

Changes in the HUD Definition of “Homeless”

On January 4, 2012, final regulations went into effect to implement changes to the U.S. Department of Housing and Urban Development’s (HUD’s) definition of homelessness contained in the Homeless Emergency Assistance and Rapid Transition to Housing Act. The definition affects who is eligible for various HUD-funded homeless assistance programs. HUD issued draft regulations in April 2010. Based on public comments received on these initial draft regulations, HUD published the final rule in the December 5, 2011 *Federal Register*. This document summarizes the changes to the definition of homelessness under the final rule compared to both current law and the 2010 draft regulations. It also provides an analysis of the regulation’s effects and the decisions that communities and individual programs will have to make.

The new definition includes four broad categories of homelessness:

- People who are living in a place not meant for human habitation, in emergency shelter, in transitional housing, or are exiting an institution where they temporarily resided if they were in shelter or a place not meant for human habitation before entering the institution. The only significant change from existing practice is that people will be considered homeless if they are exiting an institution where they resided for up to 90 days (it was previously 30 days), and were homeless immediately prior to entering that institution.
- People who are losing their primary nighttime residence, which may include a motel or hotel or a doubled up situation, within 14 days and lack resources or support networks to remain in housing. HUD had previously allowed people who were being displaced within 7 days to be considered homeless. The regulation also describes specific documentation requirements for this category.
- Families with children or unaccompanied youth who are unstably housed and likely to continue in that state. This is a new category of homelessness, and it applies to families with children or unaccompanied youth (up to age 24) who have not had a lease or ownership interest in a housing unit in the last 60 or more days, have had two or more moves in the last 60 days, and who are likely to continue to be unstably housed because of disability or multiple barriers to employment.
- People who are fleeing or attempting to flee domestic violence, dating violence, sexual assault, stalking, or other dangerous or life-threatening situations related to violence; have no other residence; and lack the resources or support networks to obtain other permanent housing. This category is similar to the current practice regarding people who are fleeing domestic violence.

Timing and Implementation

The final regulation on the definition of homelessness went into effect on January 4, 2012. Implementation is dependent upon which year’s funds are being used. The new rule applies to all projects funded under the fiscal year (FY) 2011 Emergency *Solutions* Grant. Projects funded through the second allocation of FY 2011 ESG funding for prevention and rapid re-housing fall under the new rule, but those funded under the first FY 2011 ESG allocation, which was awarded under the Emergency *Shelter* Grant, do not.

The new definition also applies to all new and renewal Continuum of Care projects funded through the FY 2011 competition. This includes both Supportive Housing Program (SHP) and Shelter Plus Care (S+C) program grants.

The new definition will also apply to all activities using funding from FY 2012 and beyond, including both Continuum of Care projects and Emergency Solutions Grant projects (including outreach, emergency shelter, prevention, rapid re-housing, and HMIS activities). For more information, watch HUD’s [webinar](#) on the final rule.

Major Changes from the Draft Regulation

- People who are exiting an institution are considered homeless only if they resided in shelter or in a place not meant for human habitation prior to entering the institution and their stay in the institution was less than 90 days. People who were in transitional housing prior to entering an institution are not considered homeless upon exit. HUD notes that most of these individuals have historically been allowed to return to their transitional housing after exit, and HUD plans to continue this policy in the upcoming proposed Continuum of Care regulation.
- For the purposes of identifying unaccompanied youth who are unstably housed and are likely to continue in that state, youth means less than 25 years of age. The initial draft of the rule had not identified an age limit.
- HUD altered how it was defining “long-term period” and “frequent moves” as qualifying factors for being considered homeless. A “long-term period” will be 60 days instead of 90, and “frequent moves” will be two moves instead of three. As a result, to meet the third category of homelessness (persistent instability), a family or unaccompanied youth must have moved two or more times within the last 60 days.
- HUD also clarified several issues related to documentation requirements. For example, HUD specifies that third-party documentation, when available, is the preferable way to document homeless status. Lack of third-party documentation, however, cannot prevent a household from receiving emergency assistance, including shelter and victim services. In addition, HUD will allow other forms of already available documentation (including HMIS records) to count as evidence of homeless status.

Summary of Changes Compared to Current Law

The following table summarizes the new definition of homelessness, compares it to the existing definition, and summarizes the documentation requirements. Significant changes from the existing definition are underlined.

Table

1. Core Definition		
Traditional HUD Definition	New Definition	New Documentation Requirements
<p>An individual or family who lacks a fixed, regular, and adequate nighttime residence, which includes a primary nighttime residence of:</p> <ul style="list-style-type: none"> • Place not designed for or ordinarily used as a regular sleeping accommodation (including car, park, abandoned building, bus/train station, airport, or camping ground) • Publicly or privately operated shelter or transitional housing, including a hotel or motel paid for by government or charitable organizations; <p>In addition, a person is considered homeless if he or she is being discharged from an institution where he or she has been a resident for <u>30 days</u> or less and the person resided in a shelter or place not meant for human habitation immediately prior to entering that institution.</p>	<p>An individual or family who lacks a fixed, regular, and adequate nighttime residence, which includes a primary nighttime residence of:</p> <ul style="list-style-type: none"> • Place not designed for or ordinarily used as a regular sleeping accommodation (including car, park, abandoned building, bus/train station, airport, or camping ground) • Publicly or privately operated shelter or transitional housing, including a hotel or motel paid for by government or charitable organizations; <p>In addition, a person is considered homeless if he or she is being discharged from an institution where he or she has been a resident for <u>90 days</u> or less and the person resided in a shelter (<u>but not transitional housing</u>) or place not meant for human habitation immediately prior to entering that institution.</p>	<p>Acceptable evidence documenting homelessness in a place not ordinarily used as sleeping accommodation or shelter includes:</p> <ul style="list-style-type: none"> • Certification from individual or head of household seeking assistance; • Written documentation from an outreach worker as to where the individual or family was living before; or • Written referral by another housing or service provider. <p>In addition, documentation that a person was in an institution for 90 days or less includes <u>discharge paperwork</u> or a written/oral referral from a social worker, case manager, or other appropriate official that explains the entry and exit dates. If the intake worker is unable to obtain such a statement, documentation of his/her due diligence in attempting to obtain one, along with a certification from the individual, is acceptable.</p>

2. Imminently Losing Primary Nighttime Residence

Traditional HUD Definition	New Definition	New Documentation Requirements
<p>Individual or family is being evicted within 7 days from a private dwelling and:</p> <ul style="list-style-type: none">• No subsequent residence has been identified; and• The household lacks the resources or support networks (i.e. family, friends, faith-based or other social networks) needed to obtain other permanent housing.	<p>Individual or family is being evicted within 14 days from their primary nighttime residence and:</p> <ul style="list-style-type: none">• No subsequent residence has been identified; and• The household lacks the resources or support networks (i.e. family, friends, faith-based or other social networks) needed to obtain other permanent housing.	<ol style="list-style-type: none">1. At least one of the following stating that the household must leave within 14 days:<ul style="list-style-type: none">• A court order resulting from an eviction notice or equivalent notice, or a formal eviction notice;• For individuals in hotels or motels that they are paying for, evidence that the individual or family lacks the necessary financial resources to stay for more than 14 days; or• An oral statement by the individual or head of household stating that the owner or renter of the residence will not allow them to stay for more than 14 days. The intake worker must verify the statement either through contact with the owner or renter, or documentation of due diligence in attempting to obtain such a statement.2. Certification by the individual or head of household that no subsequent residence has been identified.3. Self-certification or other written documentation that the individual or head of household lacks the financial resources and support networks to obtain other housing.

3. Persistent Housing Instability		
Traditional HUD Definition	New Definition	New Documentation Requirements
<p>People who experience persistent housing instability were not considered homeless.</p>	<p><u>People with ALL of these characteristics:</u></p> <ol style="list-style-type: none"> <u>1. Unaccompanied youth (less than 25 years of age) or family with children and youth;</u> <u>2. Defined as homeless under other federal statutes (for example the definition used by the Department of Education) who do not otherwise qualify as homeless under HUD’s definition;</u> <u>3. Has not had a lease, ownership interest, or occupancy agreement in permanent housing in the 60 days prior to applying for assistance;</u> <u>4. Has moved two or more times in the 60 days immediately prior to applying for assistance;</u> <u>5. Has one or more of the following</u> <ul style="list-style-type: none"> • <u>chronic disabilities,</u> • <u>chronic physical or mental health conditions</u> • <u>substance addiction</u> • <u>histories of domestic violence or childhood abuse</u> • <u>child with a disability</u> • <u>two or more barriers to employment, which include</u> <ul style="list-style-type: none"> – <u>lack of a high school degree or GED</u> – <u>illiteracy</u> – <u>low English proficiency</u> – <u>history of incarceration or detention for criminal activity</u> – <u>history of unstable employment</u> 	<ol style="list-style-type: none"> 1. A nonprofit, state, or local government entity that administers the other federal statute must certify that household qualifies as homeless under that statute’s definition. 2. To document that the individual has not had a lease, occupancy agreement, or ownership interest in housing in the last 60 days, certification by the individual or head of household, written observation by an outreach worker, or referral by a provider. 3. To document that the individual or family has moved two times in the past 60 days, a certification from the individual and supporting documentation, including records or statements from each owner or renter of housing, shelter or housing provider, or social worker, case worker, or appropriate official of an institution where the individual or family resided. Where these statements are unobtainable, the intake worker should include a written record of his or her due diligence in attempting to obtain them. 4. Evidence of barriers includes: <ul style="list-style-type: none"> • Written diagnosis from a licensed professional, employment records, department of corrections records, literacy, and English proficiency tests. • For disability, any of the above, written verification from the Social Security Administration (or a disability check receipt), or observation of the intake worker of disability, which must be confirmed within 45 days by an appropriate professional.

4. Fleeing Domestic Violence

Traditional HUD Definition	New Definition	New Documentation Requirements
<p>Is fleeing a domestic violence housing situation and no subsequent residence has been identified and the person lacks the resources and support networks needed to obtain housing.</p>	<p>Any individual or family who:</p> <ul style="list-style-type: none">• 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;• Has no other residence; and• Lacks the resources or support networks to obtain other permanent housing.	<p>Acceptable Evidence for Individuals Fleeing Domestic Violence:</p> <ul style="list-style-type: none">• Oral statement by the individual or head of household seeking assistance, that is certified by the individual or head of household; and• Where the safety of the household is not in jeopardy:<ul style="list-style-type: none">○ Written observation by intake worker; or○ Written referral by a housing or service provider, social worker, or other organization from whom the household has sought assistance for domestic violence. <p>If the individual or family is being admitted to a domestic violence shelter or is receiving services from a victim service provider, the oral statement need only be documented by a certification of the individual or head of household, or by the intake worker.</p>

Analysis

The changes to the definition of homelessness are mandated by the HEARTH Act. HUD's final regulations provide the specific details necessary to implement those changes. For most of the changes, the HEARTH Act provided enough specificity, and HUD's proposal is simply restating the HEARTH Act's language. In other cases, the HEARTH Act provided less specific guidance, which HUD interpreted and translated into the detailed guidance necessary for implementation. Significant features of the new definition regulation include the following:

- HUD is requiring that providers maintain records for 5 years after the end of the grant term.
- The HEARTH Act states that people should be considered homeless if they were temporarily residing in a shelter or place not meant for human habitation prior to entering an institution. HUD interpreted a temporary stay in an institution to mean a stay of 90 days or less. Currently, HUD allows for stays of 30 days or less.
- The changes in the imminent homelessness category—people will be considered homeless if they are losing their housing in 14 days instead of 7 days as well as new documentation requirements—were specified in detail in the HEARTH Act, and the regulations closely follow those instructions.
- The HEARTH Act created a new category of homelessness that attempts to capture unaccompanied youth and families with children who experience persistent housing instability and have other barriers to housing. The HEARTH Act's language was more general than other language regarding the definition of homelessness. It required that the definition only apply to unaccompanied youth and families with children who are considered homeless under other federal statutes but not under the HUD portion of the McKinney-Vento Homeless Assistance Act. The HEARTH Act also required the following:
 - the individual or family has not lived independently for a long period of time, which HUD interpreted as not being on a lease or having an ownership interest in a housing unit for the past 60 days;
 - the individual or family has moved frequently, which HUD interpreted as having moved at least two times in the past 60 days; and
 - the individual or family is expected to continue to have unstable housing for one of a number of reasons—chronic disabilities, chronic physical health or mental health conditions, substance addiction, histories of domestic violence or childhood abuse, the presence of a child or youth with a disability, or multiple barriers to employment—HUD interpreted multiple barriers to employment to mean at least two of the following: lack of a high school degree or GED, illiteracy, low English proficiency, history of incarceration or detention for criminal activity, or history of unstable employment.

Overall, these changes will likely have modest impacts on homeless assistance programs. The number of people eligible for assistance through Continuum of Care programs will grow. Continuum of Care funded programs, particularly transitional housing programs, will have to evaluate how they target their assistance, whether they plan to serve people newly covered under the definition, and how they will prioritize whom to serve. Changes in data elements, intake forms, reporting forms, policies and rules may also be needed to implement the changes.

More people will also be eligible for assistance from ESG funded shelter programs. (Other changes to ESG will significantly expand ESG prevention assistance for people at risk of homelessness). Similar to the transitional housing programs, shelters funded through HUD's ESG program will have to decide whether they plan to serve people newly covered under the definition and how they will prioritize whom to serve.

The changes to the definition will have little impact on how point in time counts are conducted. The HEARTH Act prohibits HUD from requiring that communities conduct counts of people who are in imminent danger of losing their housing, experiencing persistent instability, or fleeing or attempting to flee domestic violence unless those people are being served by HUD-funded homeless assistance programs. HUD may only require CoCs to conduct

a count of people who are homeless under the core definition—residing in a shelter (including motel paid for by government or charitable organization), transitional housing, or place not meant for human habitation.

HUD will continue to issue regulations to implement the rest of the HEARTH Act. Some of those regulations may create incentives or disincentives for CoCs to serve people who are in imminent danger of losing their housing or experiencing persistent instability. For example, the HEARTH Act requires that CoCs be evaluated for their performance, and decisions about who is served may have an impact on that performance.

Although the changes to the definition will have modest effects, CoCs should use this opportunity to evaluate who their programs serve and how they serve them. Following are some questions that CoCs could consider.

- How *does* our community prioritize who to serve? How *should* we prioritize?
In many CoCs, providers each have a strategy for screening potential clients, and those strategies may not be coordinated.
- Are people we serve receiving the most appropriate intervention?
As eligibility for assistance expands, CoCs should evaluate whether newly eligible people are best served by the existing programs, which of those programs they are best served by, and whether new programs should be developed.
- How can we help providers and other stakeholders implement changes?
No matter what decisions CoCs make regarding which populations they serve and how they serve them, intake workers, providers, referring agencies, and other stakeholders will need training, technical assistance, and help with planning to ensure that the changes are implemented in a coordinated and efficient manner.