

## **INITIAL STATEMENT OF REASONS**

### **Emergency Shelter Grants Program (ESG) Title 25, California Code of Regulations**

#### **Proposed Amendments to:**

#### **Sections 8400-8421**

### **INTRODUCTION**

This Initial Statement of Reasons (ISOR) has been prepared by the California Department of Housing and Community Development (hereinafter “the Department”) to describe amendments to regulations currently in effect for the Federal Emergency Shelter Grants Program and the factual basis for these amendments.

The State of California Department of Housing and Community Development (hereinafter “the Department”) receives ESG funds from the U.S. Department of Housing and Urban Development (hereinafter “HUD”) to make grants to eligible Private nonprofit organizations and Units of general purpose local government. These funds may be used for a wide variety of uses to serve homeless households or households at-risk of homelessness so long as the State and funded subrecipients comply with a comprehensive set of requirements prescribed by federal law and regulations, as well as State regulations.

These regulations can be found at Title 25, Division 1, Chapter 7, Subchapter 20, sections 8400-8421. Unless otherwise specified, all section references herein are to Title 25 of the California Code of Regulations. They establish procedures for the award and disbursement of ESG funds, and establish policies and procedures for use of these funds to meet the purposes contained in the federal ESG regulations at 24 CFR Part 576. State authority for the administration of the ESG Program is contained in Health and Safety Code sections 50406.

## **DISCUSSION OF PROPOSED AMENDMENTS**

### **Section: 8400. Purpose and Scope**

#### **Subsections (a)-(d)**

**Purpose:** The proposed regulation changes to these sections would do the following:

- (a) change the name of the program from the Emergency Shelter Grants Program to the Emergency *Solutions Grants Program* consistent with this change in the federal statute and regulations;
- (b) include the citation for the Homeless Emergency Assistance and Rapid Transition to Housing (hereinafter HEARTH) Act which amended the program statute.
- (c) change the name of the McKinney Act to the correct name under current law.
- (d) change the State initialism for the program from FESG to ESG
- (e) make other nonsubstantive changes for clarity.

**Problem:** The HEARTH Act of 2009 changed the program name. The initialism FESG once used in State regulation is confusing because the common initialism used for the program by HUD is ESG.

**Rationale and Benefits:** These changes are consistent with how the program is currently named and referenced by HUD, the State and its Subrecipients. Making these changes in State regulations will avoid confusion with the program as it existed prior to changes in the McKinney-Vento Homeless Assistance Act (McKinney Vento) at 42 USC 11371-11378 and federal ESG regulations at 24 CFR 576.

**Alternatives Considered:** No other alternatives were considered. These changes are nonsubstantive technical corrections.

### **Section: 8401. Definitions**

The following amendments to this section have been proposed:

#### **Introductory Sentence**

**Purpose:** The amended introductory sentence adds the citation in the HEARTH Act that relates to the corresponding citation for the definitions section for the ESG Program within McKinney-Vento.

Problem: The HEARTH Act of 2009 amended McKinney-Vento. Consequently, statutory references to the ESG program contain both the citation under HEARTH and the citation under McKinney Vento.

Rationale and Benefits: The proposed change is consistent with how the program is currently referenced by HUD in federal statute for the ESG Program.

Alternatives Considered: No other alternatives were considered. These changes are nonsubstantive technical corrections.

### “Action Plan”

Purpose: The proposed regulation amendment adds the term “Action Plan” to the Definitions section.

Problem: This term is used by HUD, and refers to an annual document that recipients must prepare and submit to HUD governing the use and distribution of ESG funds. This term is currently not defined in State regulations

Rationale and Benefits: Adding this term in State regulations enables the Department to correctly use it throughout the regulations without having to cite to federal regulations for the document each time the term is used.

Alternatives Considered: The Department considered citing to the federal regulations governing the Action Plan each time the document was referenced in the State regulations, but rejected this alternative in order to simplify the reference to this term.

### “Administrative activities”:

Purpose: The proposed regulation amendment adds the term “Administrative activities” to the Definitions section.

Problem: This term is used by HUD, and refers to the category of ESG eligible activities pursuant to 24 CFR 576.108.

Rationale and Benefits: Adding this term in State regulations enables the Department to correctly use it throughout the regulations without having to cite to federal regulations for the document each time the term is used.

Alternatives Considered: The Department considered citing to the federal regulations governing Administrative activities each time the document was referenced in the State regulations, but rejected this alternative in order to simplify the reference to this term.

### “Administrative Entity”

Purpose: The proposed regulation amendment adds the term “Administrative Entity” (AE) to the Definitions section. An AE is defined as a Unit of general purpose local government approved by the Department under section 8403 to administer State ESG funds.

Problem: The ESG program currently does not have any local entities that administer ESG funds on behalf of the State. As proposed in sections 8302 and 8303 of the regulations, Administrative Entities (AE’s) will be designated to receive an allocation of ESG funds through the Continuum of Care Allocation to award to Eligible Organizations to carry out ESG activities. AEs will be responsible for entering into contracts with funded organizations, as well as contract administration and monitoring.

Rationale and Benefits: Utilizing AEs to administer the Continuum of Care Allocation will enable local communities to have more control in the selection of funded providers and activities, as well as decrease the number of contracts the Department has to administer. AEs must be Units of general purpose local government as specified in section 8303 because these entities have direct experience with administering ESG funds. Since the Department will be utilizing several AEs to administer the Continuum of Care allocation, it is important that the Department designate entities that have the most experience with ESG funds allocation and administration.

Alternatives Considered: The Department considered allowing Continuums of Care to become AEs, but rejected this alternative because HUD currently does not permit Continuums of Care to administer ESG funds. Although HUD requires consultation with Continuums of Care regarding program administration, many Continuums of Care do not have sufficient staffing or other systems in place to administer ESG directly. See section 8403 for further discussion of AE qualifications and requirements to collaborate with Continuums of Care in the administration of ESG funds.

### “Balance of State Allocation”:

Purpose: The proposed regulation amendment adds the term “Balance of State Allocation” to the Definitions section.

Problem: This term is necessary since a portion of ESG funds will be distributed to these areas pursuant to the requirements of sections 8404-8407.

Rationale and Benefits: See discussion in section 8404.

Alternatives Considered: See discussion in section 8404.

### “Continuum of Care”

Purpose: The proposed regulation amendment adds the term “Continuum of Care” to the Definitions section.

Problem: This term is defined by HUD at 24 CFR 576.2

Rationale and Benefits: Adding this term in State regulations enables the Department to correctly use it throughout the regulations without having to cite to federal regulations each time the term is used.

Alternatives Considered: The Department considered citing to the federal regulations governing the Action Plan each time the document was referenced in the State regulations, but rejected this alternative in order to simplify the reference to this term.

### “Continuum of Care Allocation”:

Purpose: The proposed regulation amendment adds the term “Continuum of Care Allocation” to the Definitions section.

Problem: This term is necessary since a portion of ESG funds will be distributed to these areas pursuant to the requirements of section 8403

Rationale and Benefits: See discussion in section 8403

Alternatives Considered: See discussion in section 8403.

### “Continuum of Care Service Area”

Purpose: The proposed regulation amendment adds the term “Continuum of Care Service Area” to the Definitions section.

Problem: This term is necessary to define to make clear that the State ESG program will consider the CoC service area to be the entire geographic area within the boundaries of the CoC

Rationale and Benefits: Under current State regulations, the ESG program can only serve Nonentitlement areas. By making clear that the Continuum of Care Service Area is its entire geographic area, Continuums of Care are able to provide ESG funds throughout its entire Service Area, rather than just ESG Nonentitlement areas. Rapid Rehousing and Homelessness Prevention funds may be expended more easily if the funds can be used throughout a Continuum of Care Service Area. Emergency Shelters that serve wider geographies can better target their ESG resources to serve those with the highest barriers and greatest need. Enabling ESG to be utilized across the entire Continuum of Care Service Area is also consistent with how other homeless funding sources are utilized. Use of this definition does not relieve a Subrecipient or

Subrecipient of the Administrative Entity of the responsibility to ensure that households living in Nonentitlement communities continue to access ESG funds. See section 8403 for additional discussion regarding service to Nonentitlement areas.

Alternatives Considered: See discussion in section 8403.

*“Coordinated Entry”*

Purpose: The proposed regulation amendment adds the term “Coordinated Entry” to the Definitions section.

Problem: This term is used by HUD, and refers to a coordinated system of program access, needs assessment, and prioritization developed by the Continuum of Care pursuant to 24 CFR 576.400(d) and associated HUD requirements and guidance. This term is also known as “Coordinated Entry System”, “Coordinated Assessment” or “Centralized Assessment”.

Rationale and Benefits: Adding this term in State regulations enables the Department to correctly use it throughout the regulations without having to cite to federal regulations which reference the term each time the term is used.

Alternatives Considered: The Department considered citing to the federal regulations governing centralized or coordinated assessment each time the term was referenced in the State regulations, but rejected this alternative in order to simplify the reference to this term.

*“Core Practices”:*

Purpose: The proposed regulation amendment adds the term “Core Practices” to the Definitions section.

Problem: This term is not currently defined in regulations and is used to refer to the practices and protocols of delivering ESG Eligible activities as specified in section 8409.

Rationale and Benefits: See discussion in section 8409.

Alternatives Considered: See discussion in section 8409.

*“ESG” and “Eligible activities” Definitions:*

The changes to these definitions are technical corrections consistent with the re-naming of the program and the renumbering of sections of the regulations to accommodate new regulation text.

### “Eligible Continuum of Care”

Purpose: The proposed regulation amendment adds the term “Eligible Continuum of Care” to the Definitions section. The term refers to a Continuum of Care in the State that has within its Service Area at least one Nonentitlement area. These entities must also meet the requirements of sections 8403 (d) or 8404 (a) (1).

Problem: Continuum of Care eligibility is an important issue in the administration of ESG funds in both the Continuum of Care Allocation and Balance of State Allocation; hence it was important to define what constitutes an eligible Continuum of Care

Rationale and Benefits: Because ESG funds provided to Entitlement Areas by HUD are typically used only within those areas, or for the benefit of residents of those areas, and are typically not made available for Nonentitlement Areas, it is important that State ESG funds continue to be available to those Continuums of Care that have within their Service Area at least one Nonentitlement Area so that these communities can continue to access ESG funds. See further discussion in section 8403 (d)

Alternatives Considered: Because of the importance of continuing to serve Nonentitlement Areas with ESG funds, no other alternatives to this definition were considered. See further discussion in section 8403 (d)

### “Eligible Organization”

The proposed regulation amendment modifies the definition of the term “Eligible Organization” so that the terms referenced in this definition referring to local governments and nonprofits are consistent with how HUD refers to these terms in 24 CFR 576.2. These changes are made for consistency with HUD regulations only and are nonsubstantive in nature.

### “Emergency shelter”:

Purpose: The changes to this definition are being made to achieve consistency between the definition of Emergency shelter in these regulations and the definition now used by HUD for ESG in 24 CFR 576.2.

Problem: This term, as now defined under State regulations, is not consistent with HUD’s required definition at 24 CFR 576.2

Rationale and Benefits: Adding this term in State regulations enables the Department to correctly use it throughout the regulations without having to cite to federal regulations each time the term is used.

Alternatives Considered: The Department considered citing to the federal regulations governing the definition of Emergency shelter each time this term was referenced in the

State regulations, but rejected this alternative in order to simplify the reference to this term.

*“ESG Entitlement”:*

Purpose: The proposed regulation amendment adds the term “ESG Entitlement” to the Definitions section. The definition sets forth the three ways that a city or county (i.e. a Unit of general purpose local government) may receive an allocation of ESG funds directly from HUD: (1) by qualifying as a Metropolitan City or Urban County as defined under 42 USC 5302 and receiving an allocation of ESG funds directly from HUD; (2) by being a Nonentitlement area that has entered into an agreement with an Urban County to participate in that locality’s ESG program, or (3) by being a Metropolitan City or Urban County that has entered into a joint agreement with one another to receive and administer a combined direct allocation of ESG funds from HUD.

Problem: Current State regulations do not contain a definition of ESG Entitlement since ESG funds cannot currently be used in these areas or administered by local governments of Entitlement areas. The proposed regulations change this, making it necessary to define this term.

Rationale and Benefits: See discussion under “Continuum of Care Service Area” above.

Alternatives Considered: See discussion in section 8403.

*“ESG Entitlement Area”*

Purpose: The proposed regulation amendment adds the term “ESG Entitlement Area” to the Definitions section.

Problem: Current regulations do not contain a definition of ESG Entitlement Area since ESG funds cannot currently be used in these areas or administered by local governments of Entitlement Areas. The proposed regulations change this, making it necessary to define this term.

Rationale and Benefits: See discussion under “Continuum of Care Service Area” above.

Alternatives Considered: See discussion in section 8403.

*“ESG Nonentitlement”*

Purpose: The proposed regulation amendment adds the term “ESG Nonentitlement” to the regulations to mean the Unit of general purpose local government that does not receive ESG funding directly from HUD and is not participating as an ESG Entitlement

Problem: While the term Nonentitlement area still exists in the regulations, this term clarifies what an ESG Nonentitlement is.

Rationale and Benefits: This term was added for purposes of clarification and to provide a distinction between ESG Entitlement and ESG Nonentitlement Units of general purpose local government.

Alternatives Considered: The Department considered not defining this term and just leaving in the term “Nonentitlement area”, but rejected this alternative to provide more clarity regarding terms.

### “ESG Nonentitlement Area”

Purpose: The proposed regulation amendment adds the term “ESG Nonentitlement Area” to the regulations to mean the geography within an ESG Nonentitlement’s boundaries.

Problem: While the term Nonentitlement area still exists in the regulations, this term clarifies what an ESG Nonentitlement area is.

Rationale and Benefits: This term was added for purposes of clarification and to provide a distinction between ESG Entitlement and ESG Nonentitlement areas

Alternatives Considered: The Department considered not defining this term and just leaving in the term “Nonentitlement area”, but rejected this alternative to provide more clarity regarding terms.

### “HMIS”

Purpose: The proposed regulation amendment adds the term “HMIS” to the Definitions section as defined by HUD under 24 CFR 576.2, and expands the use of the term to include use of a comparable database as permitted by HUD under 24 CFR Part 576.

Problem: The term as defined in 24 CFR 576.2 does not include a comparable database where permitted elsewhere in the federal ESG regulations.

Rationale and Benefits: Defining this term in State regulation to include a comparable database where permitted by HUD will serve to clarify that the State will apply the same basic standard to entities using a comparable database as to those using an HMIS system, without having to state this everywhere where the term HMIS is used.

Alternatives Considered: The Department considered citing to 24 CFR 576.2 each time the term HMIS or the term “comparable database” was referenced in the State regulations, but rejected this alternative in order to simplify the references to these terms within the regulations.

“Homeless” The change to this definition was made to refer to the most commonly referenced definition for this term in the federal ESG regulations.

“Homelessness prevention activities” The change to this definition was made to clarify that this term is now defined consistent with its definition for Homelessness prevention under the federal ESG regulations.

“NOFA”: - The change to this definition was made due to section renumbering done to accommodate new regulation text.

“Private nonprofit organization”

Purpose: The proposed regulation amendment adds the term “Private nonprofit organization” to the Definitions section.

Problem: This term is defined by HUD at 24 CFR 576.2

Rationale and Benefits: Adding this term in State regulations enables the Department to correctly use it throughout the regulations without having to cite to federal regulations each time the term is used.

Alternatives Considered: The Department considered citing to the federal regulations each time the term was referenced in the State regulations, but rejected this alternative in order to simplify the reference to this term.

“Rapid Rehousing”

Purpose: The proposed regulation amendment adds the term “Rapid Rehousing” to the Definitions section.

Problem: This term is used by HUD, and refers to the activities set forth in 24 CFR 576.104

Rationale and Benefits: Adding this in State regulations enables the Department to correctly use it throughout the regulations without having to cite to federal regulations each time the term is used.

Alternatives Considered: The Department considered citing to the federal regulations each time the term was referenced in the State regulations, but rejected this alternative in order to simplify the reference to this term.

“Service Area” – See the discussion of “Continuum of Care” Service Area above. These terms are used interchangeably to improve the clarity and readability of the text where the longer term “Continuum of Care Service Area” could be used.

### “Site Control”

Purpose: The proposed regulation amendments to this definition delete references to forms of site control and forms of assistance specific to capital development activities because Renovation, Conversion and Major Rehabilitation activities will no longer be eligible uses of State ESG funds. Other changes correct the program initialism, as discussed above, or are otherwise made for clarity or to conform to current Department practice.

Problem: See discussion in section 8408.

Rationale and Benefits: See discussion in section 8408

Alternatives Considered: See discussion in section 8408

“Standard Agreement” The proposed regulation amendments to this definition correct the program acronym as discussed above, and change the word “awardee” to “Subrecipient”. Subrecipient is the more common term used by HUD in the ESG program, and has the same meaning as “awardee” as the term is used in this definition.

### “Subrecipient”

Purpose: The proposed regulation amendments to this definition clarify that under these regulations the term Subrecipient will specifically refer to entities that enter into a Standard Agreement directly with the Department for ESG funds.

Problem: Under the proposed allocation system, the Department will be awarding directly to Entitlement Area AEs in the Continuum of Care Allocation who will be re-awarding these funds to homeless service providers. There may be some confusion over which subrecipients are directly responsible to the Department concerning State ESG funds, and which subrecipients are responsible to the Department-designated Administrative Entities when both entities are considered subrecipients for State funds under HUD’s definition at 24 CFR 576.2

Rationale and Benefits: Defining the term “Subrecipient” more clearly in the context of these State regulations will eliminate this confusion.

Alternatives Considered: The Department considered making no change to the definition of Subrecipient currently in State regulation; however, this may lead to confusion related to contracting, funds disbursement, reporting, and monitoring requirements among the AEs and the State when the term Subrecipient is used in these regulations.

### “Subrecipient of the Administrative Entity”

Purpose: The proposed regulation amendments to this definition clarify that under these regulations the term Subrecipient of the Administrative Entity will specifically refer to entities that enter into a written agreement directly with an AE for ESG funds.

Problem: See discussion above for the term “Subrecipient”.

Rationale and Benefits: Defining the term “Subrecipient of the Administrative Entity” more clearly in the context of these State regulations will eliminate this confusion.

Alternatives Considered: See discussion above for the term “Subrecipient”.

### “Written Standards”

Purpose: The proposed regulation amendment adds the term “Written Standards” to the Definitions section.

Problem: This term is used by HUD, and refers to the requirements set forth under 24 CFR 576.400 (e)

Rationale and Benefits: Adding this term in State regulations enables the Department to accurately refer to Written Standards in its regulations without having to cite to federal regulations each time the term is used.

Alternatives Considered: The Department considered citing to the federal regulations governing Written Standards each time these were referenced in the State regulations, but rejected this alternative in order to simplify its reference to this term.

The remainder of the definitions deleted from this section were deleted because these terms are no longer being used in the proposed regulations.

## **Section 8402. Allocation of Funds**

### Subsection (a)

Purpose: As proposed, this section establishes that the Department will accept and use Administration funds as permitted under 24 CFR sections 576.100 (c) and 576.108 (b). The Department will determine annually the percentage it will take and share among Units of general purpose local government. Available administrative amounts will be published for public comment in the State’s Annual Plan to HUD, pursuant to the requirements of 24 CFR Part 91, and published in the current NOFA.

Problem: Because ESG allocation amounts from HUD and the number of Administrative Entities (AEs) designated to administer ESG funds will fluctuate, the State will need to

adjust the split in Administration funds as necessary to accommodate State and local needs.

Rationale and Benefits: The proposed language will enable the State to make regular necessary adjustments to the percentage of Administration funds that are available to local entities. It will also enable local entities to engage in this decision-making process through participation in the State's Annual Plan process.

Alternatives Considered: The State considered establishing a predetermined amount for local Administration, but rejected this alternative due to annual uncertainties in ESG allocation amounts from HUD, and in the number of AEs who choose to apply for or continue their designation to administer ESG funds.

#### Subsection (b)

Purpose: As proposed, this section establishes two separate allocation pools for ESG funds. After deducting for State Administrative activities, ESG funds will be made available for Eligible activities through two allocations according to the formula set forth in subsection (c): the Continuum of Care Allocation to be administered in accordance with section 8403; and the Balance of State Allocation to be administered in accordance with sections 8404 through 8407.

Problem: The Department seeks to be able to allocate funds, pursuant to the formula factors discussed in the next subsection, to Continuum of Care Service Areas with Entitlement areas, (the Continuum of Care Allocation) as well as to Continuum of Care Service Areas with no Entitlement areas (the Balance of State Allocation). Since the funding distribution mechanism for each of these funding pools will be different, (discussed in later sections), it is necessary to create separate pools

Rationale and Benefits: The advantage of having these two distinct funding pools is that Continuum of Care Service Areas that also have ESG Entitlement Areas have experience administering ESG funds at the local government level that is different from local governments in Nonentitlement Areas. These differences warrant having different allocation responsibilities and mechanisms between the two with respect to the administration of State ESG funds. See further discussion in sections 8403 and 8404 below.

Alternatives Considered: The Department considered structuring the allocation responsibilities and mechanisms between Entitlement Area and Nonentitlement Area Continuums of Care the same, but rejected this alternative in order to reduce the Department's administrative workload in Service Areas with ESG Entitlement experience, while still providing local control in both funding pools, with an appropriate level of State oversight in each commensurate with the administrative capacity among local governments and Continuums of Care in each pool. See further discussion in sections 8403 and 8404 below.

### Subsection (c)

**Purpose:** The purpose of this subsection is to set forth the formula factors for determining the amounts potentially available in each Continuum of Care Service Area. The formula looks at three factors:

- (1) The point-in-time count published by HUD which includes both sheltered and unsheltered homeless persons prorated to reflect the total population of the ESG Nonentitlement Areas within each Continuum of Care Service Area as published by the Census Bureau;
- (2) The number of extremely low-income renter households within the ESG Nonentitlement Areas of each Continuum of Care Service Area that are paying more than 50 percent of their income for rent using HUD's Comprehensive Housing Affordability Strategy dataset;
- (3) The number of persons below the federal poverty line within the ESG Nonentitlement Areas of each Continuum of Care Service Area divided by the total population within the ESG Nonentitlement Areas of each Continuum of Care Service Area. This factor will be double-weighted. Data for these factors will be obtained from the Census Bureau.
- (4) Notwithstanding subsections (1)-(3) above, the Department may from time to time adjust the sources of information or weighting of these factors to reflect changes in the availability of data sources and the best information available at the time. Any changes to the factors or weighting of the formula will be reflected in the Action Plan.

**Problem:** Homelessness is a problem that affects all California counties across the State. To help address the problem statewide, an important policy goal of the Department in redesigning the ESG program is to ensure that there is a wide geographic distribution of ESG funds. A formula is a good way to ensure a wide geographic distribution of funds; however, the formula factors must also be appropriate measures of the need the program is trying to address using standardized, readily available data.

**Rationale and Benefits:** The above formula factors were chosen because they are good measures of homelessness and housing need in ESG Nonentitlement communities, which are the historical targets for State ESG funds. Formula factor (1), the Homeless Point-in-Time (PIT) count, is the best measure for homelessness in a Continuum of Care Service Area. The PIT count is published by HUD for the entire Continuum of Care Service Area. Because ESG has traditionally targeted Nonentitlement Areas, each Continuum of Care homeless count number will be prorated by the total population for the Nonentitlement areas in the Continuum of Care Service Area to arrive at an approximation for homelessness in these areas.

Formula Factor (2) was chosen because the number of Extremely Low-Income renters in a community who are paying more than 50% of their income for rent ( i.e. severe

housing cost burden) is a good predictor of how many households may be at-risk of homelessness in a community.

Formula Factor (3), Poverty rate among all Nonentitlement areas is also a good predictor of housing need and homelessness. Poverty rate was double weighted because poverty rate is a particularly good measure of need in small rural Nonentitlement Areas that are less densely populated, have lower incomes, and that may have high percentages of households living below the poverty line than more urbanized areas of the State with higher incomes.

For all three factors used, it is necessary to attempt to measure need specifically in Nonentitlement Areas since these are the areas for which State ESG dollars are the primary source of funding for their homeless crisis response system.

(4) Proposed language would also permit the Department occasionally to adjust the weighting of these factors and sources of information to reflect changes in the availability of data sources and to use the best information available. Any changes to the factors or weighting of the formula will be proposed in the Action Plan. This will enable the Department to adjust the formula factors as necessary to use the best data available which measures homelessness, renter overpayment, and poverty.

#### Alternatives Considered:

- The Department considered not using a formula to distribute ESG funds, but this alternative was rejected because of the need to achieve a wider geographic distribution of ESG funds, while also directing a larger share of funds to those areas of the State with higher need as reflected in each of the three formula factors.
- The Department considered using the formula factors used by the State's Emergency Housing and Assistance Program (EHAP) when that program had operations funds. This alternative was rejected because the EHAP formula factors (unemployment rate, total county population, and total county poverty rate) are not as targeted to measuring homelessness or the need for housing in Nonentitlement areas.
- The Department also considered not double-weighting poverty, but this alternative was rejected because of the desire to direct a reasonable share of the available funds to rural areas, which typically have high poverty rates.

#### Subsection (d)

Purpose: The purpose of this subsection is to enable the Department to cap the amount of funds available to a Service Area under the formula in order to achieve a greater geographic balance of the funds among all eligible Continuums of Care of the

State. Any cap on amounts available under the formula will be proposed in the Action Plan.

Problem: Due to extreme population differences in some Entitlement counties, and changing allocation levels, it may be necessary to limit the maximum amount that any one Continuum of Care Service Area may receive under the formula to ensure that each Continuum of Care Service Area has available to it a reasonable amount of funds to be able to operate a Rapid Rehousing program and other ESG-eligible activities throughout the Service Area.

Rationale and Benefits: The proposed language provides the ability to impose a cap if necessary, and provides the opportunity for public input on the proposed change in the Department's annual Action Plan.

Alternatives Considered: The Department considered imposing a fixed dollar or percentage limit on the amount that could be received under the formula, but since the amount of the ESG allocation level changes from year to year, it is best to determine the need for any cap on an annual basis.

#### Subsection (e)

Purpose: The purpose of this subsection is to establish that in any year where the Department is issuing a NOFA, by January 31st, the Department will notify Eligible Continuums of Care and ESG Entitlement Areas within an Eligible Continuum of Care of the following by January 31st, the Department will notify Eligible Continuums of Care and ESG Entitlement Areas within an Eligible Continuum of Care of the following:

- (1) Service Areas and preliminary funding amounts within the Continuum of Care Allocation and the Balance of State Allocation
- (2) In determining the Continuum of Care Allocation, the Department will issue the following:
  - (A) A solicitation of interest for Administrative Entities which includes timeframes for applications and approval pursuant to section 8403; and
  - (B) Where there is no intent to apply to be an Administrative Entity, a solicitation of interest to apply for Rapid Re-housing activities pursuant to 8403(a) (2).
- (3) In determining the Balance of State Allocation, the Department will issue the following:
  - (A) A solicitation of interest from Continuums of Care to participate in Balance of State Allocation regional competition pursuant to section 8404(a(4)), and
  - (B) A solicitation of interest in applying for Rapid Rehousing activities pursuant to 8404(a) (2).

Problem: The Department needs to solicit applications for AE designations and commitments to participate in the funding allocation process prior to finalizing the amounts available under the formula and issuing its own NOFA for the Balance of State Allocation. Some Units of general purpose local government may decide not to become AEs or may not be approved to participate, and some Continuums of Care in the Balance of State Allocation may chose not to participate in the funding allocation decisions for their Service Area. This would mean that the amounts available to that Service Area may be allocated elsewhere pursuant to sections 8403 and 8404; therefore, the Department needs notification of these decisions in advance of its NOFA.

Rationale and Benefits: The proposed language is necessary for adequate planning to occur at the local, and State level in order to meet HUD's ESG commitment and expenditure deadlines at 24 CFR 576.203. The requirement that the Department notify local entities of estimated allocation amounts by January 31 of each year was proposed since this will enable Entitlement Areas and the State to use this information to begin preparing their Annual Plans for public comment.

Alternatives Considered: No other alternatives to the proposed language were considered. Adequate notification is necessary for planning purposes.

The text in strikethrough format that appears in this section addresses the current allocation of funds. This language is being deleted because it is no longer necessary under the proposed new allocation method.

### **Section 8403: Continuum of Care Allocation**

#### **Subsection (a) (1)**

Purpose: The overall purpose of this section is to establish that funding for a Service Area in the Continuum of Care Allocation shall be administered by an approved Administrative Entity in the Service area in which it is located. Notwithstanding this general rule, subdivision (a) (1) permits an AE to administer the funds of its Continuum of Care Service Area as well as the Service Area of a geographically contiguous Continuum of Care eligible to receive funds under the Balance of State Allocation if 100% of the available funds are used for Rapid Rehousing.

#### **Problem:**

The ESG program currently does not have any local entities that administer ESG funds on behalf of the State. A few Continuums of Care share the same housing market area and it may be feasible for them to operate one Rapid Rehousing program covering that housing market area.

Rationale and Benefits: Utilizing AEs to administer the Continuum of Care Allocation will enable local communities to have more control in the selection of funded providers

and activities, as well as decrease the number of contracts the Department has to administer. The proposed provision will also foster greater collaboration among Continuums of Care to do Rapid Rehousing where it is geographically feasible.

Alternatives Considered: The Department considered allowing Continuums of Care to become AEs, but rejected this alternative because HUD currently does not permit Continuums of Care to administer ESG funds.

The Department considered not providing the option for collaboration with a Nonentitlement area Continuum of Care. This alternative was rejected in favor of offering ways for areas to collaborate with one another to foster more Rapid Rehousing. The department also considered allowing neighboring Entitlement Area Continuums of Care to combine their ESG allocations to do more Rapid Rehousing. This alternative was rejected because the Department wants more individual AEs to participate within the Continuum of Care Allocation.

#### Subsection (a) (2)

Purpose: The purpose of this subsection is to allow Continuum of Care Service Areas without an approved AE to retain a portion of their formula allocation for Rapid Rehousing activities. In this instance the Continuum of Care would recommend a Rapid Rehousing provider, and the Department would enter into a contract with the Rapid Rehousing provider for these activities. The amount available for Rapid Rehousing activities under this subdivision would be established in the Department's annual Action Plan, and the process by which the Continuum of Care selects this provider would have to meet certain minimum standards set forth in this subdivision.

Problem: Continuum of Care Service Areas without approved AEs should not be deprived of the opportunity to access funds for Rapid Rehousing as long as the local Continuum of Care will take responsibility for provider selection following a process which meets Department requirements.

Rationale and Benefits: Allowing a percentage of the funds to stay in the Service Area for Rapid Rehousing benefits the area in a way that is also consistent with a Department priority for use of ESG funds, and continues to involve the Continuum of Care in the decision-making process. Regarding provider selection: (i) requiring a fair and open process, which avoids conflicts of interest in project selection, implementation, and the administration of funds is necessary to ensure that every Rapid Rehousing provider has the opportunity to access these funds; (ii) requiring Continuums of Care to use project selection criteria reasonably consistent with the criteria used by the Department in section 8407, and in compliance with sections 8408 and 8409, as well as the other provisions (A) through (D) of this subsection, will help ensure that experienced providers are selected who have a good program design, good program outcomes, and can operate in a cost-effective manner consistent with federal and State ESG requirements, policy priorities, and core practices.

Since communities who access Rapid Rehousing funds pursuant to subdivision (a) (2) will not have an approved AE, the Department wants to relieve the Continuum of Care of the ongoing responsibility for administration of the funds, while still limiting the amount of funds that can be accessed in this manner for Rapid Rehousing activities so that there might remain an incentive to become an AE in the next funding round. Establishing the limit for these funds in the Department's annual Action Plan will enable the Department to annually adjust the amount available, as necessary to achieve the above objectives, and account for changes in ESG allocation amounts from year to year. ESG stakeholders will also have the opportunity to provide formal input and public comment on the percentage of funds permitted pursuant to this subdivision.

#### Alternatives Considered:

The Department considered requiring providers recommended by the Continuums of Care, pursuant to this subdivision, to submit an application to the Department for these funds, and to be scored by the Department pursuant to the criteria in section 8407. The Department also considered imposing a minimum point score in order for these providers to be funded. This alternative was rejected in favor of doing a process evaluation as set forth in 8403 (a) (2) (A) though (D).

#### Subsection (b)

Purpose: This subsection provides that the Department will use the formula in section 8402 to reallocate any remaining funds not conditionally reserved or allocated pursuant to the requirements of subdivision (a) to participating Service Areas in the Continuum of Care and Balance of State Allocations.

Problem: If a given Service Area that falls under the Continuum of Care Allocation does not have an AE, or does not award all of its formula allocation, there will be funds remaining which will need to be reallocated.

Rationale and Benefits: Redistributing these funds through the formula in 8402 to make them available to other Service Areas in the Continuum of Care Allocation and Balance of State allocation allows others participating in the program to access these funds.

Alternatives Considered: The Department considered redistributing unused funds in the Continuum of Care Allocation only to other Service Areas within that Allocation; however, this alternative was rejected in favor of making them available through the formula, as a fair way to distribute the remaining funds based on need.

#### Subsection (c)

Purpose: The purpose of this subsection is to set forth the issues that the Department will evaluate in determining whether a Unit of general purpose local government will be designated as an AE.

Problem: Units of general purpose local government and the Continuums of Care that recommend them to become AEs need to know the basis upon which the application for AE designation will be evaluated.

Rationale and Benefits: Subdivision (c) (1) requires the AE and Continuum of Care to demonstrate eligibility of the Continuum of Care and AE pursuant to the other requirements of this section and describe the collaboration among the two entities and the process for allocating funds to activities, and selecting providers. This is consistent with HUD's requirements pursuant to 24 CFR 576.400 (a) requiring consultation with Continuums of Care in the administration of ESG funds.

Subdivision (c) (1) (A) requires that If proposing to also administer funds in a geographically contiguous Continuum of Care Service Area pursuant to subdivision (a) (1), the application shall also include evidence, acceptable to the Department, of agreement between geographically contiguous Continuums of Care to administer Rapid Re-Housing with 100 percent of both allocations. This will ensure that there is agreement between the AE and the Continuum to administer both allocations of funding.

Subdivision (c) (1) (B): requires Applications from a continuing Administrative Entity to include HMIS project-level and system-level performance data for the prior two years. This data will be set forth in the State's Action Plan for the prior fiscal year. After the initial award period, if performance remains in the lowest quartile compared to all participating Service Areas in the Continuum of Care allocation, the Department will work collaboratively with the Administrative Entity to develop performance improvement plans which will be incorporated into the written agreements required under section 8403 subdivisions, (f) and (j).

While the Department does not intend to examine outcomes for AEs in the first year, It is important that performance in future years be examined, and that the Department and AEs work together to help improve local outcomes. Since specific HMIS data elements are subject to change by HUD, the Department will propose the measures to be examined in its annual Action Plan for public review and comment.

Alternatives Considered: The Department considered making the AE term of certification longer than two years, but rejected this alternative in favor of two year terms and regular evaluation of performance outcome data.

#### Subsection (d)

Purpose: The purpose of this subsection is to set forth the qualifications of an Eligible Continuum of Care.

Problem: Continuums of Care have a responsibility to participate in decisions related to ESG funding and administration; therefore a Continuum of Care must meet certain qualifications in order to fulfill this responsibility.

Rationale and Benefits: Subdivision (d) (1) requires that an eligible Continuum of Care has received Continuum of Care funding from HUD in at least one of the past two federal competitions or has registered with HUD to apply for funding in the next competition. This is necessary to ensure that the Continuum of Care is an active, functioning body. Subdivision (d) (2) requires that the Continuum of Care has conflict of interest policies in place that meet HUD requirements. This is necessary to ensure that the Continuum of Care can participate in provider selection in a manner that is fair and open. Subdivision (d) (3) requires that the Continuum of Care has Written Standards for all Eligible activities proposed to be carried out with ESG funds. This is consistent with HUD's requirement at 24 CFR 576.400 (e) (2) (i). Subdivision (d) (4) requires that the Continuum of Care operate, or causes to be operated, an HMIS system that meets HUD requirements. This is consistent with 24 CFR 576.400 (f).

Alternatives Considered: No other alternatives to this subsection were considered

#### Subsection (e)

Purpose: The purpose of this subsection is to set forth the qualifications of an eligible AE and to establish that the Continuum of Care shall recommend an AE for approval by the Department.

Problem: AEs will be responsible to the Department for ongoing administration of State ESG funds; therefore an AE must meet some basic qualifications in order to fulfill this responsibility.

Rationale and Benefits: Subdivision (e) (1) requires that an AE be a Unit of general purpose local government that has administered ESG funds for an Entitlement area during at least one of the past five years. This is necessary to help ensure that the AE has recent experience administering ESG funds. Subdivision (e) (2) requires that an AE has no unresolved ESG monitoring findings with HUD or the Department that the Department determines poses a substantial risk to the Department if the Administrative Entity is approved. This is necessary to help ensure that the AE has no serious performance problems related to administration of ESG funds. Subdivision (e) (3) requires that the AE demonstrate the ability and willingness to perform the functions of an Administrative Entity pursuant to federal and State ESG requirements

It is important that the AE operate with the approval of the Continuum of Care. Where there is more than one eligible ESG Entitlement in a Continuum of Care Service Area willing to perform the functions of an AE, the Continuum of Care shall recommend a single Administrative Entity for approval by the Department. These provisions are another way to ensure the involvement of Continuums of Care.

Alternatives Considered: The Department considered requiring that AEs have current experience administering ESG Entitlement funds; however, this alternative was rejected because there are a few Units of general purpose local government which have recent experience administering ESG, but due to changes in federal allocation levels, no

longer receive a direct allocation of ESG funds from HUD. The Department wants to offer those Units of general purpose local government with recent ESG Entitlement experience an opportunity to become AEs.

#### Subsection (f)

Purpose: The purpose of this subsection is to require that the Continuum of Care and the AE shall enter into a written agreement that specifies the roles and responsibilities of each entity to ensure compliance with federal and State requirements. The Continuum of Care and the AE shall collaborate to the maximum extent feasible in determining Eligible activities, selecting providers, and administering the ESG funds.

Problem: Without a written agreement between the Continuum of Care and AE specifying the roles and responsibilities of each with respect to participation in the State ESG program, over time roles and responsibilities may become unclear, jeopardizing compliance with federal and State ESG requirements.

Rationale and Benefits: A written agreement between the AE and the Continuum of Care will document the collaborative relationship between the two entities and help to ensure that there are systems put in place at the local level in order for the parties to operate collaboratively in compliance with State and federal ESG requirements. Requiring collaboration between the AE and the Continuum of Care to the maximum extent feasible in determining Eligible activities, selecting providers, and administering ESG funds is consistent with HUD requirements at 24 CFR 576.400 (a).

Alternatives Considered: The Department considered not requiring a written agreement between the two parties, but rejected this alternative for the reasons stated above.

#### Subsection (g)

Purpose: The purpose of this subsection is to set forth general criteria by which AEs will select providers qualified to deliver Eligible activities in the Service Area.

Problem: While the Department does not want to dictate a specific allocation process or application rating criteria for AEs to use when selecting providers for State ESG funds, it is important that the process used by the AE meet some basic standards.

Rationale and Benefits: AEs must do all of the following:

(1) Conduct fair and open competitions which avoid conflict of interest, and (2) follow procurement requirements of 24 CFR Part 84. This helps ensure that every provider has the opportunity to access these funds.

(3) Evaluate provider capacity and experience, including the ability to deliver services in Nonentitlement areas. Evaluating provider capacity and experience is important for effective program implementation and funds administration. Evaluating provider ability

to deliver services to Nonentitlement areas is also important to ensure that Nonentitlement areas can continue to be served with State ESG funds.

(4) Evaluate eligibility and quality of services, including adherence to core practices pursuant to section 8409. This is important for effective program implementation in compliance with federal and State requirements, as well as policy objectives that are central to current best practices in homeless service delivery.

(5) Utilize data and consider community input to identify unmet needs and

(6) Prioritize activities that address the highest unmet need, considering other available funding and system-wide performance measures.

(7) Consider project-level performance measures when evaluating proposals. Evaluating project level performance measures is important to provider selection.

These are important to help ensure that ESG funds are used in ways most needed in the Service Area, as well as most effective.

(8) Collaborate with the Continuum of Care. as discussed above in subdivision (f) above.

This is important to meet the requirements of 24 CFR 576. 400(a) as well as to ensure broad collective input into ESG program administration.

Alternatives Considered: No other alternatives to the above provisions were considered. These provisions are consistent with HUD requirements and best practices, and are general enough to be implemented in any Service Area.

#### Subsection (h)

Purpose: The purpose of this subsection is to provide that the Action Plan will set forth any proposed limits on the number of contracts, subcontracts, and activities per contract between the Administrative Entity and the Subrecipient of the Administrative Entity.

Problem: The State ESG program currently receives and evaluates approximately 120 applications per year and funds approximately 60 contracts per year. Funding levels and the administration allowance for the program are very small compared to the volume of work that could be created due to the demand for this assistance. Given the current limits on allocation levels and administration costs imposed at the federal level, the Department needs a way to control administrative costs incurred by both the AEs and the Department.

Rationale and Benefits: Setting limits on the number of contracts, subcontracts, and activities per contract between the Administrative Entity and the Subrecipient of the Administrative Entity will help to manage the workload of the AE and the Department related to provider selection, contract management, and monitoring. Since allocation levels change from year to year, the Department wants the ability to establish these limits on an annual basis to be most responsive to changes in allocation levels, and to change when necessary as understanding improves over time regarding what activity

types are best funded together in the same contract, or require more ability to subcontract. The Department also recognizes the importance of stability of funding at the project level; therefore any limits proposed will be subject to annual public comment and input from program stakeholders through the Action Plan process.

Alternatives Considered The Department considered establishing no limits on the number of contracts, subcontracts, and activities per contract. This alternative was rejected due to concerns that AEs or Continuums of Care may want to divide their formula allocations into very small contracts to fund as many providers as possible, even though doing so is not expected to lead to better performance outcomes or more impactful service delivery. The Department considered establishing hard limits in these regulations on the number of contracts, subcontracts, and activities per contract, but rejected this alternative because program and individual Service Area allocation levels will change from year to year, and the Department wants the flexibility to be responsive to these changes, as well as ongoing changes in service delivery methods and best practices.

#### Subsection (i)

Purpose: The purpose of this subsection is to set forth specific requirements related to amounts available for Rapid Rehousing, and use of ESG funds to serve both Nonentitlement and Entitlement areas.

Problem: It is important that Continuums of Care emphasize Rapid Rehousing in their overall strategy to end homelessness. It is also important that State ESG funds be made available throughout the entire Continuum of Care Service Area, including Nonentitlement Areas that typically do not have access to ESG Entitlement funds

#### Rationale and Benefits:

The Administrative Entity shall ensure that:

(1) Not including the funding administered for a geographically contiguous Continuum of Care Service Area, not less than 40 percent of the funds awarded on an annual basis shall be used for Rapid Re-Housing activities.

Service Areas in the Continuum of Care allocation will receive the largest share of ESG funds pursuant to the formula in section 8402. Rapid Rehousing is a Department priority for use of ESG funds; therefore AEs

ensure that at least 40% of their allocation be used for Rapid Rehousing. Pursuant to subdivision 8403 (a) (1), for AEs that partner with a geographically contiguous Continuum of Care covering a Nonentitlement area, 100% of the administered allocations must be used for Rapid Rehousing

(2) Through the use of Coordinated Entry and other means, all funded activities are available to Nonentitlement areas of the Service Area.

For the reasons stated above, it is important that State ESG funds continue to be made available to Nonentitlement Areas within the Continuum of Care Service Area. Use of a Coordinated Entry or Coordinated Assessment system should facilitate being able to systemize the use of funds so that persons in Nonentitlement Areas are served. Notwithstanding the above, nonprofit organizations operating emergency shelters must have a certification of local approval, pursuant to 414 [42 U.S.C. section 11373(c)].

(A) The Administrative Entity shall facilitate outreach and access to reach populations in the Nonentitlement areas and shall evaluate participation from these areas at least annually. The Department may condition future funding to ensure access to funded activities by Nonentitlement areas. (B) Funded activities may also serve households located in ESG Entitlement areas.

Although it is expected that AEs will utilize State ESG funds in both Entitlement and Nonentitlement areas, depending on need, it is important that AEs regularly evaluate whether Nonentitlement areas are being served so that any barriers to service in these areas may be addressed. Conditioning future funding on access by these areas may be necessary. If it is determined that Nonentitlement areas do not have access to funded activities.

Alternatives Considered: The Department considered establishing a minimum percentage of funds that must be used for Nonentitlement areas. The Department also considered requiring that a particular process be followed to determine whether access by Nonentitlement Areas was sufficient. The Department rejected these alternatives because the level of homelessness and types of infrastructure within each Nonentitlement Area to address homelessness varies widely; therefore it is difficult to establish a minimum expenditure amount or percentage served that would be a reasonable standard to apply for all Nonentitlement areas in the State.

#### Subsection (j)

Purpose: The purpose of this subsection is to set forth the general terms of the written agreement (known as the Standard Agreement) between the AE and the Department.

Problem: Without a written agreement between the AE and the State setting forth the roles and responsibilities of the AE, over time these roles and responsibilities may become unclear, jeopardizing compliance with federal and State ESG requirements

#### Rationale and Benefits:

As set forth in the Standard Agreement, the AE shall

(1) Receive and administer up to two allocations of annual federal ESG funding per application cycle, conditioned on the availability of federal funds. The Department would like to be able to “fund forward” meaning that it would issue award letters to AEs for up to two allocations’ worth of ESG funding, (the current FY allocation, and the year following). AEs could, in turn, select providers for both years in one award cycle, reducing the administrative burden associated with having to engage in a provider

selection process every year. Because the funds for the second year would not be available until the Department's Grant Agreement with HUD was executed, the Department would condition the award letter with the AE on the availability of those funds from HUD.

(2) Carry out identified Eligible Activities through selected providers and (3) provide for matching funds as required by 24 CFR 576.201. These are basic requirements under federal ESG regulations.

(4) Enter into a written agreement with providers of funded activities governing the implementation of activities, including but not limited to eligible use of funds, funds disbursement, activity reporting, performance evaluation, monitoring, and termination.

AEs would be responsible for contracting directly with providers, with the contracts addressing the above issues. The Department wants AEs to contract directly with their funded providers both to reduce the administrative workload with the Department in having to enter into a written agreement with each provider, and to provide the AEs with the direct local oversight and control over the activities of the providers which they will be selecting.

(5) Monitor the performance of all contractors, including selected providers, and those they subcontract with to carry out ESG-eligible activities, to ensure compliance with federal and State ESG requirements. Along with provider selection, direct oversight and control of funded providers by the AEs includes monitoring the performance of these providers and any entities that they subcontract with to carry out ESG-eligible activities in compliance with federal and State requirements.

(6) Provide timely reports to the Department using a format and method prescribed by the Department. AEs would be responsible for reporting to the Department regarding ESG compliance issues, rather than each selected provider reporting directly to the Department.

(7) In all other ways administer ESG funding to ensure compliance with federal and State ESG requirements, and the Standard Agreement. This language is general language that will be contained in the Standard Agreement that will direct the AE to administer ESG funds to ensure compliance with all federal and State ESG requirements, including the terms of the Standard Agreement.

Alternatives Considered: The Department considered only allowing AEs to make awards for one allocation at a time, but rejected this alternative in favor of trying to reduce the administrative burden on AE of having to engage in an annual provider selection process.

#### Subsection (k)

Purpose: The purpose of this subsection is to set forth the circumstances under which the Department may deny or revoke the designation of an approved Administrative Entity.

Problem: There may be circumstances under which the Department will need to deny an application by a Unit of general purpose local government to become an AE, or will need to revoke an AEs current designation.

### Rationale and Benefits:

The Department may deny or revoke the designation of an approved Administrative Entity under any of the following circumstances:

(1) The Administrative Entity or one or more of the Subrecipients of the Administrative Entity has engaged in, or is responsible for, serious violations of federal or State ESG requirements. Denial or revocation in this instance is necessary to prevent future noncompliance with ESG requirements. If a Subrecipient of an AE has serious noncompliance issues, that is an indicator of the AE's inability to select good providers or manage their activities in a manner that prevents serious issues of noncompliance from occurring or continuing.

(2) The Administrative Entity fails to utilize project-level or system-wide performance data in its project selection, renewal, or monitoring process. It is crucial that AEs utilize project-level and system-wide performance data to select providers, renew their awards, and monitor their ongoing ESG program implementation in order to ensure that providers and systems are rewarded for producing successful outcomes, or if performance has been poor, that the AE is aware of this so that it can assist the provider in improving its performance or discontinue funding that provider. Failure of the AE to utilize this data will be an indication that the AE does not operate, or does not intend to operate, in a manner consistent with the federal and State requirements and policy goals concerning the use of performance data.

(3) The Administrative Entity or the Service Areas for which it has been approved does not meet the requirements of this section. The Department may deny or revoke the designation of an approved Administrative Entity if it does not meet the requirements in section 8403. This is necessary to ensure that the intended objectives of 8403 will be carried out through the approval of any AE.

Alternatives Considered: No other alternatives to this section were considered.

### Subsection (l)

Purpose: The purpose of this subsection is to notify AEs and Continuums of Care that, The Department may request information from the Administrative Entity or the Continuum of Care, which demonstrates compliance with any or all of the above requirements. The Administrative Entity or Continuum of Care shall provide such information when requested.

Problem: Demonstrating compliance with many of the requirements of section 8403 will require documentation from the AE or the Continuum of Care.

Rationale and Benefits: Documentation is the primary way in which the Department will be able to assess compliance with the requirements of section 8403 since the Department cannot physically be present to monitor the day-to-day activities of the AE and Continuum of Care.

Alternatives Considered: No other alternatives to this section were considered.

The language in section 8403 that appears in strikeout format addresses statewide NOFA requirements. The Department's statewide NOFA requirements are now addressed in section 8405 and will be discussed in this section of the ISOR.

#### **Section 8404. Balance of State Allocation**

##### Subsection (a) (1)

Purpose: Subsection (a) establishes that the Department will administer the Balance of State (BOS) Allocation for Service Areas without an ESG Entitlement. In contrast to section 8403, which is for Service Areas with an ESG Entitlement, this section contains some requirements that are different from section 8403, as well as some requirements that are similar.

The purpose of subsection (a) (1) is to establish the requirements for a Continuum of Care to be eligible to participate in the BOS Allocation.

Problem: Continuums of Care have a responsibility to participate in decisions related to ESG funding and administration; therefore a Continuum of Care must meet some basic qualifications in order to fulfill this responsibility.

Rationale and Benefits: Subdivision (a) (1) (A) requires that the Continuum of Care not have opted to have the State ESG allocation for the Service Area administered for Rapid Rehousing activities by an AE of a geographically contiguous Service Area (See discussion in section 8403 (a) (1) for more details on this option.) Subdivision (a) (1) (B) requires that an eligible Continuum of Care has received Continuum of Care funding from HUD in at least one of the past two federal competitions or has registered with HUD to apply for funding in the next competition. This is necessary to ensure that the Continuum of Care is an active, functioning body. Subdivision (a) (1) (C) requires that the Continuum of Care has conflict of interest policies in place that meet HUD requirements. This is necessary to ensure that the Continuum of Care can participate in provider selection in a manner that is fair and open. Subdivision (a) (1) (D) requires that the Continuum of Care has Written Standards for all Eligible activities proposed to be carried out with ESG funds. This is consistent with HUD's requirement at 24 CFR 576.400 (e) (2) (i). Subdivision (a) (1) (E) requires that the Continuum of Care operate, or causes to be operated, an HMIS system that meets HUD requirements. This is consistent with 24 CFR 576.400 (f).

Alternatives Considered: No other alternatives to this section were considered.

Subsection (a) (2)

Purpose: The purpose of this subsection is to allow Continuum of Care Service Areas to retain a portion of their formula allocation for Rapid Rehousing activities, rather than compete for funds in a regional competition pursuant to subsection (a) (3) discussed below.

In this instance the Continuum of Care would recommend a Rapid Rehousing provider, and the Department would administer these funds. The amount available for Rapid Rehousing activities under this subdivision would be established in the Department's annual Action Plan pursuant to subsection (a) (2) (E), and the process by which the Continuum of Care selects this provider would have to meet certain minimum standards set forth in (a)(4).

Problem: Continuums of Care who want to use ESG funds only for Rapid Rehousing but don't wish to compete for funds available in a regional competition should not be deprived of the opportunity to access funds for Rapid Rehousing as long as they will take responsibility for recommending a provider to be funded using a process which meets Department requirements.

Rationale and Benefits: Allowing a percentage of the funds to stay in the Service Area for Rapid Rehousing benefits the area in a way that is also consistent with a Department priority for use of ESG funds, and continues to involve the Continuum of Care in the decision-making process. Regarding provider selection: (i) requiring a fair and open process which avoids conflicts of interest in project selection, implementation, and the administration of funds is necessary to ensure that every Rapid Rehousing provider has the opportunity to access these funds; (ii) requiring Continuums of Care to use project selection criteria reasonably consistent with the criteria used by the Department in section 8407, and in compliance with sections 8408 and 8409, as well as the other provisions of this section (A) through (D), will help ensure that experienced providers are selected who have a good program design, good program outcomes, and can operate in a cost-effective manner consistent with federal and State ESG requirements, policy priorities, and core practices.

The Department wants to limit the amount of funds that can be accessed for Rapid Rehousing activities in this manner so that there might remain an incentive to participate in the regional competition. Establishing the limit for these funds in the Department's annual Action Plan will enable the Department to annually adjust the amount available, as necessary to achieve the above objectives, and account for changes in ESG allocation amounts from year to year. ESG stakeholders will also have the opportunity to provide formal input and public comment on the percentage of funds permitted pursuant to this subdivision.

### Alternatives Considered:

The Department considered requiring providers recommended by the Continuums of Care pursuant to this subdivision to submit an application to the Department for these funds, and to be scored by the Department pursuant to the criteria in Section 8407. The Department also considered imposing a minimum point score in order for these providers to be funded. This alternative was rejected in favor of doing a process evaluation as set forth in 8404 (a) (2) (A) through (D).

### Subsection (a) (3)

Purpose: The purpose of this subsection is to establish that funds remaining after allocating for Rapid Re-housing activities pursuant to subsection (a) (2) above will be made available within three regional allocations: Northern Region, Bay Area Region, and Central and Imperial Valley Region. Although the regulations set forth the counties that will generally belong to each region, the regulations also provide that the configuration of Service areas within each region may change subject to individual Continuum of Care or ESG Entitlement area designations made by HUD, and that the counties belonging to each region will therefore be announced in the NOFA.

Problem: For funds administered by the Department under the BOS allocation, the Department wants to maintain some portion of the funds distributed through a regional competition in order to provide Continuums of Care with an incentive to recommend providers that best meet the Department's criteria under section 8407.

Rationale and Benefits: Aside from funding providers that best meet the criteria in section 8407, participating in the regional competition will enable providers serving a Continuum of Care Service Area to potentially access more funds through the competition than they would be able to access through a Continuum of Care formula allocation alone.

Alternatives Considered: The Department considered allowing providers to only access funds available through the formula allocation of a particular Continuum of Care Service Area. This alternative was rejected because in addition to preventing some providers from accessing more funds through a competition, it may result in some Continuums of Care simply recommending provider awards in a noncompetitive manner, and selection of providers that do not best meet the criteria in section 8407. This may also result in more contracts or subcontracts for the Department to monitor than would be the case under a regional competition. These issues are discussed further in subsections (a) (4) through (a) (6) below,

### Subsection (a) (4)

Purpose: This subsection provides that, as requested in the NOFA, each Continuum of Care shall recommend to the Department an Eligible organization or organizations proposing Eligible activities within the Continuum of Care Service Area for funds

available under the applicable regional allocation It also sets forth the process by which the Continuum of Care shall make its recommendations.

Problem: For funds administered by the Department under the BOS allocation, the Department wants to maintain some portion of the funds as distributed through a regional competition in order to provide Continuums of Care with an incentive to recommend providers that best meet the Department's criteria under section 8407.

Rationale and Benefits:

This approach continues to involve the BOS Continuums of Care in the decision-making process pursuant to the requirements of 24 CFR 576.400 (a). Regarding provider selection: (i) requiring a fair and open process, which avoids conflicts of interest in project selection, implementation, and the administration of funds is necessary to ensure that every provider has the opportunity to access these funds. (ii) Requiring BOS Continuums of Care to use the project selection criteria in sections 8406 and 8407, and (iii) to select activities and providers in compliance with sections 8408 and 8409, will help ensure that providers are recommended that can best compete under, and comply with, these criteria.

Alternatives Considered: No alternatives to this subsection were considered.

Subsection (a) (5)

Purpose: The purpose of this subsection is to clarify that all applications for funds available under the regional allocations will be evaluated by the Department pursuant to the requirements of sections 8406, 8408, and 8409. Depending on whether the regional allocations are oversubscribed, applications submitted for funds within a regional allocation may be rated and ranked pursuant to the requirements of 8407.

Problem: Section 8406 addresses application eligibility requirements. sections 8408 and 8409 address Eligible activities and Core Practices requirements, and section 8407 addresses application rating criteria which will be utilized should demand for funds exceed the amount of funds available.

Rationale and Benefits: See discussion in sections 8406-8409.

Alternatives Considered: No other alternatives to the proposed language was considered.

Subsection (b)

Purpose: The purpose of this subsection is to provide that the Action Plan will set forth any proposed limits on the number of applications per Continuum of Care, and any

limits on the number or type of activities, contracts, or subcontracts within an application.

Problem: The State ESG program currently receives and evaluates approximately 120 applications per year and funds approximately 60 contracts per year. Funding levels and the administration allowance for the program are very small compared to the volume of work that could be created due to the demand for this assistance. Given the current limits on allocation levels and administration costs imposed at the federal level, the Department needs a way to control the administrative costs incurred in having to evaluate and manage large numbers of applications and contracts with multiple activities or subcontracts.

Rationale and Benefits: Setting limits on the number of contracts, subcontracts, and activities per contract will help to manage the workload of the Department related to provider selection, contract management, and monitoring. Since allocation levels change from year to year, the Department needs the ability to establish these limits on an annual basis. The Department also needs the ability to be responsive to changes in allocation levels, and to react, when necessary, as the Department learns over time what activity types are best funded together in the same contract, or require more ability to subcontract. The Department also recognizes the importance of stability of funding at the project level; therefore any limits proposed will be subject to annual public comment and input from program stakeholders through the Action Plan process.

Alternatives Considered The Department considered establishing hard limits in these regulations on the number of contracts, subcontracts, and activities per contract, but rejected this alternative because program and individual Service Area allocation levels will change from year to year, and the Department needs the flexibility to be responsive to these changes, as well as ongoing changes in service delivery methods and best practices.

#### Language in Strikeout Format

The language in section 8404 that appears in strikeout format addresses requirements for eligible organizations. These requirements are now in section 8406, or addressed through the provisions concerning Core Practices in section 8409.

#### **Section 8405. Notice of Funding Availability**

Subsection (a) The purpose of this subsection is to notify interested persons that the Department will issue a NOFA soliciting applications for Eligible Activities within the regional allocations pursuant to 8404(a)(4) and (a) (5).

#### Subsection (b)

Purpose: The purpose of this subsection is to outline the general contents of the NOFA.

Problem: Without a NOFA, BOS CoCs, and applicants for ESG funds, will not have the basic information need to evaluate whether a provider would score well in the regional competition for ESG funds.

Rationale and Benefits: The NOFA will notify all interested persons of the following:

(1) That the Department has been allocated ESG funds or expects to be allocated such funds.

This information will be made available based on the allocation amounts from HUD, or estimates thereof.

(2) Identification of Continuum of Care Service Areas and allocation amounts under the Balance of State and Continuum of Care Allocations.

(3) Regional allocation amounts and identification of Continuum of Care Service Areas eligible to submit applications under the regional allocations pursuant to 8404 (a) (4) and (a) (5).

Based on the allocation amounts from HUD, and the current Continuum of Care Service Areas that have indicated they will participate in the program pursuant to 8402 (e), the Department will generate estimated allocation amounts that will be available in the Continuum of Care Allocation and the Balance of State Allocation, as well as estimated amounts available in each of the regional allocations pursuant to 8404 (a) (4);

(4) Range of Eligible activities as adopted in the Action Plan, and any prohibitions on uses of funds.

Pursuant to section 8408, the range of Eligible activities will be proposed for public comment in the Action Plan. As adopted in the Action Plan, these activities will be specified in the NOFA. See further discussion in section 8408.

(5) As adopted in the Action Plan, the maximum number of applications from a Continuum of Care Service Area, and the maximum number and type of Eligible activities, contracts, and subcontracts within an application;

Pursuant to 8404 (b), this information will be proposed for public comment in the Action Plan. As adopted in the Action Plan, this information will be specified in the NOFA. See discussion in section 8404 (b).

(6) Role of Continuum of Care in the application process;

Pursuant to 8404, the NOFA will reiterate the role of the Continuum of Care in the BOS Application process

(7) Application or other documentation requirements pursuant to activities to be funded under the regional allocations pursuant to 8404 (a) (4) and 8404 (a) (5)

See discussion in sections 8404 (a) (4) and 8404 (a) (5).

(8) Deadline for filing of applications to be reviewed and approved by the Department, timeframes for review and funding of all applications; and

(9) General terms and conditions of funding allocations.

This information is basic information needed to submit an application, and other information of interest to award recipients.

Alternatives Considered No other alternatives to the proposed language were considered.

The language in Section 8405 that appears in strikeout format addresses requirements for eligible applications. These requirements are now addressed in section 8406.

### **Section 8406. NOFA Application Process**

Subsection (a): The purpose of this subsection is to set forth the eligibility requirements for applications submitted for the regional competition pursuant to sections 8404 (a) (4) and 8404 (a) (5).

Problem: BOS Continuums of Care and provider applicants need to understand the eligibility criteria under which applications in the regional competition will be evaluated.

#### **Rationale and Benefits**:

Subsections (a) (1) through (a) (3) refer to basic applicant, Continuum of Care, and activity eligibility requirements discussed in other sections of the regulations and ISOR.

Subsection (a) (4) requires that the application be submitted by the deadline stated in the NOFA. Since funds under the regional allocations may be distributed on a competitive basis, it is necessary that all applications be submitted by a date specified in the NOFA so that they can be evaluated against one another within each region.

Subsection (a) (5) discusses the requirements for a complete application.

(A) Authorizing resolution by the applicant's Governing Board;

This is required under section 8405 (b) (1) of the current program regulations.

(B) For applications requesting funds for Emergency shelter, evidence of site control;

This is required under section 8405 (b) (2) of the current program regulations; however the federal ESG regulations no longer recognize transitional housing as a distinct activity from emergency shelter; therefore, these regulations will only require site control for Emergency shelters as defined under 24 CFR 576.2.

(C) For Private nonprofit organizations, a Certification of Local Government Approval to undertake ESG-funded activities from each Unit of Local Government where the activity is carried out pursuant to section 414 [42 U.S.C. section 11373(c)];

This is required under section 8405 (b) (3) of the current program regulations. Citations have been updated to reflect citations to the HEARTH Act. Other provisions specific to approvals from Eligible cities and Eligible counties have been deleted from the proposed regulations because these terms are no longer proposed to be used. See section 8401. The new proposed language can be interpreted as necessary to meet the federal requirement.

(D) Response to all of the application selection criteria as set forth in section 8407;

This is required under section 8405 (b) (7) of the current program regulations. Citations have been updated to section 8407 which now contains the application selection criteria.

(E) Written Standards for the proposed program activity from the Continuum of Care that recommends this application for funding, which meet the requirements of section 8409, as well as federal requirements.

Written Standards are now required pursuant to 24 CFR 576.400 (e) (2). Pursuant to section 8403 (d) (3) and 8404 (a) (1)(D), the Department is requiring that the Continuums of Care have Written Standards for all Eligible activities proposed to be carried out with ESG funds.

(F) Documentation of satisfactory match pursuant to the requirements of section 8410;

This is required under section 8405 (b) (4) of the current program regulations.

(G) Completed application accompanied by all applicable attachments, certifications, and any additional information requested in the applicable NOFA;

This is required under section 8405 (b) (5) of the current program regulations.

(H) Certification by the applicant that all information within the application is true, complete, and accurate; and

This is required under section 8405 (a) (4) of the current program regulations.

- (l) Any other information the Department or HUD requires to determine compliance with the requirements of these regulations and all other regulations, statutes, and laws applicable to ESG, and scored based on the criteria in section 8407

This language is necessary to address unanticipated needs based on federal and State requirements.

Alternatives Considered No other alternatives to the proposed language were considered.

Subsections (b) (c) and (d):

Purpose: The purpose of these subsections is to notify applicants and BOS Continuums of Care that applications under the NOFA will be rated according to the criteria in section 8407, but that even if an application is submitted as incomplete as long as the requirements of this section are met, the application may be scored as submitted and the Department may condition awards as necessary to secure missing information in order to ensure compliance with federal and State requirements, according to the requirements of subsection (c), where doing so does not alter the competitive scoring, The Department reserves the right to request clarification of unclear or ambiguous statements made in the application and other supporting documents where doing so will not impact the competitive scoring of the application, and the Department may request that an applicant revise application documents as necessary to establish threshold compliance as long as such revisions do not impact the competitive scoring of the application.

Problem: It is not unusual for the Department to receive incomplete applications under a NOFA or applications with unclear or ambiguous statements, and have to reject those applications, even though the program itself may be competitive under the rating criteria and may be a good program.

Rationale and Benefits: The proposed language enables the Department to score an incomplete application, based on the information submitted, and if the application ranks high enough to be funded, condition the award on receipt of any missing information necessary to ensure compliance with federal and State requirements, where receipt or consideration of this information would not change the score the application received. The Department may also request clarification of clear or ambiguous statements, or request revisions to application documents as long as doing so will not impact the competitive scoring of the application

This language is similar to language currently in the ESG regulations under section 8405 subdivisions (c) (d) (e) but it has been simplified, and clarifies that all applications will be scored as submitted. Unlike the current 8405 (e), the proposed language does not require that the missing information be in existence prior to the application deadline. Since the missing information will not be used for scoring purposes, it is not necessary that the information have existed prior to the application deadline.

Alternatives Considered: No other alternatives to the proposed language were considered.

Language in Strikeout Format: The language in section 8406 that appears in strikeout format is proposed for removal for the following reasons:

- Subsection (a) addresses ESG eligible activities which are now addressed in section 8408.
- The specific references in subdivisions (A) through (F) and (M) through (O) are no longer necessary because section 8408 refers generally to the eligible activities in 24 CFR Part 576, and specifies in this section any limitations beyond what is permissible in the federal ESG regulations.
- Subdivision (G) refers to rules for client participation which the Department no longer wishes to require except in the manner now described in sections 8408 and 8409.
- In an effort to streamline program requirements the Department no longer wishes to require subdivisions (H) or (I).
- Subdivisions (J) and (K) are no longer necessary because the federal ESG regulations no longer recognize transitional housing as a distinct activity from emergency shelter; and the practices described in these subdivisions are distinct to transitional housing.
- In an effort to streamline program requirements the Department no longer wishes to require subdivision (L).
- The specific prohibitions in subsection (b) (1) are no longer necessary because section 8408 refers generally to the eligible activities in 24 CFR Part 576, and specifies in this section any limitations beyond what is permissible in the federal ESG regulations.
- Former subsections (b) (2) through (5) are addressed sufficiently in 24 CFR 576.406, 24 CFR 576.403, and the definition of emergency shelter in 24 CFR 576.2. In an effort to streamline program requirements, the Department does not wish to impose requirements over and above what is required in the federal regulations.

**Section: 8407:      Selection Criteria for NOFA Applicants**

Subsection (a)

Purpose: The purpose of subsection (a) is to set forth the rating criteria upon which applications recommended for funding within the regional allocations will be evaluated.

Problem: BOS Continuums of Care and applicants for funding need to know what criteria will be used to score applications within the regional competitions.

Rationale and Benefits:

(a) Where applications requesting funds for more than one program are permitted in the NOFA, each program will receive a separate score for each rating factor, and the point scores will be averaged to calculate a final point score for each rating factor

This is the current practice of the Department in scoring applications with multiple activities. In these instances, averaging the scores for the activities is the most streamlined way to arrive at a total score.

(a) (1) Applicant Experience - 20 points

(A) Length of experience implementing the proposed Eligible activity or activity similar to the proposed activity.

Length of Experience is one good measure of an organization's ability to operate a program.

(B) For applicants who have received funding in the State's ESG program in the past three years, a maximum of 20 points will be deducted for the following

(i) Whether the Department has terminated or disencumbered ESG grant funding;

(ii) Whether the applicant has any unresolved monitoring findings in ESG that pose a substantial risk to the Department;

(iii) Whether the applicant has submitted annual reports in a timely manner for ESG grants.

Prior performance is one good indicator of an organization's ability to perform in the future. The above three measures were chosen because disencumbered ESG funds, unresolved ESG monitoring findings that pose a substantial risk to the Department, and timely submittal of ESG Annual Reports are the three measures most important to the

Department in order to assess an organization's ability to meet its financial and reporting obligations to HUD.

(a) (2) Need for Funds – 10 points

Need for funds based on whether the application activity and subpopulation targeting, if any, meets a high need for the community as identified by the Continuum of Care. The Continuum of Care shall provide data and analysis to support the need.

It is important that Continuums of Care continue to recommend activities for ESG funds which meet a high need, and this need should be supported by data and analysis

(a) (3) Program Design -20 points

Quality of the proposed program in delivering Eligible activities to participants consistent with Continuum of Care Written Standards, and Core Practices as set forth under section 8409. In making determinations under this rating factor, the Department may examine such things as Continuum of Care Written Standards for the activity; provider guidelines governing activity operations; program rules for clients; and the reasonableness of program staffing patterns and the activity budget relative to program design, target population, and local conditions.

As evidenced through the kinds of program documents specified above, whether the proposed program is designed and delivered in a manner that is consistent with the Continuum of Care's Written Standard's for the activity and the Department's Core Practices as set forth in section 8409 are important in determining whether the proposed activity is conducted in a manner consistent with Continuum of Care and Department policy objectives. Examination of the program's staffing patterns and activity budget, relative to program design, target population, and local conditions, are important tools for assessing whether the program is able to provide the type and degree of services consistent with the Core Practices in section 8409.

(a) (4) Impact and Effectiveness – 20 points

Using HMIS data from the most recent ESG contract year, applications will be evaluated based on an evaluation of project and system-wide impact and effectiveness utilizing project level and system-wide performance outcomes for ESG Eligible activities or similar activities implemented within the past three years based on data which is reasonably available. Performance measures for each ESG activity and for each Continuum of Care Service Area will be identified in the Action Plan and based on the metrics used by HUD in programs such as ESG and the Continuum of Care. The Department may require documentation to verify the accuracy of the data provided by the applicant.

Consistent with HUD's policy direction, use of outcome data to inform individual project selection and Continuum of Care system-wide performance is an important component

of the State's ESG program. Pursuant to 24 CFR 576.400 (f), all data on persons served or activities assisted under ESG must be entered into the applicable community-wide HMIS system or a comparable database in accordance with HUD requirements.

The proposed Impact and Effectiveness rating factor will look at project-level and system-wide performance data from the most recent ESG contract year for ESG Eligible activities or similar activities implemented within the past three years. The Department chose these time periods because this will enable the Department to collect the most recent data available without requiring that the activity have been provided in the last one or two years.

24 CFR 576. 400 (a) requires states, as recipients of ESG funds, to consult with Continuums of Care in developing performance standards for ESG. In addition, the Preamble to the Part 576, states that HUD has increased flexibility in establishing and modifying standards for collecting data on homeless populations and subpopulations and performance measures. Given the requirement to consult with Continuums of Care in developing performance standards, and the flexibility that HUD has in establishing and modifying the data standards used, it is important that the exact metrics used be identified in the Action Plan in order to be most responsive to changes made by HUD from year to year, and to allow for consultation annually with Continuums of Care to ensure that the metrics being requested can be generated through the Continuums' current HMIS software vendors.

#### (a) (5) Cost Efficiency – 20 points

Using HMIS data from the most recent ESG contract year, applications will be evaluated based on the average cost per exit to permanent housing based on the total ESG project budget and the number of exits to permanent housing. The Department may require documentation to verify the accuracy of the information provided by the applicant. Such documentation shall be provided upon the request of the Department.

Average cost per exit to permanent housing is an important measure of cost efficiency, and program success, particularly in the context of following all of the Core Practices in section 8409.

#### (a) (6) State Objectives – 10 Points

The Department may award each application up to 10 points for addressing one or more State Objectives as identified in the Action Plan and NOFA. The Department's selection of State Objectives will be based on one or more of the following:

(A) Federal funding priorities, as publicly announced by HUD;

(B) State funding priorities as publicly announced by the Governor or Department Director; and

(C) Housing and community development needs or objectives as identified in the Action Plan.

This rating category is similar to the State Objectives rating category in the current regulations, (section 8411 (b) (5) except that fewer points have been assigned to it, and the subcategory of “imbalance in the types of programs funded” is being removed because it can be addressed in subcategory (C) if necessary.

### Alternatives Considered

Regarding Applicant Experience, the Department considered deducting points for not submitting disbursement requests at least quarterly; however, this alternative was rejected in favor of streamlining the number of documents examined for this rating factor. Regarding Need, the Department considered having Continuums of Care rate this factor directly similar to what is currently done in the program; however, this alternative was rejected in favor of rating this factor based on the documentation and analysis done by the different Continuums.

Regarding the Impact and Effectiveness and Cost Efficiency rating factors, the Department considered continuing to compare like activities to like activities when scoring this rating factor, but rejected this alternative because it is important that programs stand on their own merits, and that their performance measurement and cost efficiency scores not be affected through a narrowing of the applicant pool or budget items through which they are compared.

### Subsection (b)

Purpose: The purpose of this subsection is to specify how the application ranking process will work.

Problem: Once applications are rated and assigned a point score, they need to be ranked and funds allocated to them until the funds are no longer available.

### Rationale and Benefits:

Within each regional allocation, applications will be ranked in descending order and awarded the amount requested in the application or a revised amount if necessary to conform to funding limits in the NOFA. In the event of a tie between applicants within a regional allocation, funds will be awarded to the applicant who scored the most points in the Cost Efficiency rating factor.

ESG funds remaining in a regional allocation may be made available for the highest ranked unfunded applications in the other regional set-asides, according to their total application score. Remaining funds may also be set-aside for distribution in the next NOFA.

When there are insufficient funds to fully fund the next highest ranked unfunded application, this application may be partially funded if the funded activities can be adequately performed with the remaining ESG allocation.

This approach is similar to how the Department has ranked applications under the regional allocations currently in regulations, except that new language permits the Department to reserve unallocated funds within a regional set-aside for the next NOFA. This is necessary because, compared to the current regulations, there are fewer set-asides in the proposed regulations in which to reallocate funds at this point in the rating and ranking process. There is no general allocation, and the number of applications that each Continuum of Care can recommend for funding will be limited. See 8404 (b) for further discussion.

Alternatives Considered: No other alternatives to this section were considered.

Section 8407 Language in Strikeout Format:

The language in the current regulations' section 8407 is no longer necessary because the Department will not regulate Homelessness prevention activities beyond what is required in the 24 CFR Part 576 governing this activity.

Section 8411 Language in Strikeout Format: Section 8407 replaces the content now covered in Section 8411.

- The introductory language in the section 8411 of the current regulations was deleted to simplify the text in this section. The issues covered in the deleted introductory language in (subdivision (a) are covered in subdivision 8406. The language in (b) is addressed in the proposed subdivision (a) of the new section 8407.
- The Applicant Experience category above replaces the Applicant Experience category in section 8411 of the current regulations. The deleted introductory language is basic information that is commonly understood and does not need to be in the regulation.
- The Applicant Capability rating factors in subdivision (b) (1) (A) through (I) in the current section 8411 have been replaced with the Applicant Experience rating factors discussed above in order to streamline the rating process and focus on what the Department now believes is most important to evaluate in the this rating category.
- The Need rating factors in subdivision (b) (2) in the current section 8411 have been replaced with the Need rating factor discussed above in order to streamline the rating process and focus on what the Department now believes is most important to evaluate in the this rating category, in the manner now specified in section 8407 (a) (2). The deleted introductory language is basic information that

is commonly understood and does not need to be in regulation.

- The Impact and Effectiveness rating factors in the current section 8411 (b) (3) have been eliminated in favor of using HMIS performance metrics used by HUD in programs such as ESG and the Continuum of Care which will be identified in the Action Plan. See above discussion for section 8407 (a) (4). The deleted introductory language in the current section 8411 (b) (3) is basic information that is commonly understood and does not need to be in regulation.
- The Cost Efficiency rating factors in the current section 8411 (b) (4) have been eliminated in favor of a more streamlined approach to evaluating cost efficiency focusing on exits to permanent housing in 8407 (a) (5). The deleted introductory language in the current section 8411 (b) (4) is basic information that is commonly understood and does not need to be in regulation.
- The State Objective rating factors in the current section 8411 (b) (5) have been modified as discussed above in section 8407 (a) (6). The deleted introductory language in the current section 8411 (b) (6) is basic information that is commonly understood and does not need to be in regulation, or is no longer going to be used in determining the total amount of State Objective Points available in any given year. The total amount of points for this category has been reduced from 35 to 10; therefore the 5% cap on total points for this rating factor is no longer necessary.

## **Section 8408. Eligible Activities**

### **Subsection (a)**

**Purpose:** The purpose of this subsection is to establish that State ESG funds awarded by an Administrative Entity or by the Department shall be used for Eligible activities as permitted by HUD pursuant to 24 CFR Part 576 in accordance with this section

**Problem:** Providers of funded activities and Continuums of Care need to know what Eligible activities ESG funds can be used for.

**Rationale and Benefits:** Keeping the detailed rules with respect to Eligible activities consistent with federal regulations avoids difficulty in having to understand and implement two different sets of rules, State and federal.

**Alternatives Considered:** No other alternatives to this section were considered.

### **Subsection (b)**

**Purpose:** The purpose of this subsection is to establish that pursuant to 24 CFR 92.320 (d), to address the State's priority needs and objectives pursuant to the Action Plan,

the Department may limit the types of activities that may be funded in a particular NOFA.

Problem: The Department may need to limit the types of activities funded in a given year in order to address particular priority needs and objectives that the Department must address that year.

Rationale and Benefits: The proposed language gives the Department the ability to carry out the authority provided it in 24 CFR 91.320 (d) to designate activities to be undertaken by the state, using funds that are expected to be received under formula allocations during the program year as well as other HUD assistance, and the reasons for the allocation priorities. This authority assumes that States may need to change the activities they fund in a given year based on changes in available funding or changes in allocation priorities.

Alternatives Considered: No other alternatives to this subsection were considered.

Subsection (c):

Purpose: The purpose of this subsection is to limit the percentage of an individual formula allocation under section 8302 that may be used for HMIS activities.

Problem: Federal regulations do not limit the amount of ESG funds that can be used for HMIS activities.

Rationale and Benefits: Although HMIS is critically important to outcome-related data collection, the Department wishes to limit the amount of any individual formula allocation that may be used for HMIS in order to ensure that AEs can meet their obligation to allocate a minimum of 40% of their funds to Rapid Rehousing pursuant to 8404 (i), and that an adequate share of ESG funds can be made available for emergency shelter and street outreach activities subject to HUD's limitations on these activities at 24 CFR 576.100 (b). The proposed language still permits individual providers to request more than 10% for HMIS as long as the total formula allocation to a Service Area does not exceed 10% for HMIS.

Alternatives Considered: The Department considered not limiting the amount of a formula allocation that can be used for HMIS activities, but rejected this alternative for the reasons stated above.

Subsection (d)

Purpose: The purpose of this subsection is to establish that State ESG funds shall not be used for Renovation, Conversion, or Major Rehabilitation activities pursuant to 576.102. Minor repairs to an ESG-funded Emergency shelter that do not qualify as Renovation, Conversion, or Major Rehabilitation are an eligible use of State ESG funds.

Problem: Due to the limited amount of ESG funds available, Renovation, Conversion, or Major Rehabilitation activities as defined under the federal regulations have never been a requested use for ESG funds.

Rationale and Benefits: The proposed language still permits ESG funds to be used for minor repairs associated with operating an ESG-funded Emergency shelter, but does not require AEs or the Department to establish or maintain the administrative capacity to evaluate and manage contracts for capital development activities funded by ESG.

Alternatives Considered: The Department considered continuing to permit Renovation, Conversion, or Major Rehabilitation as Eligible activities under ESG, but rejected this alternative for the reasons stated above.

Language in Strikeout Format The language in the current regulations under Section 8408 concerns leasing or renting rooms with vouchers. The Department no longer wishes to regulate activities performed to provide temporary housing assistance beyond what is required under 24 CFR Part 576.

## **Section 8409. Core Practices**

### Subsection (a):

Purpose: The purpose of this subsection is to establish that, unless exempted by federal rules, all ESG funded activities shall utilize a Coordinated Entry system established by and consistent with the protocols of the Continuum of Care for the Service Area in which that program operates, and to set forth basic State requirements for that system.

Problem: Use of a centralized or coordinated assessment system by an ESG-funded program or project is required under 24 CFR 576.400(d); however, the federal regulations are silent on general principles of these systems, other than that the screening, assessment, and referral or program participants must be consistent with the Written Standards of the Continuum of Care.

### Rationale and Benefits:

Participation in Coordinated Entry shall occur in a manner that promotes the following:

(1) Comprehensive and coordinated access to assistance regardless of where an individual or family is located in the Continuum of Care Service Area. Local systems should be easy to navigate and have protocols in place to ensure immediate access to assistance for people who are homeless or most at-risk;

(2) Prioritized access to assistance for people with the most urgent and severe needs. ESG-funded activities shall seek to prioritize people who:

(A) Are unsheltered and living in places not designed for human habitation, such as cars, parks, bus stations, and abandoned buildings;

(B) Have experienced the longest amount of time homeless;

(C) Have multiple and severe service needs that inhibit their ability to quickly identify and secure housing on their own; and

(D) For Homelessness prevention activities, people who are at greatest risk of becoming literally homeless without an intervention and are at greatest risk of experiencing a longer time in shelter or on the street should they become homeless.

The above proposed requirements focus on easy access to the Coordinated Entry system, no matter where a household is located, with priority for assistance given to those with the most severe and urgent needs for housing and services. This is necessary because ESG funds in many communities are the primary source of temporary housing assistance and services; therefore, they need to be utilized to serve those who are otherwise not able to access housing or other needed supports on their own, or from other resources available to them. The above standards are consistent with guidance issued by HUD and the United States Interagency Council on Homelessness regarding prioritized access to resources through a Coordinated Entry system.

Alternatives Considered: No other alternatives to this subsection were considered.

Subsection (b):

Purpose: The purpose of this subsection is to set forth some basic housing first and progressive engagement and assistance practices that all ESG-assisted projects shall operate consistent with.

Problem: Housing first and progressive engagement are important practices which HUD seeks to promote by which all projects seeking ESG funds should be evaluated; however, the federal regulations are silent on defining these practices or articulating basic standards for implementation.

Rationale and Benefits:

Adherence to these practices will help ensure that ESG-assisted projects can provide easy access to housing and services for all program participants, including those with the most barriers to accessing housing, in a manner that focuses on providing households access to permanent housing first, and while in housing helping them, as needed, to access the necessary resources to remain housed.

(1) Ensuring low-barrier, easily accessible assistance to all people, including, but not limited to, people with no income or income history, and people with active substance abuse or mental health issues;

This is consistent with one of HUD's primary goals that assistance be easily accessible no matter where or how people present, and that programs not engage in practices which screen people out for assistance because of perceived barriers to housing or services, including, but not limited to, lack of employment or income, and active substance abuse or mental health issues.

(2) Helping participants quickly identify and resolve barriers to obtaining and maintaining housing; and

(3) Seeking to quickly resolve the housing crisis before focusing on other non-housing related services;

Items (2) and (3) are consistent with HUD's policy goals of housing people as quickly as possible by providing them the assistance they need to get into housing, and then helping to access services while in housing which are targeted to their particular long-term barriers to accessing and maintaining housing.

(4) Allowing participants to choose the services and housing that meets their needs, within practical and funding limitations;

This is consistent with HUD's policy guidance that access to services be participant self-directed to foster more effective participation in services.

(5) Connecting participants to appropriate support and services available in the community that foster long-term housing stability;

This is consistent with HUD's requirements at 24 CFR 576.400 (b) and (c) that there be coordination and integration of ESG-funded activities with other targeted homeless services and mainstreamed resources in order to address participants' housing needs and barriers to housing stability.

(6) Offering financial assistance and supportive services in a manner which offers a minimum amount of assistance initially, adding more assistance over time if needed to quickly resolve the housing crisis by either ending homelessness, or avoiding an immediate return to literal homelessness or the imminent risk of literal homelessness. The type, duration, and amount of assistance offered shall be based on an individual assessment of the household, and the availability of other resources or support systems to resolve their housing crisis and stabilize them in housing; and

This is consistent with HUD's policy goal of maximizing use of available participant and community resources to quickly re-house, or avoid imminent literal homelessness by providing customized levels of assistance based on individual needs and resources and

preserving the most expensive interventions for households with the most severe barriers to housing success.

Alternatives Considered: No other alternatives to this subsection were considered.

Language in Strikeout Format The language in section 8409 that appears in strikeout format is text from the current regulations relating to Renovation, Conversion, and Major Rehabilitation. Under the proposed regulations, this activity is no longer eligible; so this language has been removed from the regulations. See discussion in section 8408 (d) above.

## **Section 8410. Match Requirements**

### Subsections (a) and (b)

The proposed amendments to these subsections:

(a) update the federal citation to the match requirements to that in the ESG regulations, which is more commonly utilized when seeking detail on the match requirements, rather than the statutory citation now in regulations; and

(b) clarify that State funds used as ESG match can only come from programs serving homeless persons.

These changes are nonsubstantive and are being made for clarity.

### Subsection (c)

Purpose: The purpose of this subsection is to clarify that should the State, in meeting its federal ESG match requirement, need to request documentation of match from its Subrecipients and Subrecipients of the AEs, that it will set forth any such requirement in the Action Plan and NOFA.

Problem: The regulations currently only provide that ESG applicants will be notified of any match documentation requirement in the NOFA. Depending on where else they are operating ESG-eligible activities, Subrecipients of the AE may not also be applying for ESG funds through the NOFA.

Rationale and Benefits: Notifying Subrecipients and Subrecipients of the AE of the annual match obligation through the State's Action Plan will put organizations on notice earlier of the need to provide documentation of ESG match. This is also consistent with HUD's requirement pursuant to 24 CFR Part 91. 320 (c) (2) that the means for satisfying the match requirement be discussed in the Action Plan.

Alternatives Considered: No other alternatives to this subsection were considered.

## **Section 8411. Standard Agreement**

### **Language in Strikeout Format**

Section 8411 in the current regulations has been stricken and replaced with section 8407, as discussed above. The current section 8412 has been renumbered section 8411. The language in strikeout format in the new section 8411 is discussed below along with the new text.

### **Subsection (a):**

**Purpose:** The purpose of this subsection is to reiterate or establish what entities shall enter into a Standard Agreement with the Department and approximately when in the award process those Standard Agreements will follow.

**Problem:** 24 CFR 576.203 (a) establishes the Department's deadline for obligating or committing ESG funds to a Subrecipient. This subsection clarifies when in the award process that will occur for AEs and for BOS-funded providers.

**Rationale and Benefits:** For AEs their Standard Agreements will follow receipt of funding recommendations from an AE and certification by the AE that the proposed activities meet federal and State requirements pursuant to sections 8403, 8408, and 8409. The Department may require documentation to verify the accuracy of the information provided.

Department review of AE funding recommendations will be a review of the AE's certification that their recommendations comply with the terms of sections 8403, 8408, and 8409. The Department may require additional documentation to verify compliance with section these sections if the Department has questions about the information provided in the certification. Obtaining a certification from the AE, and requesting additional documentation when necessary to verify compliance should streamline the Department review process so that AE Standard Agreements can be issued in a timely manner.

For applications funded pursuant to the NOFA, the Standard Agreement will follow the funding award by the Department. This is the Department's current practice, and is necessary for these applications because the Department must first rate and rank them pursuant to the requirements of section 8407 before an award letter can be issued.

**Alternatives Considered:** The Department considered doing a more in depth review of individual applications recommended for funding by the AE, but rejected this alternative because this may jeopardize the Department's ability to meet HUD's obligation deadline at 24 CFR 576.203.

### Subsections (b) and (c)

Purpose: The purpose of these subsections is to reiterate the federal and State authorities applicable to the ESG program with which the Standard Agreement must comply, and to outline other areas of the Standard Agreement.

Problem: Changes to these existing sections are needed to be consistent with other changes proposed in the regulations.

### Rationale and Benefits:

- The proposed language in (b) reiterates in general terms the applicable federal and State laws to which the Standard Agreement will be written.
- The proposed modifications to subsection (c) (1) are for clarity and consistency with the proposed revised definition of Subrecipient.
- The proposed modifications to subsection (c) (2) add geographic area to the list of specified terms. This is particularly important, since under the proposed allocation system, eligible geographic areas will include the entire Continuum of Care Service Area. Language regarding performance timeframes has been removed from subdivision (c) (2) since this is already addressed in subdivision (c) (5).
- The proposed modifications to subsection (c) (3) add to the list of specified terms “budget detail sufficient for the Department to enter into HUD’s financial management system (“IDIS”), and to ensure eligibility of expenses”. This is important since the Department will use this information to establish the award in IDIS in order to process payments from the grant. It will also be important information for the Subrecipient to have in its contract with the Department to use for its own internal expenditure monitoring purposes.
- The proposed changes to subsection (c) (4) modify existing language to include the AE. For an AE, the information on activity types and budget will be reflected in its Standard Agreement with the Department for each of its selected providers. This is important for both the Department and the AE for contract monitoring purposes.
- The proposed changes to subsection (c) (5) regarding timeframes for performance of Eligible Activities were made for purposes of clarity and to incorporate a reference to the applicable federal regulation governing performance deadlines under ESG.
- Deleted subsections (b) (1) – (3) and (c) were deleted because the subsections address Renovation, Conversion, and Rehabilitation activities which are no

longer eligible activities under the proposed regulations.

Alternatives Considered: No other alternatives to these subsections were considered.

Subsection (d):

Purpose: The purpose of this subsection is to specify conditions under which modification to the Standard Agreement will be approved.

Problem: The language in the current section 8415 (b) (and (c) on budget changed which addresses this issue is unnecessary and currently is not being put into practice by the Department, or it does not address important elements of a budget change. This issue is also best addressed in a subsection concerning changes to the Standard Agreement, rather than in a separate section on changes to a budget, since a project budget is part of the Standard Agreement

Rationale and Benefits: The Department may approve modifications to the Standard Agreement as follows:

- (1) The Administrative Entity may propose to change the funded provider or Eligible activity consistent with section 8403 if necessary to meet the requirements of this Chapter or to expend its funding allocation. Any change must still comply with the requirements in sections 8408 and 8409.
- (2) A Subrecipient shall notify the Department of any line item changes to the budget needed for the Department to update IDIS. For line item changes representing more than 25 percent of the overall budget, a contract amendment is required. Changes must still comply with the requirements in sections 8408 and 8409.

Subdivision (1) gives the Department the authority to approve requests to change funded providers or activities if necessary to comply with ESG requirements or expend ESG funds; hence if a provider is having difficulty implementing a proposed activity, modifications can be made to help ensure that the Standard Agreement can remain active, as long as the changes made continue to comply with Eligible Activity and Core Practice requirements.

Subdivision (2) reflects current Department practice for budget line item changes and contract amendments, but the language in this subsection is more clear and concise than the language in section 8415 of the current regulations.

Alternatives Considered: No other alternatives to this subsection were considered.

### Subsection (e)

Purpose: The purpose of this subsection is to clarify existing language in the regulations regarding performance requirements, and eliminate unnecessary requirements in the regulations.

Problem: The language that is shown in strikeout in this subsection is unnecessary due to other proposed changes in the regulations, is outdated, or is more appropriately addressed in other sections of the regulations, as noted by references to other sections of the regulations.

Rationale and Benefits: The changes simplify the language in this section. The language in the current subdivision (e) has also been deleted because it is no longer necessary since it is not current practice within the ESG program to incorporate a workplan into the Standard Agreement.

Alternatives Considered: No other alternatives to this subsection were considered.

Subsection (f) The language in this subsection has been deleted since Renovation, Conversion, and Major Rehabilitation are no longer eligible activities under the proposed regulations.

Sections 8413 and 8414 of the current regulations have been deleted since these sections address requirements specific to Renovation, Conversion, and Major Rehabilitation which are no longer eligible activities under the proposed regulations. See section 8408 for further discussion regarding why these activities are proposed to be removed from the regulations.

Section 8415 of the current regulations has been deleted since the information in this section is now addressed in the proposed section 8411 (d) (2) for the reasons discussed above.

### **Section 8412: Disbursement Procedures**

The changes to this section of the regulations are nonsubstantive or have been made to conform to other proposed changes to the regulations discussed in earlier sections:

- Changing the program initialism from FESG to ESG
- Removing references to Renovation, Conversion, and Rehabilitation activities, which is no longer eligible under the proposed regulations
- Changing the term State recipient to Subrecipient
- Correcting citation references and paragraph lettering where necessary, and
- Making other nonsubstantive corrections for clarity

The language in paragraph (h) was updated consistent with these changes, and moved up to paragraph (d). Requiring funds disbursements no less than once per quarter

ensures regular expenditure of ESG funds, and is consistent with current program practice.

### **Section 8413: Recordkeeping and Reporting**

#### **Subsection (a):**

**Purpose:** The purpose of this subsection is to establish a records retention requirement for all program records pertaining to a Standard Agreement

**Problem:** The records retention requirements at 24 CFR 576.500 (y) require clarification. The longer retention period for Renovation, Conversion, or Major Rehabilitation discussed at 576.500 (y) (2) is not relevant under the proposed regulations because this activity is proposed to be ineligible. There are also no ESG funds currently being used for this activity.

**Rationale and Benefits:** The proposed language in this subsection makes clear that the Subrecipient shall retain all program records pertaining to the Standard Agreement for a period of five years from the date of expenditure of all funds under the Standard Agreement. This is consistent with HUD's general 5-year retention rule, but makes clear that the period is five years from expenditure of all funds under the Standard Agreement. Even though HUD requires funds to be spent within 24 months from execution of its grant agreement with the State, a longer records retention period is necessary to accommodate federal and State monitoring and audit activities that may occur several years after a Standard Agreement has expired.

**Alternatives Considered:** No other alternatives to this subsection were considered.

#### **Subsection (b)**

**Purpose:** The purpose of this subsection is to clarify the ESG reports that must be submitted to the Department

**Problem:** Requirements in the current subsection concerning reporting can be eliminated or are best addressed in section 8412 because they concern disbursement procedures.

#### **Rationale and Benefits:**

The Subrecipient shall submit the following reports on forms approved by the Department:

(1) Annual performance reports during the period of the grant. Performance reporting may, as required by HUD or the Department, include data on the metrics used by HUD in programs such as ESG and the Continuum of Care or other information required by

HMIS or the Consolidated Annual Performance Evaluation Report required by HUD at 24 CFR 91.520

The annual performance reports are necessary in order for the Department to complete the HUD required Consolidated Annual Performance Evaluation Report (CAPER) pursuant to 24 CFR 91.520. As HUD's own reporting systems change, it may be necessary for the Department to request data on the metrics used by HUD in programs such as ESG and the Continuum of Care or other information required by HMIS in order to complete the CAPER.

(2) Completion reports within 60 days after expiration of the Standard Agreement;

These reports are necessary in order to fulfil the Department's reporting obligations in HUD's Integrated Disbursement and Information System (IDIS), pursuant to 24 CFR 576.500 (aa).

(3) Additional reports as requested by the Department to meet other federal reporting requirements. Such reports shall be provided by the Subrecipient upon request.

This language is necessary to respond in a timely manner to any requests for information from HUD or federal auditors.

Alternatives Considered: The Department considered retaining the quarterly accrued expenditure reporting requirement but rejected this alternative in order to streamline the reporting requirements.

Language in Strikeout Format:

- Subsection (c) was deleted from section 8413 because this issue is now addressed in 8412 (b).
- Subsection (d) was deleted for the reason stated above in "Alternatives Considered".
- Subsection (e) was deleted because this issue is now addressed in subsection (b) (1) discussed above.
- Subsection (f) was deleted because this issue is now addressed in subsection (b) (2) discussed above.
- Subsection (g) was deleted because this issue is now addressed in subsection (b) (3) discussed above.
- Subsection (h) was deleted because this issue is now addressed in subsection (a) discussed above.
- Subsection (i) was deleted because this issue is addressed in the federal ESG regulations at 576.500 (x).

## **Section 8414: Monitoring Grant Activities**

### **Subsection (a)**

**Purpose:** The purpose of this subsection is to establish that AEs shall monitor the activities of their funded providers, and shall do onsite monitoring whenever necessary, but at least once per year.

**Problem:** Pursuant to section 8303 (j) (5), AEs shall monitor the performance of their selected providers, and those they subcontract with to carry out ESG-eligible activities.

### **Rationale and Benefits:**

Administrative Entities shall monitor the activities selected and awarded by them to ensure compliance with federal and State ESG requirements. An onsite monitoring visit of selected providers shall occur whenever determined necessary by the Administrative Entity, but at least once during the grant period.

The proposed language in subsection (a) only requires a site visit of the AEs' selected providers once per year but provides authority for additional monitoring as necessary

**Alternatives Considered:** No other alternatives to this subsection were considered.

### **Subsection (b)**

**Purpose:** The purpose of this subsection is to establish that the Department will monitor the performance of the Subrecipient based on a risk assessment and according to the terms of the Standard Agreement. The Department may also monitor the Subrecipient of the Administrative Entity as the Department deems appropriate based on a risk assessment.

**Problem:** HUD does not prescribe specific monitoring requirements for states, although monitoring is implicit pursuant to 24 CFR 576.108 (a) (1) and 576. 501 (c), among other provisions of the federal regulations.

**Rationale and Benefits:** Given the number of different funding programs and contracts which the Department has to monitor, monitoring according to a risk assessment is the best way to ensure that the highest-risk ESG contracts are monitored.

**Alternatives Considered:** No other alternatives to this subsection were considered.

### **Subsection (c)**

**Purpose:** The purpose of this subsection is to establish that the Department will monitor the performance of Administrative Entity and funded projects based on the performance measures used by HUD in ESG or the Continuum of Care program. In the event that

project-level or system-wide performance consistently remains in the lowest quartile compared to all participating Service Areas in the Continuum of Care allocation, the Department will work collaboratively with the Administrative Entity to develop performance improvement plans which will be incorporated into the Standard Agreement and other agreements required under section 8403.

Problem: There are no specific performance metrics in the federal ESG regulations.

#### Rationale and Benefits:

It is important that the Department monitor the performance of its Subrecipients using measures that HUD will be requiring of ESG funded providers and CoCs. While the Department does not intend to examine outcomes for AEs in the first year, It is important that performance in future years be examined, and that the Department and AEs work together to help improve local outcomes. Since specific HMIS data elements are subject to change by HUD, the Department will propose the measures to be examined in its annual Action Plan for public review and comment.

Alternatives Considered: No other alternatives to this subsection were considered.

#### Subsection (d)

The purpose of this subsection is to set forth the Department's general rule regarding consequences for falsifying information. This is existing regulation language that was moved from the current 8418 (b) to this subsection. It was updated to change "State recipient" to "Subrecipient", as the term is now proposed to be used throughout these regulations, and the citation to the federal ESG regulations concerning allowable sanctions was added. These changes themselves are nonsubstantive in that they do not represent a significant change from current program rules.

#### Language in Strikeout Format

- Subsection 8418 (a) of the current regulations was deleted and replaced with the new language in Subsection 8414 (b) discussed above.
- Subsection 8418 (b) of the current regulations was deleted and replaced with the new language in Subsection 8414 (d) discussed above.

#### **Section 8415 Audit Requirements**

The changes made to this section of the regulations are nonsubstantive.

- Subsection (a) modifies language related to OMB Circular requirements.
- Subsection (b) modifies language related to federal audit requirements.

- Subsection (c) changes “State recipient” to “Subrecipient”, as the term is now being proposed to be used throughout these regulations.
- Subsection (c) also clarifies that audits done at the request of the Department are paid for by the Subrecipient. It is standard practice that the entity from whom the audit is being requested pay for that private audit to be performed.

### **Section 8416: Sanctions**

Subsections (a) through (e) make corrections to the program initialism, change “State recipient” to “Subrecipient”, and change capitalization of the word “grant”, which is no longer a defined term in the regulations. Other changes are also made for clarity. These changes are nonsubstantive.

#### **Subsections (e) and (f)**

**Purpose:** Pursuant to the general authority provided in 24 CFR 576.01 (c), subsection (e) clarifies that the Department may prohibit an Administrative Entity from awarding to a particular Subrecipient of the Administrative Entity until appropriate actions are taken to ensure compliance with ESG requirements, Subsection (f) clarifies that the Department may take impose any other sanctions permitted under 24 CFR 576.501.

**Problem:** Clarity is needed with regard to the role of the Department imposing sanctions on Subrecipients of an Administrative Entity.

**Rationale and Benefits:** If a Subrecipient or Subrecipient of an Administrative Entity fails to abide by ESG requirements, the Department may take actions necessary to help entities come into compliance with ESG requirements, and to safeguard the Department’s current and future investments of ESG funds.

**Alternatives Considered:** No other alternatives to this subsection were considered.

### **Section 8417: Other Federal Requirements**

This is a general statement of applicability of all local, state, and federal laws pertaining to the ESG program. Amended language uses the terms “Subrecipient” and “Subrecipient of the Administrative Entity, rather than “State recipient”. This change is nonsubstantive.

## **ECONOMIC IMPACT ASSESSMENT**

The proposed regulations clarify and interpret California Health and Safety Code Sections 8400-8421 to propose changes to the federal Emergency Shelter Grants (ESG) Program related to the allocation, uses, and administration of ESG funds.

The proposed changes are designed to enhance the geographic distribution of the funds, to allow for more local decision-making in the selection of funded organizations, to streamline eligible uses of funds to be consistent with federal requirements and federal and State policy objectives, and to clarify and/or streamline application, contracting, recordkeeping, and reporting requirements.

### **Creation or Elimination of Jobs within the State of California**

The ESG program is currently being administered by existing federally-funded staff for the program. No additional funding for administration of the program is being requested. The proposed changes are designed to enhance the geographic distribution of the funds, to allow for more local decision-making in the selection of funded organizations, to streamline eligible uses of funds to be consistent with federal requirements and federal and State policy objectives, and to clarify and/or streamline application, contracting, recordkeeping and reporting requirements. Participation in the ESG program is voluntary. Localities can decide not to accept ESG funds, and homeless service providers can decide not to apply for available funds; therefore, HCD has determined that this regulatory proposal will not have an impact on the creation or elimination of jobs in the State of California.

### **Creation of New or Elimination of Existing Businesses Within the State of California**

The ESG program is currently being administered by existing federally-funded staff for the program. No additional funding for administration of the program is being requested. The proposed changes are designed to enhance the geographic distribution of the funds, to allow for more local decision-making in the selection of funded organizations, to streamline eligible uses of funds to be consistent with federal requirements and federal and State policy objectives, and to clarify and/or streamline application, contracting, recordkeeping and reporting requirements. Participation in the ESG program is voluntary. Localities can decide not to accept ESG funds, and homeless service providers can decide not to apply for available funds; therefore HCD has determined that this regulatory proposal will not have an impact on the creation of new businesses or the elimination of existing businesses in the State of California.

## Expansion of Businesses or Elimination of Existing Businesses Within the State of California

The ESG program is currently being administered by existing federally-funded staff for the program. No additional funding for administration of the program is being requested. The proposed changes are designed to enhance the geographic distribution of the funds, to allow for more local decision-making in the selection of funded organizations, to streamline eligible uses of funds to be consistent with federal requirements and federal and State policy objectives, and to clarify and/or streamline application, contracting, recordkeeping and reporting requirements. Participation in the ESG program is voluntary. Localities can decide not to accept ESG funds, and homeless service providers can decide not to apply for available funds; therefore, HCD has determined that the proposed regulations will not have an impact on the expansion of businesses or the elimination of existing businesses in the State of California.

### Benefits of the Regulations

The proposed changes are designed to enhance the geographic distribution of ESG funds, to allow for more local decision-making in the selection of funded organizations, to streamline eligible uses of funds to be consistent with federal requirements and federal and State policy objectives, and to clarify and/or streamline application, contracting, recordkeeping and reporting requirements.

The proposed regulations will benefit the health and welfare of California residents by assisting homeless, and at-risk homeless populations. It will also benefit non-profit organizations and local governments that receive ESG funds, and the communities they serve; however, participation in the ESG program is voluntary. Localities can decide not to accept ESG funds, and homeless service providers can decide not to apply for available funds; therefore, HCD has determined that the proposed regulations will not have a significant statewide impact on the health and welfare of California residents, worker safety, or the state's environment.

### **EVIDENCE SUPPORTING NO SIGNIFICANT ADVERSE ECONOMIC IMPACT ON BUSINESSES**

Because participation in the ESG program is voluntary, the Department has determined that the proposed regulations will not have a significant impact on the creation or elimination of jobs in the State of California, the creation of new businesses, the elimination of existing businesses, or the expansion of businesses currently doing business within the State of California. The proposed regulations will have no significant impact on the health and welfare of California residents, worker safety, or the state's environment.

**OTHER DOCUMENTS RELIED UPON:**

No other technical, theoretical or empirical studies, reports or similar documents were relied upon in preparing the proposed regulatory action.

**EFFECT ON SMALL BUSINESS**

The Department has determined that the proposed action has no impact on small business because participation in the ESG program is voluntary.