

MEMORANDUM

TO: Regional Steering Committee on Homelessness and Housing

FROM: HomeBase

RE: Homeless Emergency Assistance and Rapid Transition to Housing Act of 2009 (“HEARTH”): Reauthorizing and Modifying the McKinney-Vento Homeless Assistance Act of 1987

DATE: July 17, 2009

Background:

The Regional Steering Committee (“RSC”) has presented issues briefs on concerns with the McKinney-Vento Homeless Assistance Act of 1987 (“McKinney-Vento”) to Congress and federal agencies since inception. These briefs were based on many discussions on McKinney-Vento Reauthorization, including during meetings in 1994 (July 14), 2000 (June 16), 2003 (November 21), 2005 (January 21, November 18), 2006 (January 20, July 7, September 29), 2007 (January 19, October 19), 2008 (October 18), and 2009 (January 23, April 17).

Most recently during the April 17th RSC meeting, we reviewed the HEARTH Act’s (S. 808 / H.R. 1877) major provisions. Many of these have remained the same in the final legislation¹ the President signed into law on May 20, 2009.

The final legislation modifies the Homeless Assistance titles covering general provisions, the Interagency Council on Homelessness, and housing assistance (i.e., the Emergency Shelter Grant, Continuum of Care, and Rural Homelessness Grant programs). It leaves unchanged the titles governing the Federal Emergency Management Food and Shelter Program (i.e., FEMA’s Emergency Food and Shelter Program), surplus federal property, and education and training. The HEARTH Act of 2009 makes the following key changes, all of which are described in more detail in the chart below, to McKinney-Vento:

- **Appropriations:** Authorizes appropriation of \$2.203 billion in funding for fiscal year 2010: \$2.2 billion in funding to be allocated among the Continuum of Care Program, Continuum of Care Program research (\$8 million), Emergency Solutions Grants Program (maximum \$435 - 440 million), and the Rural Housing Stability Assistance Program (estimated minimum \$86 - 87 million); and \$3 million in funding for the Interagency Council on the Homeless. The legislation also authorizes “such sums as may be necessary for fiscal year 2011.”²

¹ The HEARTH Act of 2009 was included within the Helping Families Save Their Homes Act of 2009 (Public Law Number 111-22)

² 123 STAT. 1678 §§ 208, 408

- **Possibly Expanded Funding Streams:** Renewal of expiring contracts for leasing, rental assistance, or operating costs associated with permanent housing can be funded either through McKinney appropriations or through Section 8 Project-based Rental Assistance. Some new permanent housing contracts may be partially funded through Section 8 Project-based Rental Assistance as well.
- **Continuum of Care Programs:** Collapses the Supportive Housing Program, Shelter Plus Care Program, Safe Havens for Homeless Individuals Demonstration Program, and Section 1473F Moderate Rehabilitation Assistance for Single-Room Occupancy Dwellings into one Continuum of Care (“CoC”) Program with one set of requirements
- CoC project sponsors can use up to 10% (up from 5%) of their grant amount to cover administrative costs. Operating costs include coordination of services to ensure long-term housing stability. Capital costs are no longer capped and the use requirement has changed from 20 years to 15 years.
- **Emergency Shelter Grants:** Changes the Emergency Shelter Grant Program to the Emergency Solutions Grant (“ESG”) and now emphasizes prevention and re-housing. ESG recipients will need to coordinate with their local CoC process and participate in the Homeless Management Information System (“HMIS”). Up to 40% of ESG funds can be used for prevention and re-housing, although funding for existing shelter operations will be held harmless. Administrative funding is capped at 7.5%
- The legislation includes re-housing as a new allowable activity.
- **CoC Process:** A CoC – now considered the Collaborative Applicant – that is a legal entity can receive up to 3% of the total grant to cover the costs of overseeing the community planning process and participating in the local Consolidated Plan. An additional 3% is available to meet specific duties if the CoC agrees to become a Unified Funding Agency and takes on certain fiscal responsibilities.
- **Definition of Chronically Homeless:** Families are included under the definition of chronic homelessness.
- **Definition of Homeless Individual:** The legislation expands the definition of homelessness to include those who are at imminent risk of homelessness (within 14 days) and, for a limited portion of Continuum of Care funds, those who are living unstably, including those who meet other federal statutory definitions of homelessness. However, the HEARTH Act directs the Interagency Council on the Homeless to convene a meeting with a broad group of representatives to discuss the definition, including whether there is a “compelling need for a uniform definition of homelessness under Federal law.” [HEARTH Act §1004(a)(3)(G)(13)]

Thank you to Catherine Gillespie, HomeBase Legal Intern, for her significant research and writing contributions to all the HEARTH Act materials presented at today’s meeting.

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**Homeless Emergency Assistance and Rapid Transition to Housing Act of 2009
(The HEARTH Act):
*Big Changes on the Forefront***

Timeline

May 20, 2009 – President Obama signs HEARTH into law. These HEARTH sections are effective at enactment:

- Sections requiring HUD to promulgate regulations
- Interagency Council sections adding members, duties, meetings, and appropriation authorization
- Section directing the GAO to prepare study of homelessness in rural areas within 12 months of enactment

July 27-31, 2009 – HomeBase staff in Washington, D.C. delivering RSC input to HUD and Congressional members. HomeBase staff will be attending NAEH Annual Conference.

- HUD focus groups re. HEARTH Act regulations at NAEH Annual Conference:
 - July 30th (4:30 – 6 pm)
 - July 31st (8 – 9:15 am/1:15 – 2:45 pm)

November 20, 2009 – *Homelessness Definition Regulations*: Last day for HUD Secretary to issue regulations providing sufficient guidance to recipients of the Emergency Solutions Grant (“ESG”), Continuum of Care (“CoC”), Rural Housing Stability Assistance Programs’ funds to allow uniform and consistent implementation of the homelessness definition requirements.

May 20, 2010 – *Final Regulations*: Last day for HUD Secretary to promulgate final regulations governing the operation of the programs to assist the homeless, with special emphasis on elderly persons, handicapped persons, families with children, Native Americans, and veterans.

May 20, 2010 – *National Strategic Plan to End Homelessness*: Deadline for Interagency Council on Homelessness to develop, make available for public comment, and submit to the President and to Congress a National Strategic Plan to End Homelessness (to be updated annually thereafter).

May 20, 2010 – *ESG Program*: Deadline for Comptroller General of the U.S. to (a) conduct a study to examine the appropriate administrative costs for administering the program authorized under the ESG Program, and (b) submit to Congress a report on the findings of the study.

May 20, 2010 – *Rural Housing Stability Assistance Program*: Deadline for Comptroller General of U.S. to conduct a study examining homelessness and homeless assistance in rural areas and rural communities and report to Congress.

Homeless Emergency Assistance and Rapid Transition to Housing Act of 2009
(The HEARTH Act):
Big Changes on the Forefront

November 20, 2010 – *HEARTH Effective Date*: Last day HEARTH could take effect. HEARTH takes effect and applies either (a) 18 months after enactment, or (b) 3 months after HUD final regulations issued – whichever happens first.

- *CoC Program Award Announcement*: After the effective date, for the first two years, HUD must announce conditionally awarded grants within **6 months** after the application deadline each fiscal year.
 - **Two years after HEARTH takes effect**, HUD must announce conditionally awarded grants within **5 months** of the application deadline.

DEADLINE FOR PROJECTS TO MEET OBLIGATION REQUIREMENTS: Within 9 months (within 24 months if for acquisition, rehabilitation or construction of housing) of announcement of conditionally awarded grants, each recipient or project sponsor must meet all requirements for the obligations of those funds, including site control, matching funds and environmental review requirements. HUD has the discretion to grant extensions in compelling circumstances where the delay was due to factors beyond the reasonable control of the recipient or project sponsor.

HUD FUND OBLIGATION DEADLINE: HUD must obligate the funds not later than 45 days after recipient or project sponsor meets the requirements.

DEADLINE FOR FULL EXPENDITURE OF GRANT FUNDS: HUD may establish a date by which funds must be entirely expended, but it must be no less than 24 months from when funds obligated.

- *High-Performing Communities*: **Two years after effective date**, HUD no longer limited to designating only 10 collaborative applicants as high-performing communities.

May 20, 2011 – Project sponsors providing emergency shelter, transitional housing, or permanent housing to families with children under age 18 shall no longer deny admission to any family based on the age of any child under 18.

[Exception: project sponsor may target transitional housing resources to families with children of a specific age only if the project sponsor: (a) operates a transitional housing program that has a primary purpose of implementing an evidence-based practice that requires that housing units be targeted to families with children in a specific age group; and (b) provides such assurances, as the Secretary shall require, that an equivalent appropriate alternative living arrangement for the whole family or household unit has been secured.]

May 20, 2011 –Deadline for HUD to develop a formula to determine estimated grant amounts. Formula must be based on factors appropriate to allocate funds to meet the goals and objectives of the CoC grant program.

Other deadlines:

Notice of Funding Availability (“NOFA”): HUD must release a NOFA not later than 3 months after the date of the enactment of the appropriate Act making appropriations for HUD for such fiscal year.

**Homeless Emergency Assistance and Rapid Transition to Housing Act of 2009
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Definition of Homelessness: 6 months after completion of Comptroller General’s study regarding definitions of homelessness, the Interagency Council on Homelessness must convene a meeting to discuss whether should modify the definition of homelessness further, whether should be uniform federal definition, etc. Meeting must include representatives from all federal agencies, House and Senate committees with jurisdiction over Federal homeless programs, local and State governments, academic researchers, nonprofit housing and services providers that receive funding under any Federal homeless program, advocacy organizations for homeless or providers, and homeless persons receiving services from Federal programs. Transcripts, majority and dissenting recommendations must be submitted to the relevant House and Senate committees within 60 days of the meeting’s conclusion.

Rural Housing Stability Assistance Program: 18 months after funding first made available, HUD must evaluate the program’s effectiveness and determine types of assisted needed. 24 months after funding first made available, submit evaluation and recommendations to Congress.

RSC Discussion of HEARTH: 2009-2011 Schedule		
2009	<i>October 16, 2009</i>	Regulations
2010	<i>January 22, 2010 April 2010 July 2010 October 2010</i>	Formula Definitions High-Performing Communities <Please send us your suggestions>
2011	<i>January 2011 April 2011 July 2011 October 2011</i>	<Please send us your suggestions for key issues you would like to discuss>

For more information, please contact Joni Canada, Staff Attorney at joni@homebaseccc.org or at (415) 788-7961 x. 320

HEARTH Funding: Authorized Amounts & Projections

Possible Funding Changesⁱ

HEARTH Act	FY 2010 Appropriations		FY 2011 Appropriations	
	Authorized	Actual (incl. est. based on House FY 2010 Draft Legislation)	Authorized	Actual
<i>Housing Assistance funding: ESG,ⁱⁱ CoC,ⁱⁱⁱ Rural Stability Assistance Programs [HEARTH §1105]</i>	\$2.2 billion	Subject to annual Congressional appropriations, up to a maximum of \$2.2 billion <i>House of Rep. FY 2010 Draft Legislation (Homeless Assistance Grants): \$1.85 billion</i>	Such sums as necessary for FY 2011	Subject to annual Congressional appropriations
<i>LESS HUD technical assistance [HEARTH §1103]</i>	Maximum 1% of ESG and CoC Program funds “made available” for any fiscal year <i>Calculated maximum: \$22 million</i>	Dependent on Congressional appropriations for ESG and CoC Programs (maximum 1% of these funds) <i>Calculated max.: \$18.5 million</i>	Maximum 1% of ESG and CoC Program funds “made available” for any fiscal year	Dependent on Congressional appropriations for ESG and CoC Programs (maximum 1% of these funds)
Remaining funding for Housing Assistance Programs	Approx. \$2.18 billion	Approx. \$1.83 billion		
<i>LESS ESG Program national funding [HEARTH §1201]</i>	20% of ESG & CoC Program funding “made available” ^{iv} Est. maximum range: \$435.6 – 440 million	20% of total actual amount available for ESG & CoC program funding <i>Est. max. range (approx.): \$366.3 - \$370 million</i>	20% of ESG & CoC Program funding “made available”	Dependent on Congressional appropriations for ESG and CoC Programs (maximum 20% of the total of these funds)

HEARTH Funding: Authorized Amounts & Projections

HEARTH Act	FY 2010 Appropriations		FY 2011 Appropriations	
	Authorized	Actual (incl. est. based on House FY 2010 Draft Legislation)	Authorized	Actual
Remaining funding for CoC & Rural Housing Stability Assistance Programs' funding	Approx. \$1.74 billion	Approx. \$1.46 - \$1.47 billion		
<i>LESS</i> Homeless Family Interventions Research: [HEARTH Act §1306]	\$8 million	Dependent on annual Congressional appropriations for CoC Program, up to a maximum of \$8 million	\$8 million	Subject to annual Congressional appropriations for CoC Program, up to a maximum of \$8 million
Remaining CoC & Rural Hsg. Stability Assistance Program funding	Approx. \$1.73 billion	Approx. \$1.45 - 1.46 billion (assuming \$8 million research)		
<i>LESS</i> Rural Housing Stability Assistance Program [HEARTH §1401]	Minimum 5% of CoC Program amount "made available;" if <u>not used due to insufficient number of applications, returns to CoC Program</u> Est. minimum range: \$87.12 – 86.5 million	Dependent on annual Congressional appropriations for CoC Program, but minimum 5% of CoC Program funding Est. minimum range (approx.): \$72.68 - \$72.86 million	Minimum 5% of CoC Program amount "made available;" if not used due to insufficient number of applications, returns to CoC Program	Dependent on annual Congressional appropriations for CoC Program, but minimum 5% of CoC Program funding
Remaining amount available for CoC Program (funding for projects)	Est. range (approx.):^v \$1.64 - \$1.66 billion	Dependent on Congressional appropriations and other funding outlined above.	Dependent on FY 2011 determination of "such sums as may be necessary" and other	Dependent on Congressional appropriations and other funding outlined above.

HEARTH Funding: Authorized Amounts & Projections

HEARTH Act	FY 2010 Appropriations		FY 2011 Appropriations	
	Authorized	Actual (incl. est. based on House FY 2010 Draft Legislation)	Authorized	Actual
Remaining amount available for CoC Program (funding for projects)	This amount is available to fund either all CoC Program projects, or all CoC Program projects except permanent housing leasing, rental assistance, operations renewals (which would be funded by project-based Section 8 funds.) [§§423(a), 429]	Est. range (approx.): \$1.38 billion	funding outlined above. This amount is available to fund either all CoC Program projects, or all CoC Program projects except permanent housing leasing, rental assistance, operations renewals (which project-based Section 8 funds could fund.) [§§423(a), 429]	

Background: Funding History

	Actual Funding	HEARTH Authorization (FY 2010 Estimate)	FY 2010 Estimate Based on House Draft Legislation
Continuum of Care Programs	FY 2006: approx. \$1.2 billion FY 2007: approx. \$1.3 billion FY 2008: approx. \$1.4 billion	Est. range: approx. \$1.64 - \$1.65 billion	Est. range (approx.): \$1.38 billion
ESG Program	FY 2007: \$160 million FY 2008: approx. \$160 million FY 2009: \$160 million	Est. maximum range: \$440-435.6 million	Est. range (approx.): \$366.3 - \$370 million
US Interagency Council on Homelessness	FY 2007 \$1.788 million FY 2008 \$2.15 million FY 2009 \$2.66 million (rec.)	\$3 million (not taken out of CoC, ESG, or Rural Housing Stability Assistance Programs' funding)	

Sources: <http://www.hudhre.info> (grant awards); Pub. L. 111-2; www.thomas.gov (relevant Senate Reports)

HEARTH Funding: Authorized Amounts & Projections

RSC Input: Discussion Questions

- (1) On which issues would you like to advocate?
- (2) What input would you like to give HUD regarding funding priorities?
- (3) How does the expanded ESG funding assist your community in meeting its needs?

ⁱⁱ The HEARTH Act does not define amounts “made available,” so leaves some ambiguity about the order in which programs and activities below will be funded. As a result, it is unclear whether T.A. funding will be reserved out before ESG funding is calculated, reducing the funds allocated to the ESG Program; and whether research is taken out of CoC Program funding before or after the Rural Housing Stability Assistance Program funding is calculated. HomeBase has assumed to prepare this document that T.A. will be taken out first since its relevant HEARTH Act section precedes all other ESG, CoC, and Rural Housing Stability Assistance Program sections. However, HomeBase has provided funding ranges wherever possible.

ⁱⁱ Emergency Solutions Grant (formerly Emergency Shelter Grant)

ⁱⁱⁱ Continuum of Care

^{iv} The HEARTH Act requires the HUD Secretary to certify that the allocation will not adversely affect the ESG and CoC Programs’ renewals of existing projects for homeless individuals and families.

^v Calculated by reducing initial \$2.2 billion Housing Assistance amount by all above other funding and using minimum Rural Housing Stability Assistance Program range above