supportive services.* To the extent practicable, each

project must provide supportive services for residents of the project and homeless persons using the project, which may be designed by the recipient or participants. Each recipient and subrecipient of assistance under this part must conduct an ongoing assessment of the supportive services needed by the residents of the project, the availability of such services, and the coordination of services needed to ensure long-term housing stability and must make adjustments, as appropriate.

(f) *Residential supervision.* Each recipient and subrecipient of assistance under this part must provide residential supervision as necessary to facilitate the adequate provision of supportive services to the residents of the housing throughout the term of the commitment to operate supportive housing. Residential supervision may include the employment of a full- or part-time residential supervisor with sufficient knowledge to provide or to supervise the provision of supportive services to the residents.

(g) *Participation of homeless individuals.* (1) Each recipient and subrecipient must provide for the participation of not less than one homeless individual or formerly homeless individual on the board of directors or other equivalent policymaking entity of the recipient or subrecipient, to the extent that such entity considers and makes policies and decisions regarding any project, supportive services, or assistance provided under this part. This requirement is waived if a recipient or subrecipient is unable to meet such requirement and obtains HUD approval for a plan to otherwise consult with homeless or formerly homeless persons when considering and making policies and decisions.

(2) Each recipient and subrecipient of assistance under this part must, to the maximum extent practicable, involve homeless individuals and families through employment; volunteer services; or otherwise in constructing, rehabilitating, maintaining, and operating the project, and in providing supportive services for the project.

(h) *Supportive service agreement.* Recipients and subrecipients may require the program participants to take part in supportive services that are not disability-related services provided through the project as a condition of continued participation in the program. Examples of disability-related services include, but are not limited to, mental health services, outpatient health services, and provision of medication, which are provided to a person with a disability to address a condition caused

by the disability. Notwithstanding this provision, if the purpose of the project is to provide substance abuse treatment services, recipients and subrecipients may require program participants to take part in such services as a condition of continued participation in the program.

(i) *Retention of assistance after death, incarceration, or institutionalization for more than 90 days of qualifying member.* For permanent supportive housing projects surviving, members of any household who were living in a unit assisted under this part at the time of the qualifying member's death, long-term incarceration, or long-term institutionalization, have the right to rental assistance under this section until the expiration of the lease in effect at the time of the qualifying member's death, long-term incarceration, or long-term institutionalization.

#### **§ 578.77 Calculating occupancy charges and rent.**

(a) *Occupancy agreements and leases.* Recipients and subrecipients must have signed occupancy agreements or leases (or subleases) with program participants residing in housing.

(b) *Calculation of occupancy charges.* Recipients and subrecipients are not required to impose occupancy charges on program participants as a condition of residing in the housing. However, if occupancy charges are imposed, they may not exceed the highest of:

(1) 30 percent of the family's monthly adjusted income (adjustment factors include the number of people in the family, age of family members, medical expenses, and child-care expenses);

(2) 10 percent of the family's monthly income; or

(3) If the family is receiving payments for welfare assistance from a public agency and a part of the payments (adjusted in accordance with the family's actual housing costs) is specifically designated by the agency to meet the family's housing costs, the portion of the payments that is designated for housing costs.

(4) *Income.* Income must be calculated in accordance with 24 CFR 5.609 and 24 CFR 5.611(a). Recipients and subrecipients must examine a program participant's income initially, and if there is a change in family composition (e.g., birth of a child) or a decrease in the resident's income during the year, the resident may request an interim reexamination, and the occupancy charge will be adjusted accordingly.

(c) *Resident rent.* (1) *Amount of rent.* (i) Each program participant on whose behalf rental assistance payments are

made must pay a contribution toward rent in accordance with section 3(a)(1) of the U.S. Housing Act of 1937 (42 U.S.C. 1437a(a)(1)).

(ii) Income of program participants must be calculated in accordance with 24 CFR 5.609 and 24 CFR 5.611(a).

(2) *Review.* Recipients or subrecipients must examine a program participant's income initially, and at least annually thereafter, to determine the amount of the contribution toward rent payable by the program participant. Adjustments to a program participant's contribution toward the rental payment must be made as changes in income are identified.

(3) *Verification.* As a condition of participation in the program, each program participant must agree to supply the information or documentation necessary to verify the program participant's income. Program participants must provide the recipient or subrecipient with information at any time regarding changes in income or other circumstances that may result in changes to a program participant's contribution toward the rental payment.

#### **§ 578.79 Limitation on transitional housing.**

A homeless individual or family may remain in transitional housing for a period longer than 24 months, if permanent housing for the individual or family has not been located or if the individual or family requires additional time to prepare for independent living. However, HUD may discontinue assistance for a transitional housing project if more than half of the homeless individuals or families remain in that project longer than 24 months.

#### **§ 578.81 Term of commitment, repayment of grants, and prevention of undue benefits.**

(a) *In general.* All recipients and subrecipients receiving grant funds for acquisition, rehabilitation, or new construction must operate the housing or provide supportive services in accordance with this part, for at least 15 years from the date of initial occupancy or date of initial service provision.

Recipient and subrecipients must execute and record a HUD-approved Declaration of Restrictive Covenants before receiving payment of grant funds.

(b) *Conversion.* Recipients and subrecipients carrying out a project that provides transitional or permanent housing or supportive services in a structure may submit a request to HUD to convert a project for the direct benefit of very low-income persons. The request must be made while the project is operating as homeless housing or supportive services for homeless

individuals and families, must be in writing, and must include an explanation of why the project is no longer needed to provide transitional or permanent housing or supportive services. The primary factor in HUD's decision on the proposed conversion is the unmet need for transitional or permanent housing or supportive services in the Continuum of Care's geographic area.

(c) *Repayment of grant funds.* If a project is not operated as transitional or permanent housing for 10 years following the date of initial occupancy, HUD will require repayment of the entire amount of the grant used for acquisition, rehabilitation, or new construction, unless conversion of the project has been authorized under paragraph (b) of this section. If the housing is used for such purposes for more than 10 years, the payment amount will be reduced by 20 percentage points for each year, beyond the 10-year period in which the project is used for transitional or permanent housing.

(d) *Prevention of undue benefits.* Except as provided under paragraph (e) of this section, upon any sale or other disposition of a project site that received grant funds for acquisition, rehabilitation, or new construction, occurring before the 15-year period, the recipient must comply with such terms and conditions as HUD may prescribe to prevent the recipient or subrecipient from unduly benefiting from such sale or disposition.

(e) *Exception.* A recipient or subrecipient will not be required to comply with the terms and conditions prescribed under paragraphs (c) and (d) of this section if:

(1) The sale or disposition of the property used for the project results in the use of the property for the direct benefit of very low-income persons;

(2) All the proceeds are used to provide transitional or permanent housing that meet the requirements of this part;

(3) Project-based rental assistance or operating cost assistance from any federal program or an equivalent State or local program is no longer made available and the project is meeting applicable performance standards, provided that the portion of the project that had benefitted from such assistance continues to meet the tenant income and rent restrictions for low-income units under section 42(g) of the Internal Revenue Code of 1986; or

(4) There are no individuals and families in the Continuum of Care geographic area who are homeless, in which case the project may serve

individuals and families at risk of homelessness.

**§ 578.83 Displacement, relocation, and acquisition.**

(a) *Minimizing displacement.* Consistent with the other goals and objectives of this part, recipients and subrecipients must ensure that they have taken all reasonable steps to minimize the displacement of persons (families, individuals, businesses, nonprofit organizations, and farms) as a result of projects assisted under this part. "Project," as used in this section, means any activity or series of activities assisted with Continuum of Care funds received or anticipated in any phase of an undertaking.

(b) *Temporary relocation.* (1) *Existing Building Not Assisted under Title IV of the McKinney-Vento Act.* No tenant may be required to relocate temporarily for a project if the building in which the project is being undertaken or will be undertaken is not currently assisted under Title IV of the McKinney-Vento Act. The absence of such assistance to the building means the tenants are not homeless and the tenants are therefore not eligible to receive assistance under the Continuum of Care program. When a tenant moves for such a project under conditions that cause the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA), 42 U.S.C. 4601-4655, to apply, the tenant must be treated as permanently displaced and offered relocation assistance and payments consistent with paragraph (c) of this section.

(2) *Existing Transitional Housing or Permanent Housing Projects Assisted Under Title IV of the McKinney-Vento Act.* Consistent with paragraph (c)(2)(ii) of this section, no program participant may be required to relocate temporarily for a project if the person cannot be offered a decent, safe, and sanitary unit in the same building or complex upon project completion under reasonable terms and conditions. The length of occupancy requirements in § 578.79 may prevent a program participant from returning to the property upon completion (See paragraph (c)(2)(iii)(D) of this section). Any program participant who has been temporarily relocated for a period beyond one year must be treated as permanently displaced and offered relocation assistance and payments consistent with paragraph (c) of this section. Program participants temporarily relocated in accordance with the policies described in this paragraph must be provided:

(i) Reimbursement for all reasonable out-of-pocket expenses incurred in connection with the temporary

relocation, including the cost of moving to and from the temporarily occupied housing and any increase in monthly rent/occupancy charges and utility costs; and

(ii) Appropriate advisory services, including reasonable advance written notice of:

(A) The date and approximate duration of the temporary relocation;

(B) The location of the suitable, decent, safe, and sanitary dwelling to be made available for the temporary period;

(C) The reasonable terms and conditions under which the program participant will be able to occupy a suitable, decent, safe, and sanitary dwelling in the building or complex upon completion of the project; and

(D) The provisions of paragraph (b)(2)(i) of this section.

(c) *Relocation assistance for displaced persons.* (1) *In general.* A displaced person (defined in paragraph (c)(2) of this section) must be provided relocation assistance in accordance with the requirements of the URA and implementing regulations at 49 CFR part 24. A displaced person must be advised of his or her rights under the Fair Housing Act. Whenever possible, minority persons must be given reasonable opportunities to relocate to decent, safe, and sanitary replacement dwellings, not located in an area of minority concentration, that are within their financial means. This policy, however, does not require providing a person a larger payment than is necessary to enable a person to relocate to a comparable replacement dwelling. See 49 CFR 24.205(c)(2)(ii)(D).

(2) *Displaced person.* (i) For the purposes of paragraph (c) of this section, the term "displaced person" means any person (family, individual, business, nonprofit organization, or farm) that moves from real property, or moves personal property from real property, permanently, as a direct result of acquisition, rehabilitation, or demolition for a project. This includes any permanent, involuntary move for a project, including any permanent move from the real property that is made:

(A) After the owner (or person in control of the site) issues a notice to move permanently from the property, or refuses to renew an expiring lease, if the move occurs after the date of the submission by the recipient or subrecipient of an application for assistance to HUD (or the recipient, as applicable) that is later approved and funded and the recipient or subrecipient has site control as evidenced in accordance with § 578.25(b); or

(B) After the owner (or person in control of the site) issues a notice to move permanently from the property, or refuses to renew an expiring lease, if the move occurs after the date the recipient or subrecipient obtains site control, as evidenced in accordance with § 578.25(b), if that occurs after the application for assistance; or

(C) Before the date described under paragraph (c)(2)(i)(A) or (B) of this section, if the recipient or HUD determines that the displacement resulted directly from acquisition, rehabilitation, or demolition for the project; or

(D) By a tenant of a building that is not assisted under Title IV of the McKinney-Vento Act, if the tenant moves after execution of the agreement covering the acquisition, rehabilitation, or demolition of the property for the project; or

(ii) For the purposes of paragraph (c) of this section, the term "displaced person" means any person (family, individual, business, nonprofit organization, or farm) that moves from real property, or moves personal property from real property, permanently, as a direct result of acquisition, rehabilitation, or demolition for a project. This includes any permanent, involuntary move for a project that is made by a program participant occupying transitional housing or permanent housing assisted under Title IV of the McKinney-Vento Act, if any one of the following three situations occurs:

(A) The program participant moves after execution of the agreement covering the acquisition, rehabilitation, or demolition of the property for the project and is either not eligible to return upon project completion or the move occurs before the program participant is provided written notice offering the program participant an opportunity to occupy a suitable, decent, safe, and sanitary dwelling in the same building or complex upon project completion under reasonable terms and conditions. Such reasonable terms and conditions must include a lease (or occupancy agreement, as applicable) consistent with Continuum of Care program requirements, including a monthly rent or occupancy charge and monthly utility costs that does not exceed the maximum amounts established in § 578.77; or

(B) The program participant is required to relocate temporarily, does not return to the building or complex, and any one of the following situations occurs:

(1) The program participant is not offered payment for all reasonable out-

of-pocket expenses incurred in connection with the temporary relocation;

(2) The program participant is not eligible to return to the building or complex upon project completion; or

(3) Other conditions of the temporary relocation are not reasonable; or

(C) The program participant is required to move to another unit in the same building or complex, and any one of the following situations occurs:

(1) The program participant is not offered reimbursement for all reasonable out-of-pocket expenses incurred in connection with the move;

(2) The program participant is not eligible to remain in the building or complex upon project completion; or

(3) Other conditions of the move are not reasonable.

(iii) Notwithstanding the provisions of paragraph (c)(2)(i) or (ii) of this section, a person does not qualify as a "displaced person" if:

(A) The person has been evicted for serious or repeated violation of the terms and conditions of the lease or occupancy agreement; the eviction complied with applicable federal, State, or local requirements (see § 578.91); and the recipient or subrecipient determines that the eviction was not undertaken for the purpose of evading the obligation to provide relocation assistance;

(B) The person moved into the property after the submission of the application but, before signing a lease or occupancy agreement and commencing occupancy, was provided written notice of the project's possible impact on the person (e.g., the person may be displaced, temporarily relocated, or incur a rent increase) and the fact that the person would not qualify as a "displaced person" (or for any relocation assistance provided under this section), as a result of the project;

(C) The person is ineligible under 49 CFR 24.2(a)(9)(ii);

(D) The person is a program participant occupying transitional housing or permanent housing assisted under Title IV of the Act who must move as a direct result of the length-of-occupancy restriction under § 578.79; or

(E) HUD determines that the person was not displaced as a direct result of acquisition, rehabilitation, or demolition for the project.

(iv) The recipient may request, at any time, HUD's determination of whether a displacement is or would be covered under this section.

(3) *Initiation of negotiations.* For purposes of determining the formula for computing replacement housing payment assistance to be provided to a displaced person pursuant to this

section, if the displacement is a direct result of privately undertaken rehabilitation, demolition, or acquisition of the real property, "initiation of negotiations" means the execution of the agreement between the recipient and the subrecipient, or between the recipient (or subrecipient, as applicable) and the person owning or controlling the property. In the case of an option contract to acquire property, the initiation of negotiations does not become effective until execution of a written agreement that creates a legally enforceable commitment to proceed with the purchase, such as a purchase agreement.

(d) *Real property acquisition requirements.* Except for acquisitions described in 49 CFR 24.101(b)(1) through (5), the URA and the requirements of 49 CFR part 24, subpart B apply to any acquisition of real property for a project where there are Continuum of Care funds in any part of the project costs.

(e) *Appeals.* A person who disagrees with the recipient's (or subrecipient's, if applicable) determination concerning whether the person qualifies as a displaced person, or the amount of relocation assistance for which the person is eligible, may file a written appeal of that determination with the recipient (see 49 CFR 24.10). A low-income person who is dissatisfied with the recipient's determination on his or her appeal may submit a written request for review of that determination to the local HUD field office.

#### § 578.85 Timeliness standards.

(a) *In general.* Recipients must initiate approved activities and projects promptly.

(h) *Construction activities.* Recipients of funds for rehabilitation or new construction must meet the following standards:

(1) Construction activities must begin within 9 months of the later of signing of the grant agreement or of signing an addendum to the grant agreement authorizing use of grant funds for the project.

(2) Construction activities must be completed within 24 months of signing the grant agreement.

(3) Activities that cannot begin until after construction activities are completed must begin within 3 months of the date that construction activities are completed.

(c) *Distribution.* A recipient that receives funds through this part must:

(1) Distribute the funds to subrecipients (in advance of expenditures by the subrecipients);

(2) Distribute the appropriate portion of the funds to a subrecipient no later than 45 days after receiving an approvable request for such distribution from the subrecipient; and

(3) Draw down funds at least once per quarter of the program year, after eligible activities commence.

**§ 578.87 Limitation on use of funds.**

(a) *Maintenance of effort.* No assistance provided under this part (or any State or local government funds used to supplement this assistance) may be used to replace State or local funds previously used, or designated for use, to assist homeless persons.

(b) *Faith-based activities.* (1) *Equal treatment of program participants and program beneficiaries.* (i) *Program participants.* Organizations that are religious or faith-based are eligible, on the same basis as any other organization, to participate in the Continuum of Care program. Neither the Federal Government nor a State or local government receiving funds under the Continuum of Care program shall discriminate against an organization on the basis of the organization's religious character or affiliation. Recipients and subrecipients of program funds shall not, in providing program assistance, discriminate against a program participant or prospective program participant on the basis of religion or religious belief.

(ii) *Beneficiaries.* In providing services supported in whole or in part with federal financial assistance, and in their outreach activities related to such services, program participants shall not discriminate against current or prospective program beneficiaries on the basis of religion, a religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice.

(2) *Separation of explicitly religious activities.* Recipients and subrecipients of Continuum of Care funds that engage in explicitly religious activities, including activities that involve overt religious content such as worship, religious instruction, or proselytization, must perform such activities and offer such services outside of programs that are supported with federal financial assistance separately, in time or location, from the programs or services funded under this part, and participation in any such explicitly religious activities must be voluntary for the program beneficiaries of the HUD-funded programs or services.

(3) *Religious identity.* A faith-based organization that is a recipient or subrecipient of Continuum of Care program funds is eligible to use such

funds as provided under the regulations of this part without impairing its independence, autonomy, expression of religious beliefs, or religious character. Such organization will retain its independence from federal, State, and local government, and may continue to carry out its mission, including the definition, development, practice, and expression of its religious beliefs, provided that it does not use direct program funds to support or engage in any explicitly religious activities, including activities that involve overt religious content, such as worship, religious instruction, or proselytization, or any manner prohibited by law. Among other things, faith-based organizations may use space in their facilities to provide program-funded services, without removing or altering religious art, icons, scriptures, or other religious symbols. In addition, a Continuum of Care program-funded religious organization retains its authority over its internal governance, and it may retain religious terms in its organization's name, select its board members on a religious basis, and include religious references in its organization's mission statements and other governing documents.

(4) *Alternative provider.* If a program participant or prospective program participant of the Continuum of Care program supported by HUD objects to the religious character of an organization that provides services under the program, that organization shall, within a reasonably prompt time after the objection, undertake reasonable efforts to identify and refer the program participant to an alternative provider to which the prospective program participant has no objection. Except for services provided by telephone, the Internet, or similar means, the referral must be to an alternate provider in reasonable geographic proximity to the organization making the referral. In making the referral, the organization shall comply with applicable privacy laws and regulations. Recipients and subrecipients shall document any objections from program participants and prospective program participants and any efforts to refer such participants to alternative providers in accordance with the requirements of § 578.103(a)(13). Recipients shall ensure that all subrecipient agreements make organizations receiving program funds aware of these requirements.

(5) *Structures.* Program funds may not be used for the acquisition, construction, or rehabilitation of structures to the extent that those structures are used for explicitly religious activities. Program funds may

be used for the acquisition, construction, or rehabilitation of structures only to the extent that those structures are used for conducting eligible activities under this part. When a structure is used for both eligible and explicitly religious activities, program funds may not exceed the cost of those portions of the acquisition, new construction, or rehabilitation that are attributable to eligible activities in accordance with the cost accounting requirements applicable to the Continuum of Care program. Sanctuaries, chapels, or other rooms that a Continuum of Care program-funded religious congregation uses as its principal place of worship, however, are ineligible for Continuum of Care program-funded improvements. Disposition of real property after the term of the grant, or any change in the use of the property during the term of the grant, is subject to governmentwide regulations governing real property disposition (see 24 CFR parts 84 and 85).

(6) *Supplemental funds.* If a State or local government voluntarily contributes its own funds to supplement federally funded activities, the State or local government has the option to segregate the federal funds or commingle them. However, if the funds are commingled, this section applies to all of the commingled funds.

(c) *Restriction on combining funds.* In a single structure or housing unit, the following types of assistance may not be combined:

- (1) Leasing and acquisition, rehabilitation, or new construction;
- (2) Tenant-based rental assistance and acquisition, rehabilitation, or new construction;
- (3) Short- or medium-term rental assistance and acquisition, rehabilitation, or new construction;
- (4) Rental assistance and leasing; or
- (5) Rental assistance and operating.

(d) *Program fees.* Recipients and subrecipients may not charge program participants program fees.

**§ 578.89 Limitation on use of grant funds to serve persons defined as homeless under other federal laws.**

(e) *Application requirement.* Applicants that intend to serve unaccompanied youth and families with children and youth defined as homeless under other federal laws in paragraph (3) of the homeless definition in § 576.2 must demonstrate in their application, to HUD's satisfaction, that the use of grant funds to serve such persons is an equal or greater priority than serving persons defined as homeless under paragraphs (1), (2), and (4) of the

definition of homeless in § 576.2. To demonstrate that it is of equal or greater priority, applicants must show that it is equally or more cost effective in meeting the overall goals and objectives of the plan submitted under section 427(b)(1)(B) of the Act, especially with respect to children and unaccompanied youth.

(b) *Limit.* No more than 10 percent of the funds awarded to recipients within a single Continuum of Care's geographic area may be used to serve such persons.

(c) *Exception.* The 10 percent limitation does not apply to Continuums in which the rate of homelessness, as calculated in the most recent point-in-time count, is less than one-tenth of one percent of the total population.

#### § 578.91 Termination of assistance to program participants.

(a) *Termination of assistance.* The recipient or subrecipient may terminate assistance to a program participant who violates program requirements or conditions of occupancy. Termination under this section does not bar the recipient or subrecipient from providing further assistance at a later date to the same individual or family.

(b) *Due process.* In terminating assistance to a program participant, the recipient or subrecipient must provide a formal process that recognizes the rights of individuals receiving assistance under the due process of law. This process, at a minimum, must consist of:

(1) Providing the program participant with a written copy of the program rules and the termination process before the participant begins to receive assistance;

(2) Written notice to the program participant containing a clear statement of the reasons for termination;

(3) A review of the decision, in which the program participant is given the opportunity to present written or oral objections before a person other than the person (or a subordinate of that person) who made or approved the termination decision; and

(4) Prompt written notice of the final decision to the program participant.

(c) *Hard-to-house populations.* Recipients and subrecipients that are providing permanent supportive housing for hard-to-house populations of homeless persons must exercise judgment and examine all extenuating circumstances in determining when violations are serious enough to warrant termination so that a program participant's assistance is terminated only in the most severe cases.

#### § 578.93 Fair Housing and Equal Opportunity.

(a) *Nondiscrimination and equal opportunity requirements.* The nondiscrimination and equal opportunity requirements set forth in 24 CFR 5.105(a) are applicable.

(b) *Housing for specific subpopulations.* Recipients and subrecipients may exclusively serve a particular homeless subpopulation in transitional or permanent housing if the housing addresses a need identified by the Continuum of Care for the geographic area and meets one of the following:

(1) The housing may be limited to one sex where 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;

(2) The housing may be limited to a specific subpopulation, so long as admission does not discriminate against any protected class under federal nondiscrimination laws in 24 CFR 5.105 (e.g., the housing may be limited to homeless veterans, victims of domestic violence and their children, or chronically homeless persons and families).

(3) The housing may be limited to families with children.

(4) If the housing has in residence at least one family with a child under the age of 18, the housing may exclude registered sex offenders and persons with a criminal record that includes a violent crime from the project so long as the child resides in the housing.

(5) Sober housing may exclude persons who refuse to sign an occupancy agreement or lease that prohibits program participants from possessing, using, or being under the influence of illegal substances and/or alcohol on the premises.

(6) If the housing is assisted with funds under a federal program that is limited by federal statute or Executive Order to a specific subpopulation, the housing may be limited to that subpopulation (e.g., housing also assisted with funding from the Housing Opportunities for Persons with AIDS program under 24 CFR part 574 may be limited to persons with acquired immunodeficiency syndrome or related diseases).

(7) Recipients may limit admission to or provide a preference for the housing to subpopulations of homeless persons and families who need the specialized supportive services that are provided in the housing (e.g., substance abuse

addiction treatment, domestic violence services, or a high intensity package designed to meet the needs of hard-to-reach homeless persons). While the housing may offer services for a particular type of disability, no otherwise eligible individuals with disabilities or families including an individual with a disability, who may benefit from the services provided may be excluded on the grounds that they do not have a particular disability.

(c) *Affirmatively furthering fair housing.* A recipient must implement its programs in a manner that affirmatively furthers fair housing, which means that the recipient must:

(1) Affirmatively market their housing and supportive services to eligible persons regardless of race, color, national origin, religion, sex, age, familial status, or handicap who are least likely to apply in the absence of special outreach, and maintain records of those marketing activities;

(2) Where a recipient encounters a condition or action that impedes fair housing choice for current or prospective program participants, provide such information to the jurisdiction that provided the certification of consistency with the Consolidated Plan; and

(3) Provide program participants with information on rights and remedies available under applicable federal, State and local fair housing and civil rights laws.

(d) *Accessibility and integrative housing and services for persons with disabilities.* Recipients and subrecipients must comply with the accessibility requirements of the Fair Housing Act (24 CFR part 100), Section 504 of the Rehabilitation Act of 1973 (24 CFR part 8), and Titles II and III of the Americans with Disabilities Act, as applicable (28 CFR parts 35 and 36). In accordance with the requirements of 24 CFR 8.4(d), recipients must ensure that their program's housing and supportive services are provided in the most integrated setting appropriate to the needs of persons with disabilities.

(e) *Prohibition against involuntary family separation.* The age and gender of a child under age 18 must not be used as a basis for denying any family's admission to a project that receives funds under this part.

#### § 578.95 Conflicts of interest.

(a) *Procurement.* For the procurement of property (goods, supplies, or equipment) and services, the recipient and its subrecipients must comply with the codes of conduct and conflict-of-interest requirements under 24 CFR 85.36 (for governments) and 24 CFR

84.42 (for private nonprofit organizations).

(b) *Continuum of Care board members.* No Continuum of Care board member may participate in or influence discussions or resulting decisions concerning the award of a grant or other financial benefits to the organization that the member represents.

(c) *Organizational conflict.* An organizational conflict of interest arises when, because of activities or relationships with other persons or organizations, the recipient or subrecipient is unable or potentially unable to render impartial assistance in the provision of any type or amount of assistance under this part, or when a covered person's, as in paragraph (d)(1) of this section, objectivity in performing work with respect to any activity assisted under this part is or might be otherwise impaired. Such an organizational conflict would arise when a board member of an applicant participates in decision of the applicant concerning the award of a grant, or provision of other financial benefits, to the organization that such member represents. It would also arise when an employee of a recipient or subrecipient participates in making rent reasonableness determinations under § 578.49(b)(2) and § 578.51(g) and housing quality inspections of property under § 578.75(b) that the recipient, subrecipient, or related entity owns.

(d) *Other conflicts.* For all other transactions and activities, the following restrictions apply:

(1) No covered person, meaning a person who is an employee, agent, consultant, officer, or elected or appointed official of the recipient or its subrecipients and who exercises or has exercised any functions or responsibilities with respect to activities assisted under this part, or who is in a position to participate in a decision-making process or gain inside information with regard to activities assisted under this part, may obtain a financial interest or benefit from an assisted activity, have a financial interest in any contract, subcontract, or agreement with respect to an assisted activity, or have a financial interest in the proceeds derived from an assisted activity, either for him or herself or for those with whom he or she has immediate family or business ties, during his or her tenure or during the one-year period following his or her tenure.

(2) *Exceptions.* Upon the written request of the recipient, HUD may grant an exception to the provisions of this section on a case-by-case basis, taking into account the cumulative effects of

the criteria in paragraph (d)(2)(ii) of this section, provided that the recipient has satisfactorily met the threshold requirements of paragraph (d)(2)(ii) of this section.

(i) *Threshold requirements.* HUD will consider an exception only after the recipient has provided the following documentation:

(A) Disclosure of the nature of the conflict, accompanied by a written assurance, if the recipient is a government, that there has been public disclosure of the conflict and a description of how the public disclosure was made; and if the recipient is a private nonprofit organization, that the conflict has been disclosed in accordance with their written code of conduct or other conflict-of-interest policy; and

(B) An opinion of the recipient's attorney that the interest for which the exception is sought would not violate State or local law, or if the subrecipient is a private nonprofit organization, the exception would not violate the organization's internal policies.

(ii) *Factors to be considered for exceptions.* In determining whether to grant a requested exception after the recipient has satisfactorily met the threshold requirements under paragraph (c)(3)(i) of this section, HUD must conclude that the exception will serve to further the purposes of the Continuum of Care program and the effective and efficient administration of the recipient's or subrecipient's project, taking into account the cumulative effect of the following factors, as applicable:

(A) Whether the exception would provide a significant cost benefit or an essential degree of expertise to the program or project that would otherwise not be available;

(B) Whether an opportunity was provided for open competitive bidding or negotiation;

(C) Whether the affected person has withdrawn from his or her functions, responsibilities, or the decision-making process with respect to the specific activity in question;

(D) Whether the interest or benefit was present before the affected person was in the position described in paragraph (c)(1) of this section;

(E) Whether undue hardship will result to the recipient, the subrecipient, or the person affected, when weighed against the public interest served by avoiding the prohibited conflict;

(F) Whether the person affected is a member of a group or class of persons intended to be the beneficiaries of the assisted activity, and the exception will permit such person to receive generally

the same interests or benefits as are being made available or provided to the group or class; and

(G) Any other relevant considerations.

#### § 578.97 Program income.

(a) *Defined.* Program income is the income received by the recipient or subrecipient directly generated by a grant-supported activity.

(b) *Use.* Program income earned during the grant term shall be retained by the recipient, and added to funds committed to the project by HUD and the recipient, used for eligible activities in accordance with the requirements of this part. Costs incident to the generation of program income may be deducted from gross income to calculate program income, provided that the costs have not been charged to grant funds.

(c) *Rent and occupancy charges.* Rents and occupancy charges collected from program participants are program income. In addition, rents and occupancy charges collected from residents of transitional housing may be reserved, in whole or in part, to assist the residents from whom they are collected to move to permanent housing.

#### § 578.99 Applicability of other federal requirements.

In addition to the requirements set forth in 24 CFR part 5, use of assistance provided under this part must comply with the following federal requirements:

(a) *Environmental review.* Activities under this part are subject to environmental review by HUD under 24 CFR part 50 as noted in § 578.31.

(b) *Section 6002 of the Solid Waste Disposal Act.* State agencies and agencies of a political subdivision of a state that are using assistance under this part for procurement, and any person contracting with such an agency with respect to work performed under an assisted contract, must comply with the requirements of Section 6003 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. In accordance with Section 6002, these agencies and persons must:

(1) Procure items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired in the preceding fiscal year exceeded \$10,000;

(2) Procure solid waste management services in a manner that maximizes energy and resource recovery; and



(3) Must have established an affirmative procurement program for the procurement of recovered materials identified in the EPA guidelines.

(c) *Transparency Act Reporting.* Section 872 of the Duncan Huuter Defense Appropriations Act of 2009, and additional requirements published by the Office of Management and Budget (OMB), requires recipients to report subawards made either as pass-through awards, subrecipient awards, or vendor awards in the Federal Government Web site [www.fsrs.gov](http://www.fsrs.gov) or its successor system. The reporting of award and subaward information is in accordance with the requirements of the Federal Financial Assistance Accountability and Transparency Act of 2006, as amended by section 6202 of Public Law 110–252 and in OMB Policy Guidance issued to the federal agencies on September 14, 2010 (75 FR 55669).

(d) *The Coastal Barrier Resources Act of 1982* (16 U.S.C. 3501 *et seq.*) may apply to proposals under this part, depending on the assistance requested.

(e) *Applicability of OMB Circulars.* The requirements of 24 CFR part 85—Administrative Requirements for Grants and Cooperative Agreements to State, Local, and Federally Recognized Indian Tribal Governments and 2 CFR part 225—Cost Principles for State, Local and Indian Tribal Governments (OMB Circular A–87)—apply to governmental recipients and subrecipients except where inconsistent with the provisions of this part. The requirements of 24 CFR part 84—Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations; 2 CFR part 230—Cost Principles for Non-Profit Organizations (OMB Circular A–122); and 2 CFR part 220—Cost Principles for Education Institutions apply to the nonprofit recipients and subrecipients, except where inconsistent with the provisions of the McKinney-Vento Act or this part.

(f) *Lead-based paint.* The Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851–4856), and implementing regulations at 24 CFR part 35, subparts A, B, H, J, K, M, and R apply to activities under this program.

(g) *Audit.* Recipients and subrecipients must comply with the audit requirements of OMB Circular A–133, “Audits of States, Local Governments, and Non-profit Organizations.”

(h) *Davis-Bacon Act.* The provisions of the Davis-Bacon Act do not apply to this program.

(i) *Section 3 of the Housing and Urban Development Act.* Recipients and subrecipients must, as applicable, comply with Section 3 of the Housing and Urban Development Act of 1968 and its implementing regulations at 24 CFR part 135, as applicable.

#### Subpart G—Grant Administration

##### § 578.101 Technical assistance.

(a) *Purpose.* The purpose of Continuum of Care technical assistance is to increase the effectiveness with which Continuum of Care, eligible applicants, recipients, subrecipients, and UFAs implement and administer their Continuum of Care planning process; improve their capacity to prepare applications; prevent the separation of families in projects funded under the Emergency Solutions Grants, Continuum of Care, and Rural Housing Stability Assistance programs; and adopt and provide best practices in housing and services for persons experiencing homelessness.

(b) *Defined.* Technical assistance means the transfer of skills and knowledge to entities that may need, but do not possess, such skills and knowledge. The assistance may include, but is not limited to, written information such as papers, manuals, guides, and brochures; person-to-person exchanges; web-based curriculums, training and Webinars, and their costs.

(c) *Set-aside.* HUD may set aside funds annually to provide technical assistance, either directly by HUD staff or indirectly through third-party providers.

(d) *Awards.* From time to time, as HUD determines the need, HUD may advertise and competitively select providers to deliver technical assistance. HUD may enter into contracts, grants, or cooperative agreements, when necessary, to implement the technical assistance. HUD may also enter into agreements with other federal agencies for awarding the technical assistance funds.

##### § 578.103 Recordkeeping requirements.

(a) *In general.* The recipient and its subrecipients must establish and maintain standard operating procedures for ensuring that Continuum of Care program funds are used in accordance with the requirements of this part and must establish and maintain sufficient records to enable HUD to determine whether the recipient and its subrecipients are meeting the requirements of this part, including:

(1) *Continuum of Care records.* Each collaborative applicant must keep the following documentation related to

establishing and operating a Continuum of Care:

(i) Evidence that the Board selected by the Continuum of Care meets the requirements of § 578.5(b);

(ii) Evidence that the Continuum has been established and operated as set forth in subpart B of this part, including published agendas and meeting minutes, an approved Governance Charter that is reviewed and updated annually, a written process for selecting a board that is reviewed and updated at least once every 5 years, evidence required for designating a single HMIS for the Continuum, and monitoring reports of recipients and subrecipients;

(iii) Evidence that the Continuum has prepared the application for funds as set forth in § 578.9, including the designation of the eligible applicant to be the collaborative applicant.

(2) *Unified funding agency records.* UFAs that requested grant amendments from HUD, as set forth in § 578.105, must keep evidence that the grant amendment was approved by the Continuum. This evidence may include minutes of meetings at which the grant amendment was discussed and approved.

(3) *Homeless status.* Acceptable evidence of the homeless as status is set forth in 24 CFR 576.500(b).

(4) *At risk of homelessness status.* For those recipients and subrecipients that serve persons at risk of homelessness, the recipient or subrecipient must keep records that establish “at risk of homelessness” status of each individual or family who receives Continuum of Care homelessness prevention assistance. Acceptable evidence is found in 24 CFR 576.500(c).

(5) *Records of reasonable belief of imminent threat of harm.* For each program participant who moved to a different Continuum of Care due to imminent threat of further domestic violence, dating violence, sexual assault, or stalking under § 578.51(c)(3), each recipient or subrecipient of assistance under this part must retain:

(i) Documentation of the original incidence of domestic violence, dating violence, sexual assault, or stalking, only if the original violence is not already documented in the program participant’s case file. This may be written observation of 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; medical or dental records; court records or law enforcement records; or written certification by the

program participant to whom the violence occurred or by the head of household.

(ii) Documentation of the reasonable belief of imminent threat of further domestic violence, dating violence, or 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. This may be 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; current restraining order; recent court order or other court records; law enforcement report or records; communication records from the perpetrator of the violence or family members or friends of the perpetrator of the violence, including emails, voicemails, text messages, and social media posts; or a written certification by the program participant to whom the violence occurred or the head of household.

(6) *Annual income.* For each program participant who receives housing assistance where rent or an occupancy charge is paid by the program participant, the recipient or subrecipient must keep the following documentation of annual income:

(i) Income evaluation form specified by HUD and completed by the recipient or subrecipient; and

(ii) Source documents (e.g., most recent wage statement, unemployment compensation statement, public benefits statement, bank statement) for the assets held by the program participant and income received before the date of the evaluation;

(iii) To the extent that source documents are unobtainable, a written statement by the relevant third party (e.g., employer, government benefits administrator) or the written certification by the recipient's or subrecipient's intake staff of the oral verification by the relevant third party of the income the program participant received over the most recent period; or

(iv) To the extent that source documents and third-party verification are unobtainable, the written certification by the program participant of the amount of income that the program participant is reasonably expected to receive over the 3-month period following the evaluation.

(7) *Program participant records.* In addition to evidence of "homeless" status or "at-risk-of-homelessness" status, as applicable, the recipient or

subrecipient must keep records for each program participant that document:

(i) The services and assistance provided to that program participant, including evidence that the recipient or subrecipient has conducted an annual assessment of services for those program participants that remain in the program for more than a year and adjusted the service package accordingly, and including case management services as provided in § 578.37(a)(1)(ii)(F); and

(ii) Where applicable, compliance with the termination of assistance requirement in § 578.91.

(8) *Housing standards.* The recipient or subrecipient must retain documentation of compliance with the housing standards in § 578.75(b), including inspection reports.

(9) *Services provided.* The recipient or subrecipient must document the types of supportive services provided under the recipient's program and the amounts spent on those services. The recipient or subrecipient must keep record that these records were reviewed at least annually and that the service package offered to program participants was adjusted as necessary.

(10) *Match.* The recipient must keep records of the source and use of contributions made to satisfy the match requirement in § 578.73. The records must indicate the grant and fiscal year for which each matching contribution is counted. The records must show how the value placed on third party in-kind contributions was derived. To the extent feasible, volunteer services must be supported by the same methods that the organization uses to support the allocation of regular personnel costs.

(11) *Conflicts of interest.* The recipient and its subrecipients must keep records to show compliance with the organizational conflict-of-interest requirements in § 578.95(c), the Continuum of Care board conflict-of-interest requirements in § 578.95(b), the other conflict requirements in § 578.95(d), a copy of the personal conflict-of-interest policy developed and implemented to comply with the requirements in § 578.95, and records supporting exceptions to the personal conflict-of-interest prohibitions.

(12) *Homeless participation.* The recipient or subrecipient must document its compliance with the homeless participation requirements under § 578.75(g).

(13) *Faith-based activities.* The recipient and its subrecipients must document their compliance with the faith-based activities requirements under § 578.87(b).

(14) *Affirmatively Furthering Fair Housing.* Recipients and subrecipients

must maintain copies of their marketing outreach, and other materials used to inform eligible persons of the program to document compliance with the requirements in § 578.93(c).

(15) *Other federal requirements.* The recipient and its subrecipients must document their compliance with the federal requirements in § 578.99, as applicable.

(16) *Subrecipients and contractors.* (i) The recipient must retain copies of all solicitations of and agreements with subrecipients, records of all payment requests by and dates of payments made to subrecipients, and documentation of all monitoring and sanctions of subrecipients, as applicable.

(ii) The recipient must retain documentation of monitoring subrecipients, including any monitoring findings and corrective actions required.

(iii) The recipient and its subrecipients must retain copies of all procurement contracts and documentation of compliance with the procurement requirements in 24 CFR 85.36 and 24 CFR part 84.

(17) *Other records specified by HUD.* The recipient and subrecipients must keep other records specified by HUD.

(b) *Confidentiality.* In addition to meeting the specific confidentiality and security requirements for HMIS data, the recipient and its subrecipients must develop and implement written procedures to ensure:

(1) All records containing protected identifying information of any individual or family who applies for and/or receives Continuum of Care assistance will be kept secure and confidential;

(2) The address or location of any family violence project assisted with Continuum of Care funds will not be made public, except with written authorization of the person responsible for the operation of the project; and

(3) The address or location of any housing of a program participant will not be made public, except as provided under a preexisting privacy policy of the recipient or subrecipient and consistent with State and local laws regarding privacy and obligations of confidentiality;

(c) *Period of record retention.* All records pertaining to Continuum of Care funds must be retained for the greater of 5 years or the period specified below. Copies made by microfilming, photocopying, or similar methods may be substituted for the original records.

(1) Documentation of each program participant's qualification as a family or individual at risk of homelessness or as a homeless family or individual and other program participant records must

be retained for 5 years after the expenditure of all funds from the grant under which the program participant was served; and

(2) Where Continuum of Care funds are used for the acquisition, new construction, or rehabilitation of a project site, records must be retained until 15 years after the date that the project site is first occupied, or used, by program participants.

(d) *Access to records.* (1) *Federal Government rights.* Notwithstanding the confidentiality procedures established under paragraph (b) of this section, HUD, the HUD Office of the Inspector General, and the Comptroller General of the United States, or any of their authorized representatives, must have the right of access to all books, documents, papers, or other records of the recipient and its subrecipients that are pertinent to the Continuum of Care grant, in order to make audits, examinations, excerpts, and transcripts. These rights of access are not limited to the required retention period, but last as long as the records are retained.

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

(e) *Reports.* In addition to the reporting requirements in 24 CFR parts 84 and 85, the recipient must collect and report data on its use of Continuum of Care funds in an Annual Performance Report (APR), as well as in any additional reports as and when required by HUD. Projects receiving grant funds only for acquisition, rehabilitation, or new construction must submit APRs for 15 years from the date of initial occupancy or the date of initial service provision, unless HUD provides an exception under § 578.81(e).

#### § 578.105 Grant and project changes.

(a) *For Unified Funding Agencies and Continuums having only one recipient.*

(1) The recipient may not make any significant changes without prior HUD approval, evidenced by a grant amendment signed by HUD and the recipient. Significant grant changes include a change of recipient, a shift in a single year of more than 10 percent of the total amount awarded under the grant for one approved eligible activity category to another activity and a permanent change in the subpopulation served by any one project funded under the grant, as well as a permanent

proposed reduction in the total number of units funded under the grant.

(2) Approval of substitution of the recipient is contingent on the new recipient meeting the capacity criteria in the NOFA under which the grant was awarded, or the most recent NOFA. Approval of shifting funds between activities and changing subpopulations is contingent on the change being necessary to better serve eligible persons within the geographic area and ensuring that the priorities established under the NOFA in which the grant was originally awarded, or the most recent NOFA, are met.

(b) *For Continuums having more than one recipient.* (1) The recipients or subrecipients may not make any significant changes to a project without prior HUD approval, evidenced by a grant amendment signed by HUD and the recipient. Significant changes include a change of recipient, a change of project site, additions or deletions in the types of eligible activities approved for a project, a shift of more than 10 percent from one approved eligible activity to another, a reduction in the number of units, and a change in the subpopulation served.

(2) Approval of substitution of the recipient is contingent on the new recipient meeting the capacity criteria in the NOFA under which the grant was awarded, or the most recent NOFA. Approval of shifting funds between activities and changing subpopulations is contingent on the change being necessary to better serve eligible persons within the geographic area and ensuring that the priorities established under the NOFA in which the grant was originally awarded, or the most recent NOFA, are met.

(c) *Documentation of changes not requiring a grant amendment.* Any other changes to an approved grant or project must be fully documented in the recipient's or subrecipient's records.

#### § 578.107 Sanctions.

(a) *Performance reviews.* (1) HUD will review the performance of each recipient in carrying out its responsibilities under this part, with or without prior notice to the recipient. In conducting performance reviews, HUD will rely primarily on information obtained from the records and reports from the recipient and subrecipients, as well as information from on-site monitoring, audit reports, and information generated from HUD's financial and reporting systems (e.g., LOCCS and e-snaps) and HMIS. Where applicable, HUD may also consider relevant information pertaining to the recipient's performance gained from

other sources, including citizen comments, complaint determinations, and litigation.

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

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

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

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

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

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

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

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

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

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

subrecipients or returning funds to HUD; and

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

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

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

(4) HUD may continue the grant with a substitute recipient of HUD's choosing.

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

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

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

(8) HUD may condition a future grant.

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

(c) *Recipient sanctions.* If the recipient determines that a subrecipient is not complying with a program requirement or its subrecipient agreement, the recipient must take one of the actions listed in paragraphs (a) and (b) of this section.

(d) *Deobligation.* HUD may deobligate funds for the following reasons:

(1) If the timeliness standards in § 578.85 are not met;

(2) If HUD determines that delays completing construction activities for a project will mean that the funds for

other funded activities cannot reasonably be expected to be expended for eligible costs during the remaining term of the grant;

(3) If the actual total cost of acquisition, rehabilitation, or new construction for a project is less than the total cost agreed to in the grant agreement;

(4) If the actual annual leasing costs, operating costs, supportive services costs, rental assistance costs, or HMIS costs are less than the total cost agreed to in the grant agreement for a one-year period;

(5) Program participants have not moved into units within 3 months of the time that the units are available for occupancy; and

(6) The grant agreement may set forth in detail other circumstances under which funds may be deobligated and other sanctions may be imposed.

#### § 578.109 Closeout.

(a) *In general.* Grants will be closed out in accordance with the requirements of 24 CFR parts 84 and 85, and closeout procedures established by HUD.

(b) *Reports.* Applicants must submit all reports required by HUD no later than 90 days from the date of the end of the project's grant term.

(c) *Closeout agreement.* Any obligations remaining as of the date of the closeout must be covered by the terms of a closeout agreement. The agreement will be prepared by HUD in consultation with the recipient. The agreement must identify the grant being closed out, and include provisions with respect to the following:

(1) Identification of any closeout costs or contingent liabilities subject to payment with Continuum of Care program funds after the closeout agreement is signed;

(2) Identification of any unused grant funds to be deobligated by HUD;

(3) Identification of any program income on deposit in financial institutions at the time the closeout agreement is signed;

(4) Description of the recipient's responsibility after closeout for:

(i) Compliance with all program requirements in using program income on deposit at the time the closeout agreement is signed and in using any other remaining Continuum of Care program funds available for closeout costs and contingent liabilities;

(ii) Use of real property assisted with Continuum of Care program funds in accordance with the terms of commitment and principles;

(iii) Use of personal property purchased with Continuum of Care program funds; and

(iv) Compliance with requirements governing program income received subsequent to grant closeout.

(5) Other provisions appropriate to any special circumstances of the grant closeout, in modification of or in addition to the obligations in paragraphs (c)(1) through (4) of this section.

Dated: June 28, 2012.

Mark Johnston,

Assistant Secretary for Community Planning and Development (Acting).

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DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT

DEVELOPMENT SERVICES BUILDING  
150 BEAVERCREEK ROAD OREGON CITY, OR 97045

October 24, 2013

Board of County Commissioners  
Clackamas County

Members of the Board:

Approval of an Urban Growth Management Agreement (UGMA)  
between the City of Happy Valley and Clackamas County

<b>Purpose/Outcome</b>	Consideration of an updated Urban Growth Management Agreement (UGMA) between the County and the City of Happy Valley – an agreement to outline planning responsibilities for areas the City is interested in potentially annexing in the future.
<b>Dollar Amount and Fiscal Impact</b>	None
<b>Funding Source</b>	None
<b>Safety Impact</b>	None
<b>Duration</b>	The UGMA will become effective upon execution of the agreement and continue for five (5) years and will automatically renew for an additional ten (10) years if not terminated by either party.
<b>Previous Board Action/Review</b>	The County's current UGMA with the City of Happy Valley was approved by the Board of County Commissioners in May 2001.  On June 11, 2013, the Board discussed Happy Valley's area of interest, particularly the portion of the southern boundary that abuts Gladstone's area of interest. At that time, the Board directed County Planning & Zoning staff to proceed with the Happy Valley UGMA using the area of interest presented.
<b>Contact Person</b>	Martha Fritzie, Senior Planner – Planning and Zoning Division, (503) 742-4529
<b>Contract No.</b>	Not Applicable

**BACKGROUND:**

As required by state statute, Clackamas County has an urban growth management agreement (UGMA) with every city in the county except Portland (because city of Portland lands within the county are so minimal) and Damascus (because the city has not yet adopted a Comprehensive Plan). These UGMAs are necessary for management of areas of mutual interest to coordinate planning and service delivery so as to provide a smooth transition when lands are annexed and to provide certainty for property owners via consistent policies and standards for development. Each agreement is individually negotiated and pertains to specific issues between the County and that City.

It is important to understand that an UGMA agreement does not lead to immediate annexation of properties. It is simply a "political contract" for the jurisdictions to have in place for consideration of future annexation and provision of all urban services by specific providers in a targeted geographic area. This geographic area is considered the "area of interest" for the City.

Currently the County has an UGMA with the City of Happy Valley that was adopted in 2001. However, the area of interest adopted in the 2001 UGMA no longer accurately represents where the city wants to grow and where the city can logically provide services, including an area to the west that overlaps with the City of Milwaukie's area of interest (adopted in 1990) and a large area to the east that is now part of the city of Damascus. As part of Happy Valley's update to the UGMA, the city established a new area of interest, or "Urban Planning Area (UPA)." This area was established over a two-year period through extensive coordination and work with the City of Milwaukie and with outreach to the city of Gladstone, the relevant Community Planning Organizations (CPO's), and pertinent service districts.

The resulting boundaries of Happy Valley's UPA are illustrated on Exhibit A (attached) and include:

- I-205 to the west (see attached letter of support from Milwaukie);
- the Clackamas County/Multnomah County boundary to the north;
- the shared Happy Valley/Damascus boundary to the east; and
- the Portland Metropolitan Urban Growth Boundary (UGB) to the south (roughly equivalent to the location of the Clackamas River).

Other changes to the Happy Valley UGMA language were negotiated between city and county staff and attorneys and reflect changes both jurisdictions felt were necessary to better reflect current conditions.

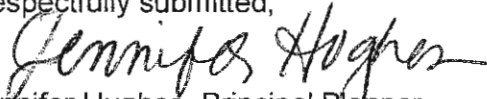
The attached UGMA has been reviewed and approved by County Counsel and approved and signed by the City of Happy Valley.

The agreement is valid for five (5) years and will automatically renew for an additional ten (10) years if not terminated by either party. The agreement may be terminated by either party by providing at least 90 days written notice at any time.

**RECOMMENDATION:**

The Planning and Zoning Division recommends the Board approve the UGMA as submitted.

Respectfully submitted,



Jennifer Hughes, Principal Planner  
Planning and Zoning Division

**CLACKAMAS COUNTY – CITY OF HAPPY VALLEY  
URBAN GROWTH MANAGEMENT AGREEMENT**

This Urban Growth Management Agreement (“UGMA”), is entered into by and between the City of Happy Valley, an Oregon municipal corporation (“City”) and Clackamas County, a political subdivision of the State of Oregon (“County”) (collectively, the “Parties,” and each individually a “Party”).

**RECITALS**

WHEREAS, authority is conferred upon local government under ORS 190.010 to enter into an agreement for the performance of any and all functions and activities that the local government, its officers or agencies has authority to perform; and

WHEREAS, the City and the County have a common interest in coordinated comprehensive plans, compatible land uses and coordinated planning of urban facilities within the Happy Valley Urban Planning Area (HVUPA), as described in Exhibit A to this Agreement; and

WHEREAS, the exchange of information should concentrate on issues that may have a significant impact on either Party and should not entail cumbersome procedural requirements that may increase the time necessary to expedite decision making; and

WHEREAS, OAR 660-003-010 requires management plans for unincorporated areas within an urban growth boundary to be set forth in a statement submitted to the Land Conservation and Development Commission (“LCDC”) at the time of acknowledgement request; and

WHEREAS, OAR 660-011-015 requires an Urban Growth Management Agreement (“UGMA”) to specify the entity responsible for the preparation, adoption and amendment of the public facility plan(s); and

WHEREAS, the City and County previously entered into an UGMA on January 30, 1992, and amended on June 19, 2001, which is to be superseded by this Agreement;

NOW THEREFORE, the Parties agree as follows:

**AGREEMENT**

**1. Definitions**

As used in this Agreement, the following words shall mean or include:

- 1.1 Comprehensive Plan. The City of Happy Valley Comprehensive Plan, the Clackamas County Comprehensive Plan, and any other plan document described

in ORS 197.015(5) that is adopted by a Party and that applies within the Urban Planning Area.

**1.2** Land Use Policies. The whole or any part of any comprehensive plan, subarea comprehensive plan, Title 16 of the City's Municipal Code ("Development Code"), refinement plan, public facility plan developed under OAR Chapter 660, Division I, land use regulation as defined by ORS 197.015(11), or any other generally applicable policy regulating the use or development of land. As applied to Metro, "Land Use Policies" include Planning Goals and Objectives, Regional Urban Growth Goals and Objectives, Functional Plans, and Regional Framework Plans.

**1.3** Happy Valley Urban Planning Area. The Happy Valley Urban Planning Area ("HVUPA") includes unincorporated land within the Portland Metropolitan Urban Growth Boundary ("UGB") as illustrated on the map attached as Exhibit A to this Agreement.

## **2. Terms of this Agreement.**

This Agreement supersedes all prior UGMAs between the parties. This UGMA becomes effective upon the Effective Date and continue thereafter for an initial term of five (5) years, unless terminated as provided in this Section or modified consistent with Section 7.4. This Agreement automatically renews for one ten (10) year term unless, not later than 90 days prior to the expiration of the initial term of this UGMA one of the Parties provides the other with written notice that it does not wish to renew the UGMA. Either party may terminate this agreement at any time after ninety (90) days written notice to the other party.

## **3. Comprehensive Plan Designation/Zoning, Permitting Authority, Annexation and Public Facilities Planning for Lands in the HVUPA.**

**3.1** Comprehensive Plan/Zoning Map Amendments. The County Comprehensive Plan and zoning shall apply to all unincorporated land within the HVUPA until such time as those lands are annexed into the City. Unless otherwise provided by law, the development of a comprehensive plan and/or comprehensive plan map amendment or zone change for the unincorporated areas within the HVUPA shall be a coordinated joint effort of the Parties. The County shall be responsible for preparing all legislative and quasi-judicial comprehensive plan amendments/zone changes within the HVUPA. The City shall have the unrestricted right to review and comment on all legislative and quasi-judicial comprehensive plan amendments/zone changes prepared by the County within the HVUPA.

**3.2** Permitting Authority and Annexation to City. The County Comprehensive Plan and land use regulations shall apply to an application for a permit or other land use review within the HVUPA. The County shall provide notice to the City of all land use applications and proposed legislative amendments to the county comprehensive plan and land use regulations affecting property within the HVUPA. The owner of property that is adjacent to the City (including by extension of a public right-of-



way or body of water) and who is seeking access to City-provided services (for example, Planning, Engineering, or Building Division permits) may be required to consent to annexation to the City.

3.3 Annexation Plan. Any City-initiated Annexation Plan shall be developed consistent with applicable state and regional laws. Opportunity shall be provided to citizens, the County, active Citizen Planning Organizations (CPOs) and affected service providers to review and comment on the Annexation Plan prior to any annexation election. Annexation Plan(s) will include development of public facilities plan(s) for the Annexation Plan area(s).

3.4 Public Facilities Plans. The City shall coordinate the preparation or amendment of public facilities plans within the HVUPA as may be required by OAR Chapter 660, Division 11 (Public Facilities Planning) and applicable sections of ORS Chapter 195 with the appropriate service providers. Upon annexation, an area within the HVUPA shall be provided with public facilities services through a combination of City-provided services and by way of intergovernmental agreements (“IGA’s”) with the sewer provider (Clackamas County Service District No. 1), water providers (Sunrise Water Authority and Clackamas River Water), county road services (Clackamas County Department of Transportation and Development), fire prevention service (Clackamas Fire District No. 1), parks services (North Clackamas Parks & Recreation District), open space (Metro), mass transit services (Tri-Met), and school facility planning (North Clackamas School District No. 12).

#### 4. City’s Responsibilities

4.1 Functions. All functions not specifically listed in this Section or any Exhibit as a City responsibility shall remain the County’s responsibility. The City shall timely distribute studies, information, requests, data and personal communications to the County on matters regarding infrastructure or policy issues that affect or are coordinated by the County.

4.2 Road Jurisdiction. The City shall assume jurisdiction of any County road classified by the County as minor arterial, collector, connector, or local streets that are within or abutting an area that is annexed to the City. The transfer shall be consistent with the provisions of ORS 373.270. When a road is transferred, the County shall upgrade the road to a Pavement Quality Index (PQI) standard of ‘8’ or provide the City with sufficient funds to allow the City to achieve the same standard. Any road that has been constructed to City required standards shall be considered to have a minimum PQI of ‘8’.

Subsequent to annexation but prior to transfer of either a collector or local street to the City, the following shall apply:

A. For development project(s) within the city limits on a County collector or

local street, the County shall determine if proposed improvements to the roadway can be built within the existing right-of-way to City standards.

B. If so, the County shall issue all appropriate permits directly to the City or developer and the City or developer shall thereafter submit a set of plans and any revisions approved by the City to the County in a timely fashion.

C. Following construction, inspection and acceptance by the City, the full section of the roadway including the roadway improvements shall thereafter be maintained by the City. The City agrees to initiate jurisdictional transfer of the full width of the portion of the road to which the improvements are made, not less than once a year.

**4.3. City Notice to and Coordination with the County and Community Planning Organizations (CPOs)**

A. The City shall provide notice to the County and the appropriate Community Planning Organization (CPO) at least 20 days prior to the first public hearing on all proposed annexations or extraterritorial service extensions into unincorporated areas.

B. The City shall provide notice to the County and appropriate CPO at least 20 days prior to the first public hearing on all proposed legislative changes to the City comprehensive plan or any quasi-judicial action that affects properties adjacent to incorporated areas.

C. The City shall notify and coordinate with the County on amendments to the City's Transportation System Plan (TSP).

D. City shall provide notice and a service-provider comment letter to the applicable County Department in conjunction with the City's review of any land use application or building permit in which the proposed development activity might affect County facilities.

**5. County's Responsibilities.**

**5.1. Development Proposals for Unincorporated HVUPA Areas.**

A. County shall retain responsibility and authority for all implementing regulations and land use actions for all unincorporated lands within the HVUPA, until such time as lands are annexed to the City.

B. County shall not form any new county service districts or support the annexation of land within the unincorporated HVUPA to such districts or to other service districts without first obtaining City approval.

**5.2. County Notice to and Coordination with the City for Lands in HVUPA.**

- A. The County shall provide notice to the City at least 20 days prior to the first scheduled public hearing on a quasi-judicial action or proposed legislative change to the County comprehensive plan text or implementing ordinances affecting land within the HVUPA.
- B. The County shall provide notice to the City at least 20 days prior to a staff decision on an application for administrative action as provided in the County's Zoning and Development Ordinance for property within the HVUPA.
- C. The County shall notify and invite City staff to participate in or comment on pre-application meetings for design review, conditional use permits, partitions, subdivisions or other significant development proposals within unincorporated areas of the HVUPA at least 15 days prior to meeting.
- D. Any amendments proposed by the County to the UGB within one mile of the HVUPA will be reviewed by the City and the County prior to submission to Metro.
- E. In any land use proceeding affecting property within the HVUPA, the County shall enter all written comments of the City into the public record and shall consider the same in the exercise of its planning and plan implementation responsibilities.
- F. The County shall organize and track County participation, comments, issues and conditions of approval, pre-application conferences, land use applications, construction plan review, pre-construction meetings, building permit release letters, occupancy permits and any other permit or process that involves coordination with the City.

## **6. Mutual Indemnification**

- 6.1 Subject to Article XI of the Oregon Constitution and ORS 30.260 to 30.300, the City will hold harmless, defend and indemnify the County, its elected officials, officers, and employees, for and against any claims or damages to property or injury to persons, resulting in whole or part from City's acts or omissions in performing any obligations under this Agreement.
- 6.2 Subject to Article XI of the Oregon Constitution and ORS 30.260 to 30.300, the County will hold harmless, defend and indemnify the City, its elected officials officers and employees for and against any claims or damages to property or injury to persons, resulting in whole or part from the County's acts or omissions in performing any obligation under this Agreement.

## **7. General Provisions.**

7.1 Applicable Law. This Agreement shall be governed by Oregon law and the Parties agree to submit to the jurisdiction of the courts of the State of Oregon.

7.2 Insurance Coverage.

- A. Commercial General Liability Insurance. City shall obtain and maintain at all times during the course of this Agreement commercial general liability insurance coverage pursuant to Oregon Tort Claims Act and subject to the limits of the Act covering Bodily Injury and Property Damage on an "occurrence" form in the amount of not less than \$1 Million per occurrence/\$2 Million general aggregate for the protection of the County, its officers, elected officials and employees. This coverage shall include Contractual Liability insurance for the indemnity provided under this Agreement.
- B. Additional Insured Provision. The City's insurance shall include "Clackamas County, its agents, officers and employees" as an additional insured.
- C. Notice of Cancellation. There shall be no cancellation, material change, exhaustion of aggregate limits or intent not to renew the City's insurance coverage without 60 days written notice to the County. Any failure to comply with the provision will not affect the insurance coverage provided to the County. The 60 days notice of cancellation provision shall be physically endorsed on to the policy.

7.3 Effective Date and Term. This Agreement shall become effective on the last date signed below and shall continue in effect according to its Terms.

7.4 Amendment. This Agreement may be amended at any time with the written consent of all Parties.

7.5 Assignment. Except as otherwise provided herein, the Parties may not assign any of their rights or responsibilities under this Agreement without prior written consent from the other Party, except that a Party may delegate or subcontract for performance of any of their responsibilities under this Agreement.

7.6 Dispute Resolution.

- A. Subject to mutually agreed upon extensions of time in writing, failure or unreasonable delay by any party to substantially perform any material provision of this agreement shall constitute default. In the event of an alleged default or breach of any term or condition of this agreement, the Party alleging such default or breach shall give the other Party not less than 30 days written notice specifying the nature of the alleged default and the manner in which the default may be cured satisfactorily. During this 30-

day period, the Party shall not be considered in default for purposes of termination or instituting legal proceedings.

- B. The Parties shall first attempt to resolve the dispute by negotiation, followed by mediation, if negotiation fails to resolve the dispute.
- C. Step One: (Negotiation). Each Party will select one or more person(s) to negotiate on behalf of the entity they represent. Those person(s) shall then meet and attempt to resolve the issue. If the dispute is resolved, there shall be a written determination of such resolution, signed by a representative of each Party and ratified by the governing bodies that shall then be binding.
- D. Step Two: (Mediation). If the dispute cannot be resolved within thirty (30) days at Step One, the Parties shall submit the matter to mediation. The Parties shall attempt to agree on a mediator. If they cannot agree, the Parties shall request a list of five (5) mediators from an entity or firm providing mediation services. The Parties will attempt to mutually agree on a mediator from the list provided, but if they cannot agree, each Party shall select one (1) name. The two selected shall select a third person who shall serve as the mediator. The common costs of mediation borne equally by the Parties with each bearing its own costs and fees. If the issue is resolved at this step, a written determination shall be signed by each Party and approved by the governing bodies.
- E. Step Three (Legal Action). If the dispute remains unresolved following mediation, the Parties may seek remedy by appropriate proceedings filed in Clackamas County Circuit Court. In any such judicial proceeding, each Party shall be responsible for its own costs and fees.

7.7 Execution in Counterparts. This Agreement may be executed in any number of counterparts, each of which may be executed by any one or more of the parties hereto, and all of such counterparts shall constitute one Agreement. Counterparts of executed signature pages may be attached to any one or more counterparts of this Agreement. To facilitate execution of this Agreement, the Parties may execute by facsimile transmission counterparts of the signature pages.

7.8 Severability. In the event a court of competent jurisdiction deems any portion or part of this Agreement to be unlawful or invalid, only that portion of part of the Agreement shall be considered unenforceable. The remainder of this Agreement shall continue to be valid.

7.9 Entire Agreement. This Agreement constitutes the entire agreement between the Parties and supersedes any prior oral or written agreements or representations relating to the Property. No waiver, consent, modification or change of terms of this Agreement shall bind the Parties unless in writing and signed by each party.

7.10 Notices. All notices or other communications required or permitted under this

Agreement shall be in writing, and shall be mailed or sent by scanned document (e-mailed) or faxed with hard copy to follow by post, addressed as follows:

To City: City of Happy Valley  
Economic & Community Development Department  
16000 SE Misty Drive  
Happy Valley, OR 97086

To County: Clackamas County Planning & Zoning Division  
150 Beaver Creek Rd.  
Oregon City, OR 97045

IN WITNESS WHEREOF, the respective parties have caused to be signed in their behalf to make and enter into this Agreement this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

CITY OF HAPPY VALLEY

By \_\_\_\_\_

Mayor

Date

9/19/13

CLACKAMAS COUNTY

By \_\_\_\_\_

Chair, Board of County Commissioners

Date \_\_\_\_\_

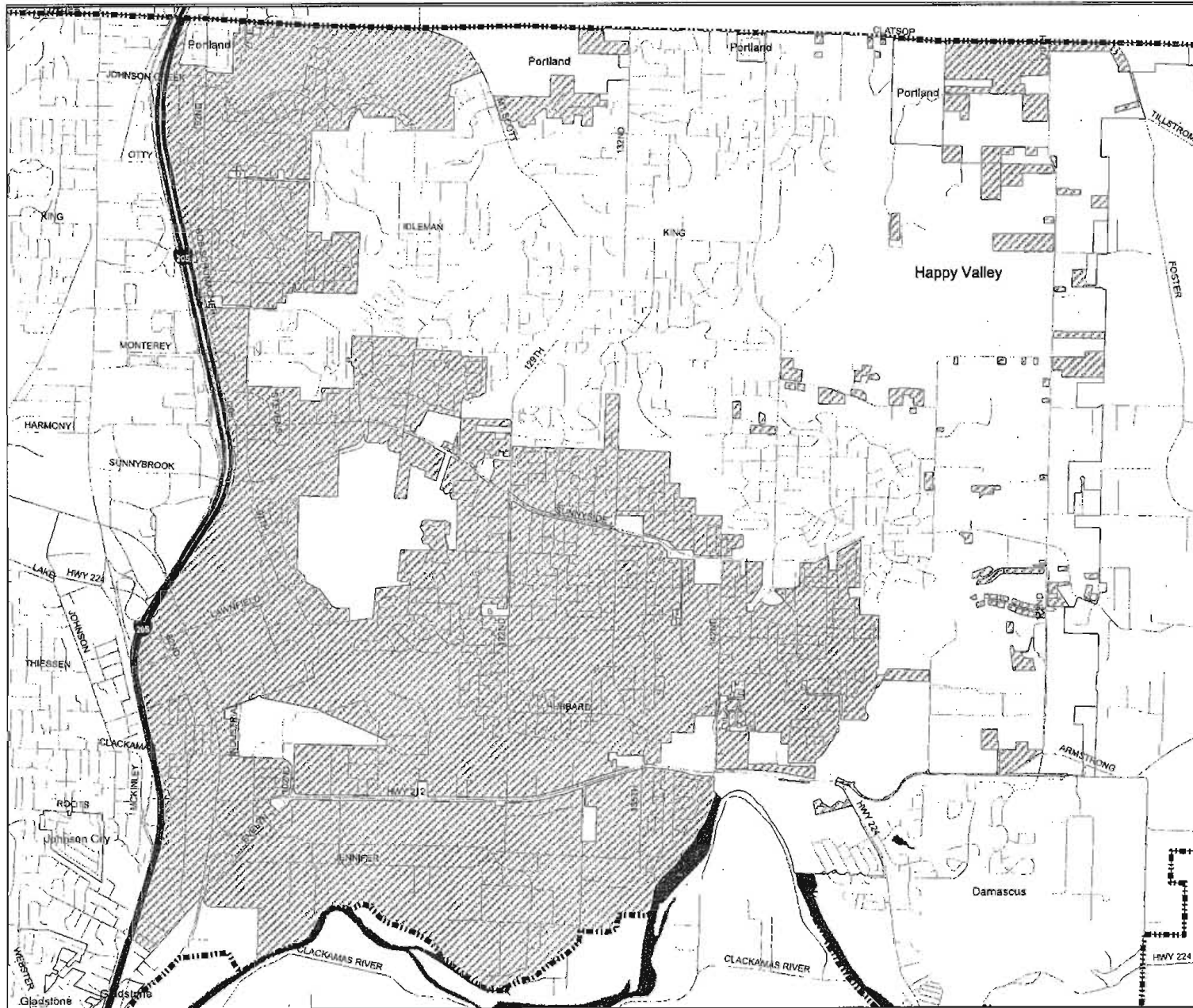
Approved as to Form:

By \_\_\_\_\_

County Counsel






Date \_\_\_\_\_

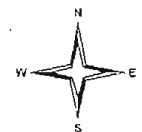
EXHIBIT "A" – Happy Valley Urban Planning Area



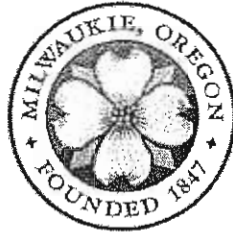
City of Happy Valley  
**Happy Valley Draft  
 Urban Planning Area  
 Exhibit A**

**Legend**

-  Urban Growth Boundary
-  Taxlots
-  Happy Valley
-  Other Cities
-  Happy Valley UGMA Area



Source: Data from Clackamas County GIS (2011)  
 The City of Happy Valley is not responsible for any errors or omissions in this map. The City of Happy Valley is not responsible for any damages or liabilities arising from the use of this map. The City of Happy Valley is not responsible for any changes in the data or the map after the date of publication.



October 31, 2012

Jason Tuck, City Manager  
City of Happy Valley  
16000 SE Misty Dr.  
Happy Valley, OR 97086

Re: UGMA Letter of Support

Dear Jason,

We are pleased that the discussions we have had with the City of Happy Valley and Clackamas County have led to an agreement that allows both communities to plan for long term growth with a common dividing line, the natural boundary of I-205. The boundary line shown in your draft Urban Growth Management Agreement (UGMA) allows each community to plan and budget for its public facilities needed to serve out to its ultimate boundary. In recognition of Happy Valley's action to propose a boundary of I-205 within its UGMA, Milwaukie plans to prepare a revised UGMA and map that pulls back its area of interest to the west of I-205. We are confident both cities will continue to work together to preserve the lines of communication as we plan for the futures of our communities.

We have briefed the Milwaukie City Council and have consensus that the Council supports the boundary that you have shown within the draft UGMA that you plan to submit to Clackamas County for adoption. Please accept this letter as the City's expression of support.

Sincerely,

William A. Monahan  
City Manager

cc: Jeremy Ferguson, Milwaukie Mayor  
Lori DeRemer, Happy Valley Mayor

MILWAUKIE CITY HALL  
10722 SE Main Street  
Milwaukie, Oregon 97222  
P) 503 786 7555 / F) 503 652 4433  
[www.cityofmilwaukie.org](http://www.cityofmilwaukie.org)



Approval of Previous Business Meeting Minutes:

September 19, 2013

(minutes attached)

A handwritten number '6' in the top right corner of the page.

## **BOARD OF COUNTY COMMISSIONERS BUSINESS MEETING MINUTES**

*A complete video copy and packet including staff reports of this meeting can be viewed at*

<http://www.clackamas.us/bcc/business.html>

**Thursday, September 19, 2013 - 6:00 PM**

**Public Services Building**

**2051 Kaen Rd., Oregon City, OR 97045**

**PRESENT: Commissioner John Ludlow, Chair  
Commissioner Jim Bernard  
Commissioner Paul Savas  
Commissioner Tootie Smith**

**Excused: Commissioner Martha Schrader**

### **I. CALL TO ORDER**

#### **■ Roll Call**

Commissioner Schrader is attending another meeting and will not be in attendance today.

#### **■ Pledge of Allegiance**

Chair Ludlow invited two Boy Scouts from the audience, Isaac and Sam Mitchell to lead the group in the Pledge of Allegiance.

Chair Ludlow announce the 2<sup>nd</sup> Readings for the Proposed Exclusion Ordinances that were originally scheduled for the Sept. 26<sup>th</sup> Business meeting have been postponed. We have asked staff to re-work the process and language on this issue and bring it back at a public hearing. Our hope is to have it ready for a public hearing in the near future at a Business Meeting. I want to thank all the citizens who have contacted us with comments and appreciate your patience as we work on this issue.

### **II. CITIZEN COMMUNICATION**

<http://www.clackamas.us/bcc/business.html>

1. Libby Wentz, Gladstone – spoke in opposition of the exclusion ordinance.
2. Jeff Weakley, Oregon City – very concerned about the proposed exclusion ordinance.
3. Jo Haverkamp, Oregon City – spoke in opposition of the proposed exclusion ordinance.
4. Maryanna Moore, Gladstone – spoke about the exclusion ordinance, referred to the Richard Langdon issue.
5. Eugene Schoenheit, Milwaukie – spoke in opposition of the proposed exclusion ordinance – gave examples of Lincoln City ordinance –also spoke about the 2<sup>nd</sup> amendment – asked what the purpose is for this ordinance.
6. Les Poole, Gladstone – spoke about the proposed exclusion ordinance, referred to the Richard Langdon issue – urged folks to watch the April 5, 2012 meeting.
7. Richard Langdon, Portland – opposes the proposed exclusion ordinance, also expects an apology for the event that occurred on April 5, 2012.
8. Ken Howard, Eagle Creek – referred to the Constitution referring to the Parks ordinance, asked when the tree ordinance will be repealed – need to get rid of all urban renewal districts and give money to the Sheriff's office.
9. Jery Ghizlary, Lake Oswego – thanked the Board for attending the Lake Oswego Town Hall.
10. Mack Woods, Canby – spoke about accountability and honesty.
11. Herb Chow, Clackamas – spoke in opposition to the proposed exclusion ordinance – it infringes on peoples civil rights.

*~Board Discussion~*

### **III. PRESENTATION**

1. Presentation of Health, Housing and Human Services 2013 Food Drive Results  
Cindy Becker, Director, presented the staff report.

*~Board Discussion~*

### **IV. DISCUSSION ITEMS**

*~NO DISCUSSION ITEMS SCHEDULED*

### **V. CONSENT AGENDA**

Chair Ludlow asked the Clerk to read the consent agenda by title. He then asked for a motion.

#### **MOTION:**

Commissioner Bernard: I move we approve the consent agenda.  
Commissioner Smith: Second.  
Clerk call the poll:  
Commissioner Smith: Aye.  
Commissioner Savas: Aye.  
Commissioner Bernard: Aye.  
Chair Ludlow: Aye - the motion is approved 4-0.

#### **A. Elected Officials**

1. Approval of Previous Business Meeting Minutes – *BCC*
2. Approval to Accept Supplemental Support for the Honest Opportunity Probation with Enforcement (HOPE) Demonstration Field Experiment Program Cooperative Agreement – *District Attorney*

#### **B. Department of Emergency Management**

1. Approval of FY11 Urban Area Security Initiative (UASI) Local Grant Agreement with the City of Milwaukie

#### **C. Juvenile Department**

1. Approval of the Grant Award for the 2013 Edward Byrne Memorial Justice Assistance Grant Specialty Court Grant
2. Approval of the Grant Award for the 2013 Edward Byrne Memorial Justice Assistance Grant Program Local Solicitation

#### **D. Business & Community Services**

1. Board Order No. 2013-76 Approval of Amendment No. 4 of the Clackamas County Parks Priority Parks Project for the 2006 Metro Parks and Open Spaces Natural Areas Bond Money

### **VI. NORTH CLACKAMAS PARKS AND RECREATION DISTRICT**

1. Approval of a Contract with T Edge Construction Inc., for the Construction of Trillium Creek Park - *Purchasing*

**VII. WATER ENVIRONMENT SERVICES**

1. Approval of Amendment No. 2 to the Agreement with Clackamas County Service District No. 1, the Tri-City Service District and CDM Smith, Inc., for the Blue Heron Remedial Investigation and Feasibility Study, Phase 3

**VIII. COUNTY ADMINISTRATOR UPDATE**

**IX. COMMISSIONERS COMMUNICATION**

<http://www.clackamas.us/bcc/business.html>

**MEETING ADJOURNED – 7:38 PM**

**NOTE: Regularly scheduled Business Meetings are televised and broadcast on the Clackamas County Government Channel. These programs are also accessible through the County's Internet site. DVD copies of regularly scheduled BCC Thursday Business Meetings are available for checkout at the Clackamas County Library in Oak Grove by the following Saturday. You may also order copies from any library in Clackamas County or the Clackamas County Government Channel.**

<http://www.clackamas.us/bcc/business.html>



7

**OFFICE OF COUNTY COUNSEL**

October 24, 2013

Board of County Commissioners  
Clackamas County

Members of the Board:

Authorizing Purchase for Certain Real Property Located at  
1102 & 1104 Main Street, Oregon City

**PUBLIC SERVICES BUILDING**  
2051 KAEN ROAD OREGON CITY, OR 97045

**Stephen L. Madkour**  
County Counsel

**David W. Anderson**  
**Kimberley Ybarra**  
**Kathleen Rastetter**  
**Chris Storey**  
**Scott C. Ciecko**  
**Alexander Gordon**  
**Amanda Keller**  
**Nathan K. Boderman**  
Assistants

<b>Purpose/Outcome</b>	Approval for the purchase of two lots in Oregon City, OR
<b>Dollar Amount and Fiscal Impact</b>	\$175,000.00 plus closing costs
<b>Funding Source</b>	Capital Projects Reserve Fund
<b>Safety Impact</b>	None
<b>Duration</b>	Permanent
<b>Previous Board Action/Review</b>	Executive Session of July 30, 2013
<b>Contact Person</b>	Chris Storey, County Counsel, 503-742-4623
<b>Contract No.</b>	n/a

**BACKGROUND:**

Clackamas County operates several facilities in downtown Oregon City. It is generally the County's obligation to provide customer and employee parking for those facilities. Previously, the County has leased space at a private parking lot and utilized other approaches to meet the goal of adequate parking. However, certain changes to downtown Oregon City, including changing the traffic flows on Main Street and certain zoning designations made by the City of Oregon City has rendered existing options inadequate. To replace the lost parking for employees and customers, Facilities staff has examined several sites in downtown Oregon City and is recommending the lots located at 1102 and 1104 Main Street in Oregon City (the "Property") as replacement parking. County Counsel is supporting Facilities in evaluating and documenting the transaction.

The Board of County Commissioners has previously discussed the possibility of purchasing the Property in executive session and staff has negotiated a potential transaction for approximately \$175,000. This amount is considered reasonable and fair market value for the Property by staff and is consistent with prior Board discussions. County Counsel's office has reviewed and approved all documents attached herein.

**RECOMMENDATION:**

Staff respectfully recommends the Board approve the order delegating authority to the Chair of the Board of County Commissioners, the County Administrator, or their designee, to finalize negotiations and execute any and all agreements, deeds, closing statements or other documents necessary to effectuate the timely acquisition of the Property.

Sincerely,

Stephen Madkour  
County Counsel

**BEFORE THE BOARD OF COUNTY COMMISSIONERS  
OF CLACKAMAS COUNTY, STATE OF OREGON**

In the Matter of Authorizing  
Purchase for Certain Real  
Property Located at 1102 &  
1104 Main Street, Oregon City



ORDER No. \_\_\_\_\_

This matter comes before the Board of County Commissioners of Clackamas County, Oregon (the "Board") at its regularly scheduled meeting on October 24, 2013.

WHEREAS, the Board desires to acquire sufficient parking for County buildings and offices located in downtown Oregon City, Oregon; and

WHEREAS, staff has negotiated with Weiler Insurance Properties, Inc. to purchase certain lots near county office buildings generally located at 1102 and 1104 Main Street, Oregon City, Oregon (the "Property"); and

WHEREAS, the Board believes the proposed consideration of \$175,000 plus closing costs for the Property is reasonable and appropriate; and

WHEREAS, to promote efficient government and timely progress on acquisition of the Property, the Board desires to delegate final signing authority to the Board Chair, County Administrator or their designee.

NOW, THEREFORE, IT IS HEREBY ORDERED, that the Chair of the Board of County Commissioners, the County Administrator, or their designee, be and hereby is authorized to finalize negotiations and execute any and all agreements, deeds, closing statements or other documents necessary to effectuate the timely acquisition of the Property.

Dated this 24<sup>th</sup> day of October, 2013.

**CLACKAMAS COUNTY BOARD OF COMMISSIONERS**

\_\_\_\_\_  
Chair

\_\_\_\_\_  
Recording Secretary



  
**NANCY DRURY**  
DIRECTOR

**DEPARTMENT OF EMPLOYEE SERVICES**

**PUBLIC SERVICES BUILDING**

2051 KAEN ROAD | OREGON CITY, OR 97045

October 24, 2013

Board of County Commissioners  
Clackamas County

Members of the Board

Approval of the Employer Group Contracts from the Providence Health Plan for the  
Period of January 1, 2013 to December 31, 2013

<b>Purpose/Outcome</b>	The attached face sheets update the service agreement between Clackamas County and Providence Health Plan. These face sheets describe the agreement and premiums negotiated with Providence for medical, vision, and prescription drug coverage for the 2013 plan year. The purpose of placing the face sheets on the agenda is to obtain the Chair's signature prior to recording the complete and official documents.
<b>Dollar Amount and Fiscal Impact</b>	The expected employer cost over the course of the service agreement plan year is \$20,393,665. The dollar amounts paid to Providence are amounts budgeted during the annual budget process.
<b>Funding Source</b>	Funding comes from County departments and employees as payroll deductions, from retirees and COBRA participants and from other agencies contracting through the County for benefits administration.
<b>Safety Impact</b>	Supports medical, vision, and pharmaceutical benefits for employees.
<b>Duration</b>	January 1, 2013 to December 31, 2013
<b>Previous Board Action/Review</b>	The renewal premiums were reviewed and approved by the Board of County Commissioners at their October 23, 2012 Study Session.
<b>Contact Person</b>	Carolyn Williams, Benefits Manager- DES Risk and Benefits Division - 503-742-5470

**BACKGROUND:**

Each year at renewal time, Providence Health plan provides the County with the contract changes for the following contract (calendar) year. These contract changes are reviewed and approved where necessary by the Benefits Review Committee and by the Board of County Commissioners in a study session. Providence submits the contracts for approval to the State of Oregon which may take several months.

The Benefits Review Committee has the authority and responsibility for reviewing, developing and designing medical, dental, life and disability insurance programs for nonrepresented employees and employees of the member unions. The Committee may also review and make recommendations to the Board of County Commissioners regarding other benefit plans and issues.

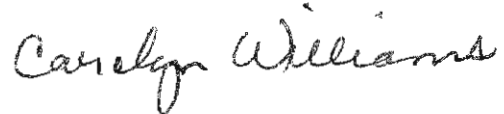
The Benefits Review Committee was established by agreement between the Board of County Commissioners and the following collective bargaining groups: AFSCME-CCOM, AFSCME-DTD, AFSCME-Utilities, Employee's Association, Housing Authority Employee's Association and FOPPO.

Due to the length of the contract documents, complete sets are on file at the Department of Employee Services. County Counsel has approved the administrative services agreement.

**RECOMMENDATION:**

Staff respectfully recommends that the Board of County Commissioners approve these Employer Group Contracts from the Providence Health Plan for the 2013 plan year.

Respectfully submitted,

A handwritten signature in cursive script that reads "Carolyn Williams".

Carolyn Williams  
Benefits Manager, Department of Employee Services



Effective Date: 01/01/2013

**SECTION A-GENERAL INFORMATION**

Group Number: 100112

Employer/Group Name: Clackamas County

Legal Name (if any):

Mailing Address: Risk & Benefits Division

Public Services Building

2051 Kaen Road Suite 310

Oregon City OR 97045

Business Address (if different from mailing address):

Association Plan: No

Custom Contract: Yes

Date

Agenda Item

**CLACKAMAS COUNTY BOARD OF COMMISSIONERS**

Chair

Recording Secretary

**Employer definition:**

**Are you an Oregon Small Employer? No**

An Oregon Small Employer means an Employer that employed an average of at least two but not more than 50 employees on business days during the preceding calendar year, the majority of whom are employed within this state, and that employs at least two Eligible Employees on the date on which coverage takes effect under a health benefit plan issued by a small employer carrier. To determine if an employer is an Oregon Small Employer, the proprietor or partners of a business must be included as an employee, as provided in OAR 836-53-0021. For purposes of this definition, "employee" means any individual employed by an employer.

- A person treated as a single employer under subsections (b), (c), (m) or (o) of section 414 of the Internal Revenue Code of 1986 shall be treated as one employer.
- The determination of whether an employer that was not in existence throughout the preceding calendar year is a small employer shall be based on the average number of employees that it is reasonably expected the employer will employ on business days in the current calendar year.

**Are you a Large Employer? Yes**

A Large Employer means an Employer that employed an average of at least 51 employees on business days during the preceding calendar year and who employs at least two employees on the first day of the plan year. To determine if an Employer is a Large Employer the proprietor or partners of a business are not included as employees, as provided in federal regulation at 29 CFR 2510.3-3.

**Eligible Employee definition:**

For an Employer that is a Small Employer: Eligible Employee means an employee of a Small Employer who works on a regularly scheduled basis, with a normal work week of 17.5 or more hours as specified in Section D of this Employer/Group Agreement. The Employer may determine hours worked for eligibility between 17.5 and 40 hours per week, subject to the rules of this Group Contract. The term does not include employees who work on a temporary, seasonal or substitute basis. Employees who have been employed by the Small Employer for fewer than 90 days are not Eligible Employees unless the Small Employer so allows.

For an Employer that is a Large Employer: Eligible Employee means a person who:

1. Is a permanent employee, or leased worker as defined in ORS 743.522, who is paid a salary or wage by the Employer that meets the requirements of the state or federal minimum wage law(s) that apply to the Employer;
2. Meets the eligibility and enrollment criteria specified in Section D of this Employer/Group Agreement and the requirements in section 3 of the Member Handbook; and
3. Is not an on-call, temporary, substitute or seasonal employee.

Eligible Employee also includes a person who is a sole proprietor, partner, corporate officer or limited liability corporation member of a business if such person regularly performs activities relating to the operation of the business and gains his/her livelihood from those activities.

## SECTION B-GROUP CONTRACT INFORMATION

- **Renewal Notification:** 180 Days
- **Premium Billing Information:**  
Payment of Premium is required for the entire month regardless of the specific day of the month that the Member's coverage begins or terminates.
- **Premium Due Date:** 1st of the month
- **Premium Payments Made in Error:**  
Refunds for Premium payments made in error by the Employer shall not exceed: 60 Days
- **Termination of Coverage Effective Date:** Last day of the month
- **Service Area:** See Appendix-A

## **SECTION C-EMPLOYER PROVISIONS**

### **DURATION, REVISION AND RENEWAL OF THIS GROUP CONTRACT**

This Group Contract is effective on the date shown on the Group Contract Declarations Page. Except for changes in Premium as described within this section, revision of this Group Contract can only be accomplished by written notification to Providence Health Plan and Providence Health Plan's acceptance of the requested revision, and the execution of an amendment to this Group Contract. Any renewal of this Group Contract for another Contract Year shall be accomplished by issuance of a new Rate Summary for this Group Contract, in the current form, executed by Providence Health Plan and the Employer. The payment of Premium shall constitute the Employer's acceptance of the terms of this Group Contract, including execution of the Rate Summary.

### **EMPLOYEE PARTICIPATION REQUIREMENTS**

The minimum enrollment percentage of Eligible Employees and Eligible Family Dependents is as stated in the Employer/Group Agreement. The maximum enrollment percentage of out-of-area Subscribers is as stated in Providence Health Plan's rate quote to the Employer. At least one Eligible Employee must be enrolled or this Group Contract will be terminated in accordance with the provisions the Employer Group Agreement.

Eligible Employees and Eligible Family Dependents who have medical coverage through another group plan will be excluded from the process of determining if the Employer meets Providence Health Plan's minimum enrollment percentage requirements. These Eligible Employees and/or Eligible Family Dependents will be required to complete and sign a Waiver of Group Coverage form provided by, or acceptable to, Providence Health Plan.

Providence Health Plan reserves the right to audit the Employer's payroll records to verify compliance with the eligibility and enrollment requirements stipulated in Group Contract. Failure to provide records requested by Providence Health Plan may, at Providence Health Plan's option, result in termination of this Group Contract.

With regard to Large Employers, Providence Health Plan reserves the right to review group census information and adjust Premiums at any time during the Contract Year if the Large Employer's number of out-of-area Subscribers exceeds the maximum allowable percentage as stated in Providence Health Plan's rate quote to the Large Employer.

If an Employer's number of out-of-area Subscribers exceeds Providence Health Plan's maximum allowable percentage of enrollment at any time during the Contract Year, Providence Health Plan will terminate the out-of-area Subscriber benefit at the next contract renewal. The Employer will receive written notice of this termination in accordance with the notification period stated in the Employer/Group Agreement.

### **PREMIUM BILLING INFORMATION**

A Member's coverage shall be effective and terminate as described in the Employer Group Agreement and the Member Handbook. Providence Health Plan will send out Premium Billing Statements on a monthly basis to the Employer listing all Subscribers and the amount of Premium due.

The Premium is due as indicated in the Rate Summary.

### **CHANGES IN PREMIUM CHARGES**

The Premium specified in the Group Contract Rate Summary may be changed only in accordance with the following provisions:

1. Premiums are subject to change upon renewal of this Group Contract for another Contract Year.
2. If at any time during a Contract Year any federal or state law or any order or regulation of a federal or state agency mandates a modification of benefits under this Group Contract, Providence Health Plan may change the Premium and/or Covered Services accordingly. The change in Premium shall be effective on the effective date of the modification of benefits, as stated in the notice.
3. Premiums may be changed as required by the terms of any amendment to this Group Contract.

Any changes in Premium will be accompanied by the issuance of a new Rate Summary.

## **PREMIUM PAYMENT DUE DATE**

Premium is due on the first of the month, unless otherwise stated in Section B of the Employer Group Agreement. If the Employer does not pay the Premium within 15 days after the due date, Providence Health Plan will mail a single Premium delinquency notice to the Employer. If the Employer does not pay the Premium by the last day of the grace period specified in the notice, coverage will be retroactively terminated, with no further notice to the Employer, on the last day of the monthly period through which Premium is paid. Providence Health Plan reserves the right to suspend claims processing for Employers whose Premium is delinquent. Failure to pay the Premium includes making a partial payment of the amount due as Premium. The Employer shall notify Members of the termination of coverage. If Providence Health Plan fails to send the Premium delinquency notice specified above, Providence Health Plan will continue this Group Contract in effect, without payment of Premium, until Providence Health Plan provides such notice. The election period for continuation or Portability coverage begins on the date that such notice is received by the Employer.

## **PAYMENTS MADE IN ERROR**

Premium paid by the Employer for Ineligible Persons shall be refunded by Providence Health Plan upon written request by the Employer. However, the refund shall not exceed the Premium for the time period stated in the Employer/Group Agreement. The Ineligible Persons will be financially responsible for the cost of health care Services received during the refund period and will be billed for such Services by the treating provider.

## **RENEWABILITY, MODIFICATION, AND TERMINATION OF THIS GROUP CONTRACT**

This Group Contract is guaranteed renewable and will not be terminated due to claims experience, health status, or length of time in force. This Group Contract may be terminated or modified for any of the following reasons:

1. Upon Providence Health Plan's receipt of written notice of termination from the Employer, provided that Providence Health Plan receives the notice at least 30 days in advance of the proposed termination date.
2. Upon failure of the Employer to pay any Premium by the due date as described in this document.
3. Upon failure of the Employer to comply with any provision of this Group Contract, including the definition of Eligible Employee or Small Employer. The termination shall be effective on the date specified in the notice from Providence Health Plan to the Employer.
4. Upon the failure of the Employer to satisfy at any time the minimum enrollment requirements specified in the Employer/Group Agreement. The termination shall be effective on the earlier of the next Group Contract anniversary date or the last of the month in which no Eligible Employees are enrolled.
5. Upon our discovery of fraud or misrepresentation of the Employer. The termination shall be effective on the date specified in the notice from Providence Health Plan to the Employer. This date shall not be earlier than the date of the fraud or misrepresentation.
6. For noncompliance with the employer contribution requirements listed in the Employer/Group Agreement. The termination shall be effective on the next Group Contract anniversary date.
7. When Providence Health Plan ceases to offer or elect not to renew all Health Benefit Plans for all Large Employer and/or Small Employer groups in this state. The termination will be effective on the date specified in the notice from Providence Health Plan. This date shall not be earlier than 180 days from the date of the notice.
8. When Providence Health Plan ceases to offer or elect not to renew a Health Benefit Plan for all groups in this state. We will send written notice to all Employers covered by the affected Group Contract at least 90 days prior to non-renewal, offering the Employer all Health Benefit Plans that we offer to groups of their size.
9. When Providence Health Plan ceases to offer or elect not to renew a Health Benefit Plan to employer groups in a specified Service Area because of an inability to reach an agreement with the health care providers or organization of health care providers to provide Services under this Group Contract within that specified Service Area. Providence Health Plan will send written notice to all Employers covered by this Group Contract at least 90 days prior to non-renewal. Providence Health Plan will offer to Employers all other plans that Providence Health Plan offer to groups of their size in the specified Service Area.

10. When Providence Health Plan is ordered by the Director to discontinue coverage in accordance with procedures specified or approved by the Director upon finding that the continuation of the coverage would not be in the best interests of Members or impair Providence Health Plan's ability to meet contractual obligations.
11. In the case of a Group Contract that delivers Covered Services through a network of Participating Providers, when Providence Health Plan no longer has any Members living, residing or working in the Service Area.
12. In the case of a Group Contract that is offered through one or more bona fide associations, when the membership of an Employer in the association ceases and the termination of coverage is not related to the health status of any Member.
13. When Providence Health Plan implements a uniform modification of coverage upon renewal for all employers in accordance with standards adopted by the Director, provided that Providence Health Plan furnishes written notice of the modification to the Employer at least 30 days prior to the renewal date.

Upon termination of this Group Contract for reasons other than non-payment of Premiums by the Employer except when group coverage is immediately replaced by the Employer with another insurer, Providence Health Plan will provide a notice of termination to the Employer within 10 working days after the termination date. If Providence Health Plan does not provide that notice to the Employer, Providence Health Plan will continue this Group Contract in effect, without payment of Premium, until the notice is given. The election period for continuation or Portability coverage begins on the date that such notice is received by the Employer.

#### **NO REINSTATEMENT BY ACCEPTANCE OF PAYMENT**

If this Group Contract is terminated for any reason, Providence Health Plan's acceptance of Premium after notice of the termination shall not guarantee a reinstatement of this contract. Any reinstatement must be agreed to by both Providence Health Plan and the Employer. Providence Health Plan shall refund any payment accepted, less any outstanding balance, to the Employer upon discovery that the payment was accepted without mutual agreement to reinstate.

#### **CONFIDENTIALITY OF PROTECTED HEALTH INFORMATION**

In accordance with the federal privacy requirements of the Health Insurance Portability and Accountability Act (HIPAA), Providence Health Plan will not disclose a Member's protected health information (PHI) to the Employer or any agent of the Employer unless requested and unless Providence Health Plan determines that such disclosure is:

1. Necessary and appropriate to the Employer's obtaining bids from Providence Health Plan or from other health plans for further health coverage or to the Employer's modifying, amending, or terminating any benefit under the health plan;
2. Necessary as part of the Member's treatment, payment for the Member's treatment and Providence Health Plan's business operations. Providence Health Plan may share the Member's information with doctors or hospitals to help them provide medical care to the Member;
3. Necessary to help manage the Member's health care;
4. In compliance with the applicable provisions of HIPAA; and
5. Consistent with the HIPAA privacy protections that are contained in the Employer's group health plan documents, as certified in writing to Providence Health Plan by the Employer, under which the Employer agrees to limit further disclosures to those permitted by law, to ensure that any person with whom the PHI is disclosed makes similar agreements, not to use PHI for employment-related actions or decisions, not to use PHI for purposes related to any other benefits, to report to Providence Health Plan any violations of these principles, to provide access to individuals to their PHI except as limited by law, to amend erroneous PHI as provided by law, to account for disclosures of PHI as provided by law, to be audited by the US Department of Health & Human Services as to its handling of PHI, to return all PHI to Providence Health Plan when no longer required, and to separate employees not necessary to using the PHI from the functions for which the PHI is required.

## **EMPLOYER RECORDS**

The Employer is responsible for keeping accurate records relating to this Group Contract. The records must contain all the information Providence Health Plan needs to administer this contract. Providence Health Plan has the right to request, inspect or audit the Employer's records at any reasonable time during regular business hours.

## **ADMINISTRATION AND INTERPRETATION OF THE PLAN**

To the extent this Group Contract relates to an employee benefit plan that is governed by the Employee Retirement Income Security Act of 1974 (ERISA), as amended, the Employer's responsibilities and Providence Health Plan responsibilities include the following:

- The Employer is responsible for furnishing summary plan descriptions, annual reports and summary annual reports to plan participants and to the government as required by ERISA.
- The Employer and not Providence Health Plan is the "Plan Administrator" as defined in ERISA.
- The Employer is responsible for providing all notices regarding the COBRA continuation provisions specified in section 11.2 of the Member Handbook. Providence Health Plan is responsible for providing all notices of Creditable Coverage as specified in section 10.4 of the Member Handbook, and notices regarding the availability of State Mandated Continuation Coverage as specified in section 11.1 of the Member Handbook, and Portability Plans as specified in section 12 of the Member Handbook, unless the Employer agrees to provide such notices.
- The Employer gives Providence Health Plan, acting for the "Plan Administrator," the discretionary authority to interpret the terms of the related ERISA plan, to make factual determinations relevant to benefit determinations and to otherwise decide all questions regarding eligibility for benefits under the plan.

Benefits shall be payable to a Member under the ERISA plan and this Group Contract only if Providence Health Plan, in its discretion, determines that such benefits are payable. Providence Health Plan's determination regarding the meaning of the provisions of the ERISA plan and this Group Contract shall not be subject to challenge absent a finding that such determination in any particular case is arbitrary and capricious.

## **LIMIT OF LIABILITY WHEN INACCURATE DESCRIPTIVE MATERIALS ARE DEVELOPED BY EMPLOYER**

The Employer will indemnify, defend and hold Providence Health Plan harmless from any claims, damages, judgments and expenses (including attorney's fees) based on or arising out of, directly or indirectly, descriptive materials written, created, designed or printed by the Employer, or on the Employer's behalf by any third party when such descriptive materials:

1. Are used without prior review and written approval by us; and
2. Inaccurately reflect any of the terms, conditions and/or provisions of this Group Contract.

The term "descriptive materials" includes, without limitation, any type of circular, leaflet, booklet, summary, handbook, letter or form that describes in whole or in part any of the terms, conditions and/or provisions of this Group Contract.

## SECTION D-CLASS INFORMATION

- **Description of Class (if applicable):** Active-Open Option Peace Officers
- **Eligibility Requirements:** To be eligible for coverage under this Group Contract all Members, except out-of-area Subscribers and Out-of-Area Dependents as specified in section 3 of this Group Contract and in Our rate quote to the Employer, must work or reside in the Service Area.  
  
All employees of this class who work on a regularly scheduled basis of 20 Hours per week are eligible for enrollment under this Group Contract.
- **Effective Date of Coverage Provision:**  
Employee Eligibility Waiting Period (probationary period): 2 Months  
Effective Date of Coverage: First of the month following probationary period
- **Minimum Employer Premium Contribution Requirements:**  
Percentage (%) or dollar amount (\$) of Premium contributed by an Employer with 51 or more Eligible Employees:  
As set by employer
- **Minimum Participation Requirements (applies to all classes combined):**  
Large Group:  
Required Eligible Employee Enrollment: % with a minimum of 15 enrolled employees  
Required Dependent Enrollment: %
- **Dependent Children Limiting Age:** 26 years of age; if fulltime student, 26 years of age
- **Group Contract Provisions:**  
Lifetime Maximum Benefit: See Summary of Benefits  
  
24-Hour Coverage: We provide 24-hour coverage for owners, officers, or partners not covered by Workers' Compensation and non-subject workers who are Members under this Group Contract.  
  
Lay Off and Rehire: If rehire occurs within ~~Custom~~ 6 months the Eligibility Waiting Period is waived. The waiting period is also waived if an employee has continuously participated in COBRA continuation coverage during the layoff period is rehired within 18 months.  
  
Employer-approved Leave of Absence: 6 months. Absences extending beyond this period of time are subject to COBRA/State Continuation and/or Portability Continuation provisions in the Group Contract and Member Handbook.
- **Enrollment:** Eligible Employees and Eligible Family Dependents must enroll within 60 days after becoming eligible.
- **Non-Medicare Eligible Retired Employee Coverage:** No

## SECTION E-BENEFIT INFORMATION

**Description of Class (if applicable):** Active-Open Option Peace Officers

<u>Contract/Endorsement</u>	<u>Benefit</u>	<u>Effective Date</u>
Open Option	OP \$10/0%/20%/\$2000/\$50cd	01/01/2013
Prescription Drugs	Rx \$10/\$15	01/01/2013
Full Service Vision Care	VIS \$200	01/01/2013
Chiropractic Care	Chiro \$10/\$1500	01/01/2013
Domestic Partner	Custom DOMPAR+	01/01/2013
Grandfathered Plan	Grandfathered Plan	01/01/2013
Voluntary Sterilization	STERIL	01/01/2013

## SECTION D-CLASS INFORMATION

- **Description of Class (if applicable):** Active-Personal Option Peace Officers
- **Eligibility Requirements:** To be eligible for coverage under this Group Contract all Members, except out-of-area Subscribers and Out-of-Area Dependents as specified in section 3 of this Group Contract and in Our rate quote to the Employer, must work or reside in the Service Area.  
  
All employees of this class who work on a regularly scheduled basis of 20 Hours per week are eligible for enrollment under this Group Contract.
- **Effective Date of Coverage Provision:**  
Employee Eligibility Waiting Period (probationary period): 2 Months  
Effective Date of Coverage: First of the month following probationary period
- **Minimum Employer Premium Contribution Requirements:**  
Percentage (%) or dollar amount (\$) of Premium contributed by an Employer with 51 or more Eligible Employees:  
As set by employer
- **Minimum Participation Requirements (applies to all classes combined):**  
Large Group:  
Required Eligible Employee Enrollment: % with a minimum of 15 enrolled employees  
Required Dependent Enrollment: %
- **Dependent Children Limiting Age:** 26 years of age; if fulltime student, 26 years of age
- **Group Contract Provisions:**  
Lifetime Maximum Benefit: See Summary of Benefits  
  
24-Hour Coverage: We provide 24-hour coverage for owners, officers, or partners not covered by Workers' Compensation and non-subject workers who are Members under this Group Contract.  
  
Lay Off and Rehire: If rehire occurs within ~~Custom~~ 6 months the Eligibility Waiting Period is waived. The waiting period is also waived if an employee has continuously participated in COBRA continuation coverage during the layoff period is rehired within 18 months.  
  
Employer-approved Leave of Absence: 6 months. Absences extending beyond this period of time are subject to COBRA/State Continuation and/or Portability Continuation provisions in the Group Contract and Member Handbook.
- **Enrollment:** Eligible Employees and Eligible Family Dependents must enroll within 60 days after becoming eligible.
- **Non-Medicare Eligible Retired Employee Coverage:** No

## SECTION E-BENEFIT INFORMATION

**Description of Class (if applicable):** Active-Personal Option Peace Officers

<b>Contract/Endorsement</b>	<b>Benefit</b>	<b>Effective Date</b>
Personal Option	PE \$15/0%/\$1000	01/01/2013
Prescription Drugs	Rx \$10/\$15	01/01/2013
Full Service Vision Care	VIS \$200	01/01/2013
Chiropractic Care	Chiro \$10/\$1500	01/01/2013
Domestic Partner	Custom DOMPAR+	01/01/2013
Grandfathered Plan	Grandfathered Plan	01/01/2013
Voluntary Sterilization	STERIL	01/01/2013



## SECTION D-CLASS INFORMATION

- **Description of Class (if applicable):** Cobra-Open Option #1 Peace Officers
- **Eligibility Requirements:** To be eligible for coverage under this Group Contract all Members, except out-of-area Subscribers and Out-of-Area Dependents as specified in section 3 of this Group Contract and in Our rate quote to the Employer, must work or reside in the Service Area.
- **Effective Date of Coverage Provision:**  
Employee Eligibility Waiting Period (probationary period): See effective date of coverage  
Effective Date of Coverage: Not Applicable for Cobra
- **Minimum Employer Premium Contribution Requirements:**  
Percentage (%) or dollar amount (\$) of Premium contributed by an Employer with 51 or more Eligible Employees:  
Subscribers: 0% Dependents: 0%
- **Minimum Participation Requirements (applies to all classes combined):**  
Large Group:  
Required Eligible Employee Enrollment: % with a minimum of 15 enrolled employees  
Required Dependent Enrollment: %
- **Dependent Children Limiting Age:** 26 years of age; if fulltime student, 26 years of age
- **Group Contract Provisions:**  
Lifetime Maximum Benefit: See Summary of Benefits  
24-Hour Coverage: We provide 24-hour coverage for owners, officers, or partners not covered by Workers' Compensation and non-subject workers who are Members under this Group Contract.  
Lay Off and Rehire: If rehire occurs within ~~Custom~~ 6 months the Eligibility Waiting Period is waived. The waiting period is also waived if an employee has continuously participated in COBRA continuation coverage during the layoff period is rehired within 18 months.  
Employer-approved Leave of Absence: ~~Custom months. Absences extending beyond this period of time are subject to COBRA/State Continuation and/or Portability Continuation provisions in the Group Contract and Member Handbook. Not applicable.~~
- **Enrollment:** Eligible Employees and Eligible Family Dependents must enroll within 60 days after becoming eligible.
- **Non-Medicare Eligible Retired Employee Coverage:** No

## SECTION E-BENEFIT INFORMATION

**Description of Class (if applicable):** Cobra-Open Option #1 Peace Officers

<u>Contract/Endorsement</u>	<u>Benefit</u>	<u>Effective Date</u>
Open Option	OP \$10/0%/20%/\$2000/\$50cd	01/01/2013
Prescription Drugs	Rx \$10/\$15	01/01/2013
Full Service Vision Care	VIS \$200	01/01/2013
Chiropractic Care	Chiro \$10/\$1500	01/01/2013
Domestic Partner	Custom DOMPAR+	01/01/2013
Grandfathered Plan	Grandfathered Plan	01/01/2013
Voluntary Sterilization	STERIL	01/01/2013

## SECTION D-CLASS INFORMATION

- **Description of Class (if applicable):** Cobra-Open Option #2 Peace Officers
- **Eligibility Requirements:** To be eligible for coverage under this Group Contract all Members, except out-of-area Subscribers and Out-of-Area Dependents as specified in section 3 of this Group Contract and in Our rate quote to the Employer, must work or reside in the Service Area.
- **Effective Date of Coverage Provision:**  
Employee Eligibility Waiting Period (probationary period): See effective date of coverage  
Effective Date of Coverage: Not Applicable for Cobra
- **Minimum Employer Premium Contribution Requirements:**  
Percentage (%) or dollar amount (\$) of Premium contributed by an Employer with 51 or more Eligible Employees:  
Subscribers: 0% Dependents: 0%
- **Minimum Participation Requirements (applies to all classes combined):**  
Large Group:  
Required Eligible Employee Enrollment: % with a minimum of 15 enrolled employees  
Required Dependent Enrollment: %
- **Dependent Children Limiting Age:** 26 years of age; if fulltime student, 26 years of age
- **Group Contract Provisions:**  
Lifetime Maximum Benefit: See Summary of Benefits  
24-Hour Coverage: We provide 24-hour coverage for owners, officers, or partners not covered by Workers' Compensation and non-subject workers who are Members under this Group Contract.  
Lay Off and Rehire: If rehire occurs within ~~Custom~~ 6 months the Eligibility Waiting Period is waived. The waiting period is also waived if an employee has continuously participated in COBRA continuation coverage during the layoff period is rehired within 18 months.  
Employer-approved Leave of Absence: ~~Custom months. Absences extending beyond this period of time are subject to COBRA/State Continuation and/or Portability Continuation provisions in the Group Contract and Member Handbook. Not applicable.~~
- **Enrollment:** Eligible Employees and Eligible Family Dependents must enroll within 60 days after becoming eligible.
- **Non-Medicare Eligible Retired Employee Coverage:** No

## SECTION E-BENEFIT INFORMATION

**Description of Class (if applicable):** Cobra-Open Option #2 Peace Officers

<b>Contract/Endorsement</b>	<b>Benefit</b>	<b>Effective Date</b>
Open Option	OP \$15/30%/50%/\$2000/\$1000cd	01/01/2013
Prescription Drugs	RX \$10/50%/\$1000	01/01/2013
Domestic Partner	Custom DOMPAR+	01/01/2013
Grandfathered Plan	Grandfathered Plan	01/01/2013
Voluntary Sterilization	STERIL	01/01/2013

## SECTION D-CLASS INFORMATION

- **Description of Class (if applicable):** Cobra-Personal Option Peace Officers
- **Eligibility Requirements:** To be eligible for coverage under this Group Contract all Members, except out-of-area Subscribers and Out-of-Area Dependents as specified in section 3 of this Group Contract and in Our rate quote to the Employer, must work or reside in the Service Area.
- **Effective Date of Coverage Provision:**  
Employee Eligibility Waiting Period (probationary period): See effective date of coverage  
Effective Date of Coverage: Not Applicable for Cobra
- **Minimum Employer Premium Contribution Requirements:**  
Percentage (%) or dollar amount (\$) of Premium contributed by an Employer with 51 or more Eligible Employees:  
Subscribers: 0% Dependents: 0%
- **Minimum Participation Requirements (applies to all classes combined):**  
Large Group:  
Required Eligible Employee Enrollment: % with a minimum of 15 enrolled employees  
Required Dependent Enrollment: %
- **Dependent Children Limiting Age:** 26 years of age; if fulltime student, 26 years of age
- **Group Contract Provisions:**  
Lifetime Maximum Benefit: See Summary of Benefits  
  
24-Hour Coverage: We provide 24-hour coverage for owners, officers, or partners not covered by Workers' Compensation and non-subject workers who are Members under this Group Contract.  
  
Lay Off and Rehire: If rehire occurs within ~~Custom 6~~ months the Eligibility Waiting Period is waived. The waiting period is also waived if an employee has continuously participated in COBRA continuation coverage during the layoff period is rehired within 18 months.  
  
Employer-approved Leave of Absence: ~~Custom months. Absences extending beyond this period of time are subject to COBRA/State Continuation and/or Portability Continuation provisions in the Group Contract and Member Handbook. Not applicable.~~
- **Enrollment:** Eligible Employees and Eligible Family Dependents must enroll within 60 days after becoming eligible.
- **Non-Medicare Eligible Retired Employee Coverage:** No

## SECTION E-BENEFIT INFORMATION

**Description of Class (if applicable):** Cobra-Personal Option Peace Officers

<b>Contract/Endorsement</b>	<b>Benefit</b>	<b>Effective Date</b>
Personal Option	PE \$15/0%/\$1000	01/01/2013
Prescription Drugs	Rx \$10/\$15	01/01/2013
Full Service Vision Care	VIS \$200	01/01/2013
Chiropractic Care	Chiro \$10/\$1500	01/01/2013
Domestic Partner	Custom DOMPAR+	01/01/2013
Grandfathered Plan	Grandfathered Plan	01/01/2013
Voluntary Sterilization	STERIL	01/01/2013

## SECTION D-CLASS INFORMATION

- **Description of Class (if applicable):** Early Retiree-Open Option #1 Peace Officers
- **Eligibility Requirements:** To be eligible for coverage under this Group Contract all Members, except out-of-area Subscribers and Out-of-Area Dependents as specified in section 3 of this Group Contract and in Our rate quote to the Employer, must work or reside in the Service Area.
- **Effective Date of Coverage Provision:**  
Effective Date of Coverage: First of the month following retirement
- **Minimum Employer Premium Contribution Requirements:**  
Percentage (%) or dollar amount (\$) of Premium contributed by an Employer with 51 or more Eligible Employees:  
As set by employer
- **Minimum Participation Requirements (applies to all classes combined):**  
Large Group:  
Required Eligible Employee Enrollment: % with a minimum of 15 enrolled employees  
Required Dependent Enrollment: %
- **Dependent Children Limiting Age:** 26 years of age; if fulltime student, 26 years of age
- **Group Contract Provisions:**  
Lifetime Maximmm Benefit: See Summary of Benefits  
  
24-Hour Coverage: We provide 24-hour coverage for owners, officers, or partners not covered by Workers' Compensation and non-subject workers who are Members under this Group Contract.
- **Enrollment:** Eligible Employees and Eligible Family Dependents mnst enroll within 60 days after becoming eligible.
- **Non-Medicare Eligible Retired Employee Coverage:** Yes  
Eligible Family Dependent Coverage: All Eligible Family Dependents

## SECTION E-BENEFIT INFORMATION

**Description of Class (if applicable):** Early Retiree-Open Option #1 Peace Officers

<u>Contract/Endorsement</u>	<u>Benefit</u>	<u>Effective Date</u>
Open Option	OP \$10/0%/20%/\$2000/\$50cd	01/01/2013
Prescription Drngs	Rx \$10/\$15	01/01/2013
Full Service Vision Care	VIS \$200	01/01/2013
Chiropractic Care	Chiro \$10/\$1500	01/01/2013
Domestic Partner	Custom DOMPAR+	01/01/2013
Grandfathered Plan	Grandfathered Plan	01/01/2013
Voluntary Sterilization	STERIL	01/01/2013
Early Retiree	RETIREE	01/01/2013

## SECTION D-CLASS INFORMATION

- **Description of Class (if applicable):** Early Retiree-Open Option #2 Peace Officers
- **Eligibility Requirements:** To be eligible for coverage under this Group Contract all Members, except out-of-area Subscribers and Out-of-Area Dependents as specified in section 3 of this Group Contract and in Our rate quote to the Employer, must work or reside in the Service Area.
- **Effective Date of Coverage Provision:**  
Effective Date of Coverage: First of the month following retirement
- **Minimum Employer Premium Contribution Requirements:**  
Percentage (%) or dollar amount (\$) of Premium contributed by an Employer with 51 or more Eligible Employees:  
As set by employer
- **Minimum Participation Requirements (applies to all classes combined):**  
Large Group:  
Required Eligible Employee Enrollment: % with a minimum of 15 enrolled employees  
Required Dependent Enrollment: %
- **Dependent Children Limiting Age:** 26 years of age; if fulltime student, 26 years of age
- **Group Contract Provisions:**  
Lifetime Maximum Benefit: See Summary of Benefits  
24-Hour Coverage: We provide 24-hour coverage for owners, officers, or partners not covered by Workers' Compensation and non-subject workers who are Members under this Group Contract.
- **Enrollment:** Eligible Employees and Eligible Family Dependents must enroll within 60 days after becoming eligible.
- **Non-Medicare Eligible Retired Employee Coverage:** Yes  
Eligible Family Dependent Coverage: All Eligible Family Dependents

## SECTION E-BENEFIT INFORMATION

**Description of Class (if applicable):** Early Retiree-Open Option #2 Peace Officers

<b><u>Contract/Endorsement</u></b>	<b><u>Benefit</u></b>	<b><u>Effective Date</u></b>
Open Option	OP \$15/30%/50%/\$2000/\$1000cd	01/01/2013
Prescription Drugs	RX \$10/50%/\$1000	01/01/2013
Domestic Partner	Custom DOMPAR+	01/01/2013
Grandfathered Plan	Grandfathered Plan	01/01/2013
Voluntary Sterilization	STERIL	01/01/2013
Early Retiree	RETIREE	01/01/2013

## SECTION D-CLASS INFORMATION

- **Description of Class (if applicable):** Early Retiree-Personal Option Peace Officers
- **Eligibility Requirements:** To be eligible for coverage under this Group Contract all Members, except out-of-area Subscribers and Out-of-Area Dependents as specified in section 3 of this Group Contract and in Our rate quote to the Employer, must work or reside in the Service Area.
- **Effective Date of Coverage Provision:**  
Effective Date of Coverage: First of the month following retirement
- **Minimum Employer Premium Contribution Requirements:**  
Percentage (%) or dollar amount (\$) of Premium contributed by an Employer with 51 or more Eligible Employees:  
As set by employer
- **Minimum Participation Requirements (applies to all classes combined):**  
Large Group:  
Required Eligible Employee Enrollment: % with a minimum of 15 enrolled employees  
Required Dependent Enrollment: %
- **Dependent Children Limiting Age:** 26 years of age; if fulltime student, 26 years of age
- **Group Contract Provisions:**  
Lifetime Maximum Benefit: See Summary of Benefits  
24-Hour Coverage: We provide 24-hour coverage for owners, officers, or partners not covered by Workers' Compensation and non-subject workers who are Members under this Group Contract.
- **Enrollment:** Eligible Employees and Eligible Family Dependents must enroll within 60 days after becoming eligible.
- **Non-Medicare Eligible Retired Employee Coverage:** Yes  
Eligible Family Dependent Coverage: All Eligible Family Dependents

## SECTION E-BENEFIT INFORMATION

**Description of Class (if applicable):** Early Retiree-Personal Option Peace Officers

<u>Contract/Endorsement</u>	<u>Benefit</u>	<u>Effective Date</u>
Personal Option	PE \$15/0%/\$1000	01/01/2013
Prescription Drugs	Rx \$10/\$15	01/01/2013
Full Service Vision Care	VIS \$200	01/01/2013
Chiropractic Care	Chiro \$10/\$1500	01/01/2013
Domestic Partner	Custom DOMPAR+	01/01/2013
Grandfathered Plan	Grandfathered Plan	01/01/2013
Voluntary Sterilization	STERIL	01/01/2013
Early Retiree	RETIREE	01/01/2013

Effective Date: 01/01/2013

**SECTION A - GENERAL INFORMATION**

Group Number: 100112

Employer/Group Name: Clackamas County

Legal Name (if any):

Mailing Address: Risk & Benefits Division

Public Services Building

2051 Kaen Road Suite 310

Oregon City OR 97045

Business Address (if different from mailing address):

Date

Agenda Item

**CLACKAMAS COUNTY BOARD OF COMMISSIONERS**

Chair

Association Plan: No

Custom Contract: Yes

Recording Secretary

**Employer definition:**

**Are you an Oregon Small Employer?** No

An Oregon Small Employer means an Employer that employed an average of at least two but not more than 50 employees on business days during the preceding calendar year, the majority of whom are employed within this state, and that employs at least two Eligible Employees on the date on which coverage takes effect under a health benefit plan issued by a small employer carrier. To determine if an employer is an Oregon Small Employer, the proprietor or partners of a business must be included as an employee, as provided in OAR 836-53-0021. For purposes of this definition, "employee" means any individual employed by an employer.

- A person treated as a single employer under subsections (b), (c), (m) or (o) of section 414 of the Internal Revenue Code of 1986 shall be treated as one employer.
- The determination of whether an employer that was not in existence throughout the preceding calendar year is a small employer shall be based on the average number of employees that it is reasonably expected the employer will employ on business days in the current calendar year.

**Are you a Large Employer?** Yes

A Large Employer means an Employer that employed an average of at least 51 employees on business days during the preceding calendar year and who employs at least two employees on the first day of the plan year. To determine if an Employer is a Large Employer the proprietor or partners of a business are not included as employees, as provided in federal regulation at 29 CFR 2510.3-3.

**Eligible Employee definition:**

For an Employer that is a Small Employer: Eligible Employee means an employee of a Small Employer who works on a regularly scheduled basis, with a normal work week of 17.5 or more hours as specified in Section D of this Employer/Group Agreement. The Employer may determine hours worked for eligibility between 17.5 and 40 hours per week, subject to the rules of this Group Contract. The term does not include employees who work on a temporary, seasonal or substitute basis. Employees who have been employed by the Small Employer for fewer than 90 days are not Eligible Employees unless the Small Employer so allows.

For an Employer that is a Large Employer: Eligible Employee means a person who:

1. Is a permanent employee, or leased worker as defined in ORS 743.522, who is paid a salary or wage by the Employer that meets the requirements of the state or federal minimum wage law(s) that apply to the Employer;
2. Meets the eligibility and enrollment criteria specified in Section D of this Employer/Group Agreement and the requirements in section 3 of the Member Handbook; and
3. Is not an on-call, temporary, substitute or seasonal employee.

Eligible Employee also includes a person who is a sole proprietor, partner, corporate officer or limited liability corporation member of a business if such person regularly performs activities relating to the operation of the business and gains his/her livelihood from those activities.

## SECTION B-GROUP CONTRACT INFORMATION

- **Renewal Notification:** 180 Days
- **Premium Billing Information:**  
Payment of Premium is required for the entire month regardless of the specific day of the month that the Member's coverage begins or terminates.
- **Premium Due Date:** 1st of the month
- **Premium Payments Made in Error:**  
Refunds for Premium payments made in error by the Employer shall not exceed: 60 Days
- **Termination of Coverage Effective Date:** Last day of the month
- **Service Area:** See Appendix-A



## **SECTION C-EMPLOYER PROVISIONS**

### **DURATION, REVISION AND RENEWAL OF THIS GROUP CONTRACT**

This Group Contract is effective on the date shown on the Group Contract Declarations Page. Except for changes in Premium as described within this section, revision of this Group Contract can only be accomplished by written notification to Providence Health Plan and Providence Health Plan's acceptance of the requested revision, and the execution of an amendment to this Group Contract. Any renewal of this Group Contract for another Contract Year shall be accomplished by issuance of a new Rate Summary for this Group Contract, in the current form, executed by Providence Health Plan and the Employer. The payment of Premium shall constitute the Employer's acceptance of the terms of this Group Contract, including execution of the Rate Summary.

### **EMPLOYEE PARTICIPATION REQUIREMENTS**

The minimum enrollment percentage of Eligible Employees and Eligible Family Dependents is as stated in the Employer/Group Agreement. The maximum enrollment percentage of out-of-area Subscribers is as stated in Providence Health Plan's rate quote to the Employer. At least one Eligible Employee must be enrolled or this Group Contract will be terminated in accordance with the provisions the Employer Group Agreement.

Eligible Employees and Eligible Family Dependents who have medical coverage through another group plan will be excluded from the process of determining if the Employer meets Providence Health Plan's minimum enrollment percentage requirements. These Eligible Employees and/or Eligible Family Dependents will be required to complete and sign a Waiver of Group Coverage form provided by, or acceptable to, Providence Health Plan.

Providence Health Plan reserves the right to audit the Employer's payroll records to verify compliance with the eligibility and enrollment requirements stipulated in Group Contract. Failure to provide records requested by Providence Health Plan may, at Providence Health Plan's option, result in termination of this Group Contract.

With regard to Large Employers, Providence Health Plan reserves the right to review group census information and adjust Premiums at any time during the Contract Year if the Large Employer's number of out-of-area Subscribers exceeds the maximum allowable percentage as stated in Providence Health Plan's rate quote to the Large Employer.

If an Employer's number of out-of-area Subscribers exceeds Providence Health Plan's maximum allowable percentage of enrollment at any time during the Contract Year, Providence Health Plan will terminate the out-of-area Subscriber benefit at the next contract renewal. The Employer will receive written notice of this termination in accordance with the notification period stated in the Employer/Group Agreement.

### **PREMIUM BILLING INFORMATION**

A Member's coverage shall be effective and terminate as described in the Employer Group Agreement and the Member Handbook. Providence Health Plan will send out Premium Billing Statements on a monthly basis to the Employer listing all Subscribers and the amount of Premium due.

The Premium is due as indicated in the Rate Summary.

### **CHANGES IN PREMIUM CHARGES**

The Premium specified in the Group Contract Rate Summary may be changed only in accordance with the following provisions:

1. Premiums are subject to change upon renewal of this Group Contract for another Contract Year.
2. If at any time during a Contract Year any federal or state law or any order or regulation of a federal or state agency mandates a modification of benefits under this Group Contract, Providence Health Plan may change the Premium and/or Covered Services accordingly. The change in Premium shall be effective on the effective date of the modification of benefits, as stated in the notice.
3. Premiums may be changed as required by the terms of any amendment to this Group Contract.

Any changes in Premium will be accompanied by the issuance of a new Rate Summary.

## **PREMIUM PAYMENT DUE DATE**

Premium is due on the first of the month, unless otherwise stated in Section B of the Employer Group Agreement. If the Employer does not pay the Premium within 15 days after the due date, Providence Health Plan will mail a single Premium delinquency notice to the Employer. If the Employer does not pay the Premium by the last day of the grace period specified in the notice, coverage will be retroactively terminated, with no further notice to the Employer, on the last day of the monthly period through which Premium is paid. Providence Health Plan reserves the right to suspend claims processing for Employers whose Premium is delinquent. Failure to pay the Premium includes making a partial payment of the amount due as Premium. The Employer shall notify Members of the termination of coverage. If Providence Health Plan fails to send the Premium delinquency notice specified above, Providence Health Plan will continue this Group Contract in effect, without payment of Premium, until Providence Health Plan provides such notice. The election period for continuation or Portability coverage begins on the date that such notice is received by the Employer.

## **PAYMENTS MADE IN ERROR**

Premium paid by the Employer for Ineligible Persons shall be refunded by Providence Health Plan upon written request by the Employer. However, the refund shall not exceed the Premium for the time period stated in the Employer/Group Agreement. The Ineligible Persons will be financially responsible for the cost of health care Services received during the refund period and will be billed for such Services by the treating provider.

## **RENEWABILITY, MODIFICATION, AND TERMINATION OF THIS GROUP CONTRACT**

This Group Contract is guaranteed renewable and will not be terminated due to claims experience, health status, or length of time in force. This Group Contract may be terminated or modified for any of the following reasons:

1. Upon Providence Health Plan's receipt of written notice of termination from the Employer, provided that Providence Health Plan receives the notice at least 30 days in advance of the proposed termination date.
2. Upon failure of the Employer to pay any Premium by the due date as described in this document.
3. Upon failure of the Employer to comply with any provision of this Group Contract, including the definition of Eligible Employee or Small Employer. The termination shall be effective on the date specified in the notice from Providence Health Plan to the Employer.
4. Upon the failure of the Employer to satisfy at any time the minimum enrollment requirements specified in the Employer/Group Agreement. The termination shall be effective on the earlier of the next Group Contract anniversary date or the last of the month in which no Eligible Employees are enrolled.
5. Upon our discovery of fraud or misrepresentation of the Employer. The termination shall be effective on the date specified in the notice from Providence Health Plan to the Employer. This date shall not be earlier than the date of the fraud or misrepresentation.
6. For noncompliance with the employer contribution requirements listed in the Employer/Group Agreement. The termination shall be effective on the next Group Contract anniversary date.
7. When Providence Health Plan ceases to offer or elect not to renew all Health Benefit Plans for all Large Employer and/or Small Employer groups in this state. The termination will be effective on the date specified in the notice from Providence Health Plan. This date shall not be earlier than 180 days from the date of the notice.
8. When Providence Health Plan ceases to offer or elect not to renew a Health Benefit Plan for all groups in this state. We will send written notice to all Employers covered by the affected Group Contract at least 90 days prior to non-renewal, offering the Employer all Health Benefit Plans that we offer to groups of their size.
9. When Providence Health Plan ceases to offer or elect not to renew a Health Benefit Plan to employer groups in a specified Service Area because of an inability to reach an agreement with the health care providers or organization of health care providers to provide Services under this Group Contract within that specified Service Area. Providence Health Plan will send written notice to all Employers covered by this Group Contract at least 90 days prior to non-renewal. Providence Health Plan will offer to Employers all other plans that Providence Health Plan offer to groups of their size in the specified Service Area.

10. When Providence Health Plan is ordered by the Director to discontinue coverage in accordance with procedures specified or approved by the Director upon finding that the continuation of the coverage would not be in the best interests of Members or impair Providence Health Plan's ability to meet contractual obligations.
11. In the case of a Group Contract that delivers Covered Services through a network of Participating Providers, when Providence Health Plan no longer has any Members living, residing or working in the Service Area.
12. In the case of a Group Contract that is offered through one or more bona fide associations, when the membership of an Employer in the association ceases and the termination of coverage is not related to the health status of any Member.
13. When Providence Health Plan implements a uniform modification of coverage upon renewal for all employers in accordance with standards adopted by the Director, provided that Providence Health Plan furnishes written notice of the modification to the Employer at least 30 days prior to the renewal date.

Upon termination of this Group Contract for reasons other than non-payment of Premiums by the Employer except when group coverage is immediately replaced by the Employer with another insurer, Providence Health Plan will provide a notice of termination to the Employer within 10 working days after the termination date. If Providence Health Plan does not provide that notice to the Employer, Providence Health Plan will continue this Group Contract in effect, without payment of Premium, until the notice is given. The election period for continuation or Portability coverage begins on the date that such notice is received by the Employer.

#### **NO REINSTATEMENT BY ACCEPTANCE OF PAYMENT**

If this Group Contract is terminated for any reason, Providence Health Plan's acceptance of Premium after notice of the termination shall not guarantee a reinstatement of this contract. Any reinstatement must be agreed to by both Providence Health Plan and the Employer. Providence Health Plan shall refund any payment accepted, less any outstanding balance, to the Employer upon discovery that the payment was accepted without mutual agreement to reinstate.

#### **CONFIDENTIALITY OF PROTECTED HEALTH INFORMATION**

In accordance with the federal privacy requirements of the Health Insurance Portability and Accountability Act (HIPAA), Providence Health Plan will not disclose a Member's protected health information (PHI) to the Employer or any agent of the Employer unless requested and unless Providence Health Plan determines that such disclosure is:

1. Necessary and appropriate to the Employer's obtaining bids from Providence Health Plan or from other health plans for further health coverage or to the Employer's modifying, amending, or terminating any benefit under the health plan;
2. Necessary as part of the Member's treatment, payment for the Member's treatment and Providence Health Plan's business operations. Providence Health Plan may share the Member's information with doctors or hospitals to help them provide medical care to the Member;
3. Necessary to help manage the Member's health care;
4. In compliance with the applicable provisions of HIPAA; and
5. Consistent with the HIPAA privacy protections that are contained in the Employer's group health plan documents, as certified in writing to Providence Health Plan by the Employer, under which the Employer agrees to limit further disclosures to those permitted by law, to ensure that any person with whom the PHI is disclosed makes similar agreements, not to use PHI for employment-related actions or decisions, not to use PHI for purposes related to any other benefits, to report to Providence Health Plan any violations of these principles, to provide access to individuals to their PHI except as limited by law, to amend erroneous PHI as provided by law, to account for disclosures of PHI as provided by law, to be audited by the US Department of Health & Human Services as to its handling of PHI, to return all PHI to Providence Health Plan when no longer required, and to separate employees not necessary to using the PHI from the functions for which the PHI is required.

## **EMPLOYER RECORDS**

The Employer is responsible for keeping accurate records relating to this Group Contract. The records must contain all the information Providence Health Plan needs to administer this contract. Providence Health Plan has the right to request, inspect or audit the Employer's records at any reasonable time during regular business hours.

## **ADMINISTRATION AND INTERPRETATION OF THE PLAN**

To the extent this Group Contract relates to an employee benefit plan that is governed by the Employee Retirement Income Security Act of 1974 (ERISA), as amended, the Employer's responsibilities and Providence Health Plan responsibilities include the following:

- The Employer is responsible for furnishing summary plan descriptions, annual reports and summary annual reports to plan participants and to the government as required by ERISA.
- The Employer and not Providence Health Plan is the "Plan Administrator" as defined in ERISA.
- The Employer is responsible for providing all notices regarding the COBRA continuation provisions specified in section 11.2 of the Member Handbook. Providence Health Plan is responsible for providing all notices of Creditable Coverage as specified in section 10.4 of the Member Handbook, and notices regarding the availability of State Mandated Continuation Coverage as specified in section 11.1 of the Member Handbook, and Portability Plans as specified in section 12 of the Member Handbook, unless the Employer agrees to provide such notices.
- The Employer gives Providence Health Plan, acting for the "Plan Administrator," the discretionary authority to interpret the terms of the related ERISA plan, to make factual determinations relevant to benefit determinations and to otherwise decide all questions regarding eligibility for benefits under the plan.

Benefits shall be payable to a Member under the ERISA plan and this Group Contract only if Providence Health Plan, in its discretion, determines that such benefits are payable. Providence Health Plan's determination regarding the meaning of the provisions of the ERISA plan and this Group Contract shall not be subject to challenge absent a finding that such determination in any particular case is arbitrary and capricious.

## **LIMIT OF LIABILITY WHEN INACCURATE DESCRIPTIVE MATERIALS ARE DEVELOPED BY EMPLOYER**

The Employer will indemnify, defend and hold Providence Health Plan harmless from any claims, damages, judgments and expenses (including attorney's fees) based on or arising out of, directly or indirectly, descriptive materials written, created, designed or printed by the Employer, or on the Employer's behalf by any third party when such descriptive materials:

1. Are used without prior review and written approval by us; and
2. Inaccurately reflect any of the terms, conditions and/or provisions of this Group Contract.

The term "descriptive materials" includes, without limitation, any type of circular, leaflet, booklet, summary, handbook, letter or form that describes in whole or in part any of the terms, conditions and/or provisions of this Group Contract.

## SECTION D-CLASS INFORMATION

- **Description of Class (if applicable):** Active-Open Option General County Employees
- **Eligibility Requirements:** To be eligible for coverage under this Group Contract all Members, except out-of-area Subscribers and Out-of-Area Dependents as specified in section 3 of this Group Contract and in Our rate quote to the Employer, must work or reside in the Service Area.  
  
All employees of this class who work on a regularly scheduled basis of 20 Hours per week are eligible for enrollment under this Group Contract.
- **Effective Date of Coverage Provision:**  
Employee Eligibility Waiting Period (probationary period): 2 Months  
Effective Date of Coverage: First of the month following probationary period.
- **Minimum Employer Premium Contribution Requirements:**  
Percentage (%) or dollar amount (\$) of Premium contributed by an Employer with 51 or more Eligible Employees:  
As set by employer
- **Minimum Participation Requirements (applies to all classes combined):**  
Large Group:  
Required Eligible Employee Enrollment: % with a minimum of 15 enrolled employees  
Required Dependent Enrollment: %
- **Dependent Children Limiting Age:** 26 years of age; if fulltime student, 26 years of age
- **Group Contract Provisions:**  
Lifetime Maximum Benefit: See Summary of Benefits  
  
24-Hour Coverage: We provide 24-hour coverage for owners, officers, or partners not covered by Workers' Compensation and non-subject workers who are Members under this Group Contract.  
  
Lay Off and Rehire: If rehire occurs within ~~Custom~~ 6 months the Eligibility Waiting Period is waived. The waiting period is also waived if an employee has continuously participated in COBRA continuation coverage during the layoff period and is rehired within 18 months.  
  
Employer-approved Leave of Absence: 6 months. Absences extending beyond this period of time are subject to COBRA/State Continuation and/or Portability Continuation provisions in the Group Contract and Member Handbook.
- **Enrollment:** Eligible Employees and Eligible Family Dependents must enroll within 60 days after becoming eligible.
- **Non-Medicare Eligible Retired Employee Coverage:** No

## SECTION E-BENEFIT INFORMATION

**Description of Class (if applicable):** Active-Open Option General County Employees

<u>Contract/Endorsement</u>	<u>Benefit</u>	<u>Effective Date</u>
Open Option	OP \$15/10%/30%/\$2000/\$500cd	01/01/2013
Prescription Drugs	RX \$15/\$30	01/01/2013
Full Service Vision Care	VIS \$400	01/01/2013
Alternative Care	Alt Care \$15/\$1500	01/01/2013
Domestic Partner	Custom DOMPAR+	01/01/2013
Voluntary Sterilization	STERIL	01/01/2013

## SECTION D-CLASS INFORMATION

- **Description of Class (if applicable):** Active-Personal Option General County Employees
- **Eligibility Requirements:** To be eligible for coverage under this Group Contract all Members, except out-of-area Subscribers and Out-of-Area Dependents as specified in section 3 of this Group Contract and in Our rate quote to the Employer, must work or reside in the Service Area.  
  
All employees of this class who work on a regularly scheduled basis of 20 Hours per week are eligible for enrollment under this Group Contract.
- **Effective Date of Coverage Provision:**  
Employee Eligibility Waiting Period (probationary period): 2 Months  
Effective Date of Coverage: First of the month following probationary period
- **Minimum Employer Premium Contribution Requirements:**  
Percentage (%) or dollar amount (\$) of Premium contributed by an Employer with 51 or more Eligible Employees:  
As set by employer
- **Minimum Participation Requirements (applies to all classes combined):**  
Large Group:  
Required Eligible Employee Enrollment: % with a minimum of 15 enrolled employees  
Required Dependent Enrollment: %
- **Dependent Children Limiting Age:** 26 years of age; if fulltime student, 26 years of age
- **Group Contract Provisions:**  
Lifetime Maximum Benefit: See Summary of Benefits  
  
24-Hour Coverage: We provide 24-hour coverage for owners, officers, or partners not covered by Workers' Compensation and non-subject workers who are Members under this Group Contract.  
  
Lay Off and Rehire: If rehire occurs within ~~Custom~~ 6 months the Eligibility Waiting Period is waived. The waiting period is also waived if an employee has continuously participated in COBRA continuation coverage during the layoff period and is rehired within 18 months.  
  
Employer-approved Leave of Absence: 6 months. Absences extending beyond this period of time are subject to COBRA/State Continuation and/or Portability Continuation provisions in the Group Contract and Member Handbook.
- **Enrollment:** Eligible Employees and Eligible Family Dependents must enroll within 60 days after becoming eligible.
- **Non-Medicare Eligible Retired Employee Coverage:** No

## SECTION E-BENEFIT INFORMATION

**Description of Class (if applicable):** Active-Personal Option General County Employees

<b>Contract/Endorsement</b>	<b>Benefit</b>	<b>Effective Date</b>
Personal Option	PE \$20/20%/\$1200/\$500d	01/01/2013
Prescription Drugs	RX \$15/\$30	01/01/2013
Full Service Vision Care	VIS \$400	01/01/2013
Alternative Care	Alt Care \$20/\$1500	01/01/2013
Domestic Partner	Custom DOMPAR+	01/01/2013
Voluntary Sterilization	STERIL	01/01/2013

## SECTION D-CLASS INFORMATION

- **Description of Class (if applicable):** Cobra/Job Share-Open Option #1 General County Employees
- **Eligibility Requirements:** To be eligible for coverage under this Group Contract all Members, except out-of-area Subscribers and Out-of-Area Dependents as specified in section 3 of this Group Contract and in Our rate quote to the Employer, must work or reside in the Service Area.  
Cobra: Not Applicable  
Job Share: 18.75 hours per week
- **Effective Date of Coverage Provision:**  
Employee Eligibility Waiting Period (probationary period): See effective date of coverage  
Effective Date of Coverage: Cobra: Not Applicable  
Job Share: First of the month following 2 months of employment.
- **Minimum Employer Premium Contribution Requirements:**  
Percentage (%) or dollar amount (\$) of Premium contributed by an Employer with 51 or more Eligible Employees:  
Cobra: 0% for Employee and Dependent Premiums  
Job Share: As set by employer
- **Minimum Participation Requirements (applies to all classes combined):**  
Large Group:  
Required Eligible Employee Enrollment: % with a minimum of 15 enrolled employees  
Required Dependent Enrollment: %
- **Dependent Children Limiting Age:** 26 years of age; if fulltime student, 26 years of age
- **Group Contract Provisions:**  
Lifetime Maximum Benefit: See Summary of Benefits  
24-Hour Coverage: We provide 24-hour coverage for owners, officers, or partners not covered by Workers' Compensation and non-subject workers who are Members under this Group Contract.  
Lay Off and Rehire: If rehire occurs within ~~Custom~~ 6 months the Eligibility Waiting Period is waived. The waiting period is also waived if an employee has continuously participated in COBRA continuation coverage during the layoff period and is rehired with eighteen months.  
Employer-approved Leave of Absence: ~~Custom months~~. COBRA: Not applicable. Job Share: 6 months. Absences extending beyond this period of time are subject to COBRA/State Continuation and/or Portability-Continuation provisions in the Group Contract and Member Handbook.
- **Enrollment:** Eligible Employees and Eligible Family Dependents must enroll within 60 days after becoming eligible.
- **Non-Medicare Eligible Retired Employee Coverage:** No

**SECTION E-BENEFIT INFORMATION**

**Description of Class (if applicable):** Cobra/Job Share-Open Option #1 General County Employees

<u>Contract/Endorsement</u>	<u>Benefit</u>	<u>Effective Date</u>
Open Option	OP \$15/10%/30%/\$2000/\$500cd	01/01/2013
Prescription Drugs	Rx \$15/\$30	01/01/2013
Full Service Vision Care	VIS \$400	01/01/2013
Alternative Care	Alt Care \$15/\$1500	01/01/2013
Domestic Partner	Custom DOMPAR+	01/01/2013
Voluntary Sterilization	STERIL	01/01/2013



## SECTION D-CLASS INFORMATION

- **Description of Class (if applicable):** Cobra/Job Share-Personal Option General County Employees
- **Eligibility Requirements:** To be eligible for coverage under this Group Contract all Members, except out-of-area Subscribers and Out-of-Area Dependents as specified in section 3 of this Group Contract and in Our rate quote to the Employer, must work or reside in the Service Area.  
Cobra: Not Applicable  
Job Share: 18.75 hours per week
- **Effective Date of Coverage Provision:**  
Employee Eligibility Waiting Period (probationary period): See effective date of coverage  
Effective Date of Coverage: Cobra: Not Applicable  
Job Share: First of the month following 2 months of employment.
- **Minimum Employer Premium Contribution Requirements:**  
Percentage (%) or dollar amount (\$) of Premium contributed by an Employer with 51 or more Eligible Employees:  
Cobra: 0% for Employee and Dependent Premiums  
Job Share: As set by employer
- **Minimum Participation Requirements (applies to all classes combined):**  
Large Group:  
Required Eligible Employee Enrollment: % with a minimum of 15 enrolled employees  
Required Dependent Enrollment: %
- **Dependent Children Limiting Age:** 26 years of age; if fulltime student, 26 years of age
- **Group Contract Provisions:**  
Lifetime Maximum Benefit: See Summary of Benefits  
24-Hour Coverage: We provide 24-hour coverage for owners, officers, or partners not covered by Workers' Compensation and non-subject workers who are Members under this Group Contract.  
Lay Off and Rehire: If rehire occurs within ~~Custom~~ 6 months the Eligibility Waiting Period is waived. The waiting period is also waived if an employee has continuously participated in COBRA continuation coverage during the layoff period and is rehired within eighteen months.  
Employer-approved Leave of Absence: ~~Custom months~~-COBRA: Not applicable. Job Share: 6 months. Absences extending beyond this period of time are subject to COBRA/State Continuation and/or Portability Continuation provisions in the Group Contract and Member Handbook.
- **Enrollment:** Eligible Employees and Eligible Family Dependents must enroll within 60 days after becoming eligible.
- **Non-Medicare Eligible Retired Employee Coverage:** No

**SECTION E-BENEFIT INFORMATION**

**Description of Class (if applicable):** Cobra/Job Share-Personal Option General County Employees

<u>Contract/Endorsement</u>	<u>Benefit</u>	<u>Effective Date</u>
Personal Option	PE \$20/20%/\$1200/\$500d	01/01/2013
Prescription Drugs	RX \$15/\$30	01/01/2013
Full Service Vision Care	VIS \$400	01/01/2013
Alternative Care	Alt Care \$20/\$1500	01/01/2013
Domestic Partner	Custom DOMPAR+	01/01/2013
Voluntary Sterilization	STERIL	01/01/2013

## SECTION D-CLASS INFORMATION

- **Description of Class (if applicable):** Early Retiree-Open Option #1 General County Employees
- **Eligibility Requirements:** To be eligible for coverage under this Group Contract all Members, except out-of-area Subscribers and Out-of-Area Dependents as specified in section 3 of this Group Contract and in Our rate quote to the Employer, must work or reside in the Service Area.
- **Effective Date of Coverage Provision:**  
Effective Date of Coverage: First of the month following retirement
- **Minimum Employer Premium Contribution Requirements:**  
Percentage (%) or dollar amount (\$) of Premium contributed by an Employer with 51 or more Eligible Employees:  
As set by employer
- **Minimum Participation Requirements (applies to all classes combined):**  
Large Group:  
Required Eligible Employee Enrollment: % with a minimum of 15 enrolled employees  
Required Dependent Enrollment: %
- **Dependent Children Limiting Age:** 26 years of age; if fulltime student, 26 years of age
- **Group Contract Provisions:**  
Lifetime Maximum Benefit: See Summary of Benefits  
24-Hour Coverage: We provide 24-hour coverage for owners, officers, or partners not covered by Workers' Compensation and non-subject workers who are Members under this Group Contract.
- **Enrollment:** Eligible Employees and Eligible Family Dependents must enroll within 60 days after becoming eligible.
- **Non-Medicare Eligible Retired Employee Coverage:** Yes  
Eligible Family Dependent Coverage: All Eligible Family Dependents

## SECTION E-BENEFIT INFORMATION

**Description of Class (if applicable):** Early Retiree-Open Option #1 General County Employees

<b><u>Contract/Endorsement</u></b>	<b><u>Benefit</u></b>	<b><u>Effective Date</u></b>
Open Option	OP \$15/10%/30%/\$2000/\$500ed	01/01/2013
Prescription Drugs	RX \$15/\$30	01/01/2013
Full Service Vision Care	VIS \$400	01/01/2013
Alternative Care	Alt Care \$15/\$1500	01/01/2013
Domestic Partner	Custom DOMPAR+	01/01/2013
Voluntary Sterilization	STERIL	01/01/2013
Early Retiree	RETIREE	01/01/2013

## SECTION D-CLASS INFORMATION

- **Description of Class (if applicable):** Early Retiree-Personal Option General County Employees
- **Eligibility Requirements:** To be eligible for coverage under this Group Contract all Members, except out-of-area Subscribers and Out-of-Area Dependents as specified in section 3 of this Group Contract and in Our rate quote to the Employer, must work or reside in the Service Area.
- **Effective Date of Coverage Provision:**  
Effective Date of Coverage: First of the month following retirement
- **Minimum Employer Premium Contribution Requirements:**  
Percentage (%) or dollar amount (\$) of Premium contributed by an Employer with 51 or more Eligible Employees:  
As set by employer
- **Minimum Participation Requirements (applies to all classes combined):**  
Large Group:  
Required Eligible Employee Enrollment: % with a minimum of 15 enrolled employees  
Required Dependent Enrollment: %
- **Dependent Children Limiting Age:** 26 years of age; if fulltime student, 26 years of age
- **Group Contract Provisions:**  
Lifetime Maximum Benefit: See Summary of Benefits  
  
24-Hour Coverage: We provide 24-hour coverage for owners, officers, or partners not covered by Workers' Compensation and non-subject workers who are Members under this Group Contract.
- **Enrollment:** Eligible Employees and Eligible Family Dependents must enroll within 60 days after becoming eligible.
- **Non-Medicare Eligible Retired Employee Coverage:** Yes  
Eligible Family Dependent Coverage: All Eligible Family Dependents

## SECTION E-BENEFIT INFORMATION

**Description of Class (if applicable):** Early Retiree-Personal Option General County Employees

<u>Contract/Endorsement</u>	<u>Benefit</u>	<u>Effective Date</u>
Personal Option	PE \$20/20%/\$1200/\$500d	01/01/2013
Prescription Drugs	RX \$15/\$30	01/01/2013
Full Service Vision Care	VIS \$400	01/01/2013
Alternative Care	Alt Care \$20/\$1500	01/01/2013
Domestic Partner	Cnstm DOMPAR+	01/01/2013
Voluntary Sterilization	STERIL	01/01/2013
Early Retiree	RETIREE	01/01/2013

## SECTION D-CLASS INFORMATION

- **Description of Class (if applicable):** Early Retiree-Open Option #2 General County Employees
- **Eligibility Requirements:** To be eligible for coverage under this Group Contract all Members, except out-of-area Subscribers and Out-of-Area Dependents as specified in section 3 of this Group Contract and in Our rate quote to the Employer, must work or reside in the Service Area.
- **Effective Date of Coverage Provision:**  
Effective Date of Coverage: First of the month following retirement
- **Minimum Employer Premium Contribution Requirements:**  
Percentage (%) or dollar amount (\$) of Premium contributed by an Employer with 51 or more Eligible Employees:  
As set by employer
- **Minimum Participation Requirements (applies to all classes combined):**  
Large Group:  
Required Eligible Employee Enrollment: % with a minimum of 15 enrolled employees  
Required Dependent Enrollment: %
- **Dependent Children Limiting Age:** 26 years of age; if fulltime student, 26 years of age
- **Group Contract Provisions:**  
Lifetime Maximum Benefit: See Summary of Benefits  
24-Hour Coverage: We provide 24-hour coverage for owners, officers, or partners not covered by Workers' Compensation and non-subject workers who are Members under this Group Contract.
- **Enrollment:** Eligible Employees and Eligible Family Dependents must enroll within 60 days after becoming eligible.
- **Non-Medicare Eligible Retired Employee Coverage:** Yes  
Eligible Family Dependent Coverage: All Eligible Family Dependents

## SECTION E-BENEFIT INFORMATION

**Description of Class (if applicable):** Early Retiree-Open Option #2 General County Employees

<u>Contract/Endorsement</u>	<u>Benefit</u>	<u>Effective Date</u>
Open Option	OP \$15/30%/50%/\$2000/\$1000cd	01/01/2013
Prescription Drugs	RX \$10/50%/\$1000	01/01/2013
Domestic Partner	Custom DOMPAR+	01/01/2013
Voluntary Sterilization	STERIL	01/01/2013
Early Retiree	RETIREE	01/01/2013

## SECTION D-CLASS INFORMATION

- **Description of Class (if applicable):** Cobra-Open Option #2 General County Employees
- **Eligibility Requirements:** To be eligible for coverage under this Group Contract all Members, except out-of-area Subscribers and Out-of-Area Dependents as specified in section 3 of this Group Contract and in Our rate quote to the Employer, must work or reside in the Service Area.
- **Effective Date of Coverage Provision:**  
Employee Eligibility Waiting Period (probationary period): See effective date of coverage  
Effective Date of Coverage:
- **Minimum Employer Premium Contribution Requirements:**  
Percentage (%) or dollar amount (\$) of Premium contributed by an Employer with 51 or more Eligible Employees:  
Subscribers: 0% Dependents: 0%
- **Minimum Participation Requirements (applies to all classes combined):**  
Large Group:  
Required Eligible Employee Enrollment: % with a minimum of 15 enrolled employees  
Required Dependent Enrollment: %
- **Dependent Children Limiting Age:** 26 years of age; if fulltime student, 26 years of age
- **Group Contract Provisions:**  
Lifetime Maximum Benefit: See Summary of Benefits  
  
24-Hour Coverage: We provide 24-hour coverage for owners, officers, or partners not covered by Workers' Compensation and non-subject workers who are Members under this Group Contract.  
Lay Off and Rehire: If rehire occurs within ~~Custom~~ 6 months the Eligibility Waiting Period is waived. The waiting period is also waived if an employee has continuously participated in COBRA continuation coverage during the layoff period and is rehired within eighteen months.  
Employer-approved Leave of Absence: ~~Custom months. Absences extending beyond this period of time are subject to COBRA/State Continuation and/or Portability Continuation provisions in the Group Contract and Member Handbook. Not applicable.~~
- **Enrollment:** Eligible Employees and Eligible Family Dependents must enroll within 60 days after becoming eligible.
- **Non-Medicare Eligible Retired Employee Coverage:** No

## SECTION E-BENEFIT INFORMATION

**Description of Class (if applicable):** Cobra-Open Option #2 General County Employees

<u>Contract/Endorsement</u>	<u>Benefit</u>	<u>Effective Date</u>
Open Option	OP \$15/30%/50%/\$2000/\$1000cd	01/01/2013
Prescription Drugs	RX \$10/50%/\$1000	01/01/2013
Domestic Partner	Custom DOMPAR+	01/01/2013
Voluntary Sterilization	STERIL	01/01/2013

## CLACKAMAS COUNTY REFUNDING ARRANGEMENT

### AGREEMENT

Clackamas County (County) and Providence Health Plans agree to enter into an alternative funding arrangement which provides some form of financial risk-sharing between the County and Providence Health Plans. All fully insured contracts and products purchased by the County are subject to the final settlement provisions of this endorsement.

### CONTRACT PERIOD

The effective date of refunding arrangement is January 1, 2013 and the contract period is January 1, 2013 through December 31, 2013

### PREMIUMS

The County will pay monthly premiums to Providence Health Plans during the Contract Period using the agreed upon renewal rates. Please refer to the enclosed Employer Group Contract Rate Summaries for these rates.

### RATING FACTORS

Medical Administration Charge:	7.73%
Pharmacy Administration Charge:	8.66%
Vision Administration Charge:	9.24%
Alternative Care Administration Charge:	9.31%
Pooling Charge:	@\$150K: \$13.85 pmpm
OMIP Assessment:	\$5.44 pmpm
Portability Charge:	1.36 %
Commission:	\$0.0
Oregon Premium Tax	1.0%
Patient-Centered Outcome Research Institute Fee:	\$0.167 pmpm

### FINANCIAL SETTLEMENT

Approximately 90 days after the end of each plan year, PHP will perform a settlement calculation to determine whether a surplus or deficit accrued during the preceding plan year. The settlement calculation will compare premium paid against incurred claims and expenses, resulting in a surplus or deficit.

Any surplus will be applied to a rate stabilization reserve equal to no more than 5% of annual premium.

Once the settlement calculation is performed and the rate stabilization reserve is confirmed to be fully funded at 5% of actual annual premium, any remaining surplus will be refunded to the County. Any deficit accrued will be offset by available rate stabilization reserve. Once the rate stabilization reserve is exhausted, any remaining deficit will be carried forward and recovered from future surpluses.

Upon termination, the County will be required to fund any shortfall in the rate stabilization reserve such that the full 5% is available to PHP to pay run-out claims. Twelve months later, a final accounting will be performed for the claims run-out. Any final surplus will be refunded to the County and any deficit will be the sole liability of PHP.

Future renewal calculations may include a margin of 1.5% of premium if the rate stabilization reserve is not fully funded. Should the rate stabilization reserve decrease in the future such that it is no longer fully funded, the margin will be re-introduced in subsequent renewals until such time as the rate stabilization reserve is again fully funded. This additional margin will not be considered administrative or other fixed expenses and, therefore, will be eligible to be refunded to the County through the calculation described above.