

**Orange County CoC-602
Governance Charter**

In accordance with the Interim Rule of the Homeless Emergency Assistance and Rapid Transition to Housing Act of 2009 (the “HEARTH Act”) which was enacted into law on May 20, 2009, the Santa Ana/Anaheim/Orange County CoC (the “Orange County CoC”) in consultation with the collaborative applicant (as described below in Section 578.9) and the Homeless Management Information System (“HMIS”) Lead Agency (as described below in Section 578.7b) as required by the Interim Rule, has developed, followed, and will “update annually a governance charter, which will include all procedures and policies needed to comply with subpart B of this part and with HMIS requirements as prescribed by HUD; and a code of conduct and recusal process for the board, its chair(s), and any person acting on behalf of the board” as described in § 578.7(5) Responsibilities of the Continuum of Care. *Subpart B of the Interim Rule is contained in Appendix A*

I. Name:

The name of the organization is Santa Ana/Anaheim/Orange County CoC (hereinafter referred to as the “Orange County CoC”).

II. Geographic Boundaries

The Orange County CoC is responsible for the area that the U.S. Department of Housing and Urban Development (HUD) has designated for CA-602 Santa Ana/Anaheim/Orange County CoC which is the boundaries of the County of Orange (hereinafter referred to as the “Geographic Area”).

III. Purpose:

The Orange County CoC serves as the HUD-designated primary decision-making group whose primary purpose and scope is to implement the Continuum of Care program (the “CoC”) which is authorized by subtitle C of title IV of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11381-11389). As noted in § 578.1 Purpose and scope of the Interim Rule of the Homeless Emergency Assistance and Rapid Transition to Housing Act of 2009 (HEARTH Act), the program is designed to:

- a. Promote communitywide commitment to the goal of ending homelessness;
- b. Provide funding for efforts by nonprofit providers, States, and local governments to quickly rehouse homeless individuals (including unaccompanied youth) and families, while minimizing the trauma and dislocation caused to homeless individuals, families, and communities by homelessness;
- c. Promote access to and effective utilization of mainstream programs by homeless individuals and families; and
- d. Optimize self-sufficiency among individuals and families experiencing homelessness.

IV. Continuum of Care Meetings

The Orange County CoC will hold meetings of the full membership with published agendas at least twice - a year.

V. Continuum of Care Membership:

Membership is based upon organizations participating in the responsibilities of the Orange County CoC by having organizational representatives actively participate in CoC board, committees, and working groups.

Organizational Members

- May designate up to (3) persons annually who are authorized to represent the organization
- Each organization holds only one vote
- An organizational representative may represent only one organization

Individual Members

- May not designate additional persons to represent them
- Individuals who have a recognized role in a member organization (such as employees, board members, consultants or current service recipients) may become individual members but may not vote
- Individuals with formal organizational affiliations such as those noted above may be selected to represent the organization with which they are affiliated
- These provisions create an opportunity for individual stakeholders to participate without duplicating organizational representation.

Representatives from active organizations within the Geographic Area will be members of the Orange County CoC. Such organizations will be required to fill out a membership form prior to recognition as an active organization. Within the Geographic Area is defined as being located and/or providing relevant services within the Geographic Area. As noted in § 578.5 Establishing the Continuum of Care of the Interim Rule. Relevant organizations will include:

“nonprofit homeless assistance providers, victim service providers, faith-based organizations, governments, businesses, advocates, public housing agencies, school districts, social service providers, mental health agencies, hospitals, universities, affordable housing developers, law enforcement, and organizations that serve veterans and homeless and formerly homeless individuals.”

- The list of organizational groups noted above is expanded to include entities that provide: Substance abuse recovery;
- Youth services;
- Employment services;
- Mainstream resources.

a. Nominations for Orange County CoC Membership

A public invitation within the Geographic Area for new members to join will be extended at least annually in accordance with the Interim Rule of the Homeless Emergency Assistance and Rapid Transition to Housing Act of 2009 (HEARTH Act) as described in § 578.7 Responsibilities of the Continuum of Care.

Membership is achieved through a request to be added to the Orange County CoC and a commitment to actively participate in the responsibilities of the Orange County CoC.

b. Membership Terms

There is no term limit. Membership, however, may be terminated by the Orange County CoC in accordance with subsection g Removal below.

c. Quorum

A number equal to a majority of those belonging to the Orange County CoC will constitute a quorum for the transaction of business at any meeting.

d. Voting

At all meetings, business items may be decided by arriving at a consensus. If a vote is necessary, all votes will be by voice or ballot at the will of the majority in attendance. Each active organization will have one vote given by one representative even when more than one organizational representative is present. No active organization may vote on any item which presents a real or perceived conflict-of-interest.

e. Conflict of Interest

Members must comply with the conflict of interest and recusal process found in the Appendix B: Conflict of Interest which is §578.95 Conflicts of interest in the Interim Rule of the Homeless Emergency Assistance and Rapid Transition to Housing Act of 2009 (HEARTH Act).

f. Proxies

The use of proxies is not allowed for members.

g. Removal

Any member of the Orange County CoC may be removed by a two-thirds majority of all organizations present during a scheduled meeting.

VI. Orange County CoC Officers

The Orange County CoC will have three officers: Chair, Vice Chair and Secretary. Their nomination, election and term will be as outlined in the Bylaws of the Commission to End Homelessness.

VII. Responsibilities of the Orange County CoC

As noted in §578.5(b) of the HEARTH Act Interim Rule, “The Continuum of Care must establish a board to act on behalf of the Continuum using the process established as a requirement by § 578.7(a)(3) and must comply with the conflict-of-interest requirements at § 578.95(b).”

VIII. Continuum of Care Board (Commission to End Homelessness)

The Continuum of Care Board (the “Commission”) will carry out the four major responsibilities of the Orange County CoC which consists of operating the Continuum of Care, designating and operating an HMIS for the Continuum of Care, planning for the Continuum of Care, and preparing an application for funds which is in accordance with § 578.7 Responsibilities of the Continuum of Care and in the Interim Rule and § 578.79 Preparing an Application for Funds and are as follows:

a. Operating the Continuum of Care. On behalf of the Orange County CoC, the CoC Board will:

1. Hold meetings of the full membership, with published agendas, at least semi-annually as noted above in Section IV Meetings;
2. Make an invitation for new members to join publicly available within the geographic at least annually as noted above in Section V Membership;
3. Adopt and follow a written process to select a board to act on behalf of the Continuum of Care. The process must be reviewed, updated, and approved by the Continuum at least once every 5 years as noted in introduction;
4. Appoint additional committees, subcommittees, or workgroups;

5. In consultation with the collaborative applicant and the HMIS Lead, develop, follow, and update annually a governance charter, which will include all procedures and policies needed to comply with subpart B of this part and with HMIS requirements as prescribed by HUD; and a code of conduct and recusal process for the board, its chair(s), and any person acting on behalf of the board;
 6. Consult with recipients and subrecipients to establish performance targets appropriate for population and program type, monitor recipient and subrecipient performance, evaluate outcomes, and take action against poor performers;
 7. Evaluate outcomes of projects funded under the Emergency Solutions Grants program and the Continuum of Care program, and report to HUD;
 8. In consultation with recipients of Emergency Solutions Grants program funds within the geographic area, establish and operate either a centralized or coordinated assessment system that provides an initial, comprehensive assessment of the needs of individuals and families for housing and services. The Continuum must develop a specific policy to guide the operation of the centralized or coordinated assessment system on how its system will address the needs of individuals and families who are fleeing, or attempting to flee, domestic violence, dating violence, sexual assault, or stalking, but who are seeking shelter or services from nonvictim service providers. This system must comply with any requirements established by HUD by Notice;
 9. In consultation with recipients of Emergency Solutions Grants program funds within the geographic area, establish and consistently follow written standards for providing Continuum of Care assistance. At a minimum, these written standards must include:
 - a. Policies and procedures for evaluating individuals' and families' eligibility for assistance under this part;
 - b. Policies and procedures for determining and prioritizing which eligible individuals and families will receive transitional housing assistance;
 - c. Policies and procedures for determining and prioritizing which eligible individuals and families will receive rapid rehousing assistance;
 - d. Standards for determining what percentage or amount of rent each program participant must pay while receiving rapid rehousing assistance;
 - e. Policies and procedures for determining and prioritizing which eligible individuals and families will receive permanent supportive housing assistance; and
 - f. Where the Continuum is designated a high-performing community, as described in Subpart G, policies and procedures set forth in 24 CFR 576.400(e)(vi), (e)(vii), (e)(viii), and (e)(ix).
- b. Designating and operating an HMIS.** On behalf of the Orange County CoC, the CoC Board will:
1. Designate a single Homeless Management Information System (HMIS) for the geographic area;

2. Designate an eligible applicant to manage the Continuum's HMIS, which will be known as the HMIS Lead;
3. Review, revise, and approve a privacy plan, security plan, and data quality plan for the HMIS;
4. Ensure consistent participation of recipients and subrecipients in the HMIS; and
5. Ensure the HMIS is administered in compliance with requirements prescribed by HUD.

Orange County CoC is part of the Los Angeles/Orange County Collaborative which is made up of the Orange County CoC, Los Angeles County CoC, Pasadena CoC and Glendale CoC. The Collaborative shares an HMIS Governance Charter and HMIS Policies and Procedures.

c. Continuum of Care planning. On behalf of the Orange County CoC, the CoC Board will develop a plan that includes:

1. Coordinating the implementation of a housing and service system within its geographic area that meets the needs of the homeless individuals (including unaccompanied youth) and families. At a minimum, such system encompasses the following:
 - a. Outreach, engagement, and assessment;
 - b. Shelter, housing, and supportive services;
 - c. Prevention strategies.
2. Planning for and conducting, at least biennially, a point-in-time count of homeless persons within the geographic area that meets the following requirements:
 - a. Homeless persons who are living in a place not designed or ordinarily used as a regular sleeping accommodation for humans must be counted as unsheltered homeless persons;
 - b. Persons living in emergency shelters and transitional housing projects must be counted as sheltered homeless persons;
 - c. Other requirements established by HUD by Notice.
3. Conducting an annual gaps analysis of the homeless needs and services available within the geographic area;
4. Providing information required to complete the Consolidated Plan(s) within the Continuum's geographic area;
5. Consulting with State and local government Emergency Solutions Grants program recipients within the Continuum's geographic area on the plan for allocating Emergency Solutions Grants program funds and reporting on and evaluating the performance of Emergency Solutions Grants program recipients and subrecipients. Emergency Solutions Grants recipients include:
 - County of Orange
 - Santa Ana
 - Anaheim
 - Garden Grove

d. Preparing an application for funds. On behalf of the Orange County CoC, the CoC Board will

1. Design, operate, and follow a collaborative process for the development of applications and approve the submission of applications in response to a NOFA published by HUD under § 578.19 of this subpart;
2. Establish priorities for funding projects in the geographic area;
3. Determine if one application for funding will be submitted for all projects within the geographic area or if more than one application will be submitted for the projects within the geographic area;
 - a. If more than one application will be submitted, designate an eligible applicant to be the collaborative applicant that will collect and combine the required application information from all applicants and for all projects within the geographic area that the Continuum has selected funding. The collaborative applicant will also apply for Continuum of Care planning activities. If the Continuum is an eligible applicant, it may designate itself;
 - b. If only one application will be submitted, that applicant will be the collaborative applicant and will collect and combine the required application information from all projects within the geographic area that the Continuum has selected for funding and apply for Continuum of Care planning activities;

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

e. CoC Board Members

The Orange County CoC will establish a board to act on its behalf using the process established as a requirement by § 578.7(a)(3)¹ and must comply with the conflict-of-interest requirements at § 578.95(b)².

The Commission to End Homelessness will act as the CoC Board as appointed by the Orange County Board of Supervisors and governed by the Commission Bylaws which may be amended from time to time. The structure, responsibilities, etc. are all per the Commission Bylaws.

Additionally, the CoC Board will be in compliance with the HEARTH Act and other HUD mandates and guidance, at all times.

Per the HEARTH Act, the Board must:

¹ Adopt and follow a written process to select a board to act on behalf of the Continuum of Care. The process must be reviewed, updated, and approved by the Continuum at least once every 5 years.

² No Continuum of Care board member may participate in or influence discussions or resulting decisions concerning the award of a grant or other financial benefits to the organization that the member represents.

- Be representative of the relevant organizations and of projects serving homeless subpopulations; and
- Include at least one homeless or formerly homeless individual.

Subpopulations will include all the subpopulations that HUD requires a CoC to address in terms of ending homelessness which are:

- Chronic Substance Abusers;
- Chronically Homeless Individuals;
- Chronically Homeless Families;
- Families;
- Persons with HIV/AIDS;
- Seriously Mentally Ill;
- Veterans;
- Veterans – Females;
- Victims of Domestic Violence;
- Unaccompanied Youth Under Age 18;
- Youth Age 18 – 24.

14. Conflict of Interest

Members must comply with the conflict of interest and recusal process found in the Appendix B: Conflict of Interest which is §578.95 Conflicts of interest in the Interim Rule of the Homeless Emergency Assistance and Rapid Transition to Housing Act of 2009 (HEARTH Act) and County of Orange Conflict of Interest Policy and additional requirements per the Commission Bylaws

1. Conflict of Interest – Members of the Commission and any of its committees or subcommittees shall abstain from voting on any issue in which they may be personally interested to avoid a conflict of interest in accordance with County, State and Federal laws, regulations and ordinances and shall refrain from engaging in any behavior that conflicts with the best interest of County.
 - (a) Members of the Commission shall not vote nor attempt to influence any other Board member on a matter under consideration by the Board or any of its committees or subcommittees as follows:
 - (1) Regarding the provision of services by such member (or by an entity that such member represents); or
 - (2) By providing direct financial benefit to such member or the immediate family of such member; or

- (3) Engaging in any other activity determined by County, State or Federal law, regulations and ordinances to constitute a conflict of interest.
- (b) If a question arises as to whether a conflict exists that may prevent a member from voting, the Chairperson or designee may consult with designated County Staff to assist them in making that determination.
- (c) In order to avoid a conflict of interest or the appearance of such conflict, all nominees to become members of the Commission shall disclose on forms provided by the County information regarding their private economic interests and shall fully comply with County, State or Federal laws, regulations and ordinances, as applicable.
- (d) Neither Commission nor any of its members shall promote, directly or indirectly, any political party, political candidate or political activity using the name, emblem or any other identifier of Commission.
- (e) No assets or assistance provided by County to Commission shall be used for sectarian worship, instruction, or proselytization, except as otherwise permitted by law.

IX. Continuum of Care Legal Entity

The Orange County CoC is a Collaborative Applicant as designated by HUD. The County of Orange is the legal applicant who will submit grants to HUD on behalf of the Orange County CoC. Submission will be in compliance with § 578.9 Preparing an application for funds which states that a CoC must:

- Design, operate, and follow a collaborative process for the development of applications and approve the submission of applications in response to a NOFA published by HUD under § 578.19 of this subpart;
- Establish priorities for funding projects in the geographic area;
- Determine if one application for funding will be submitted for all projects within the Geographic Area or if more than one application will be submitted for the projects within the geographic area;
 - If more than one application will be submitted, designate an eligible applicant to be the collaborative applicant that will collect and combine the required application information from all applicants and for all projects within the geographic area that the Continuum has selected funding. The collaborative applicant will also apply for Continuum of Care planning activities. If the Continuum is an eligible applicant, it may designate itself;

- If only one application will be submitted, that applicant will be the collaborative applicant and will collect and combine the required application information from all projects within the Geographic Area that the Continuum has selected for funding and apply for Continuum of Care planning activities.

X. Commission to End Homelessness Committees

Per the Commission Bylaws, the Commission Committees will be formed around developing a system of care to end homeless with consideration of the Ten-Year Plan goals, HUD direction, evidence-based best practices and best practices. Membership, meetings, responsibilities, and voting shall all be as outlined in the Bylaws of the Commission to End Homelessness.

XI. Provisions to Amend Governance Charter

Adoption – Affirmative vote of at least fifty percent + 1 of those voting, a quorum being present, shall be required to propose changes to these Bylaws.

A. Amendments

1. Any member of the CoC Board may propose amendments to these Bylaws.
2. Proposed amendments shall be submitted in writing and made available to each member of the Commission no less than five (5) days prior to consideration before a vote can be taken.

Appendix A: Subpart B of the Interim Rule

Subpart B – Establishing and Operating a Continuum of Care

§ 578.5 Establishing the Continuum of Care.

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

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

- (1) Be representative of the relevant organizations and of projects serving homeless subpopulations; and
- (2) Include at least one homeless or formerly homeless individual.

(c) Transition. Continuums of Care shall have 2 years [**insert effective date of interim rule**] to comply with the requirements of paragraph (b) of this section.

§ 578.7 Responsibilities of the Continuum of Care.

(a) Operate the Continuum of Care. The Continuum of Care must:

- (1) Hold meetings of the full membership, with published agendas, at least semi-annually;
- (2) Make an invitation for new members to join publicly available within the geographic at least annually;
- (3) Adopt and follow a written process to select a board to act on behalf of the Continuum of Care. The process must be reviewed, updated, and approved by the Continuum at least once every 5 years;
- (4) Appoint additional committees, subcommittees, or workgroups;
- (5) In consultation with the collaborative applicant and the HMIS Lead, develop, follow, and update annually a governance charter, which will include all procedures and policies needed to comply with subpart B of this part and with HMIS requirements as prescribed by HUD; and a code of conduct and recusal process for the board, its chair(s), and any person acting on behalf of the board;
- (6) Consult with recipients and subrecipients to establish performance targets appropriate for population and program type, monitor recipient and subrecipient performance, evaluate outcomes, and take action against poor performers;
- (7) Evaluate outcomes of projects funded under the Emergency Solutions Grants program and the Continuum of Care program, and report to HUD;
- (8) In consultation with recipients of Emergency Solutions Grants program funds within the geographic area, establish and operate either a centralized or coordinated assessment system

that provides an initial, comprehensive assessment of the needs of individuals and families for housing and services. The Continuum must develop a specific policy to guide the operation of the centralized or coordinated assessment system on how its system will address the needs of individuals and families who are fleeing, or attempting to flee, domestic violence, dating violence, sexual assault, or stalking, but who are seeking shelter or services from nonvictim service providers. This system must comply with any requirements established by HUD by Notice.

(9) In consultation with recipients of Emergency Solutions Grants program funds within the geographic area, establish and consistently follow written standards for providing Continuum of Care assistance. At a minimum, these written standards must include:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) Outreach, engagement, and assessment;

(ii) Shelter, housing, and supportive services;

(iii) Prevention strategies.

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

(i) Homeless persons who are living in a place not designed or ordinarily used as a regular sleeping accommodation for humans must be counted as unsheltered homeless persons.

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

(iii) Other requirements established by HUD by Notice.

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

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

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

§ 578.9 Preparing an application for funds.

(a) The Continuum must:

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

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

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

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

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

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

§ 578.11 Unified Funding Agency.

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

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

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

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

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

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

(c) Requirements. HUD-designated UFAs shall:

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

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

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

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

§ 578.13 Remedial action.

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

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

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

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

(b) HUD must provide a 30-day prior written notice to the Continuum and its collaborative applicant and give them an opportunity to respond.

Appendix B: Conflict of Interest

§ 578.95 Conflicts of interest (of the Interim Rule of the Homeless Emergency Assistance and Rapid Transition to Housing Act of 2009 (HEARTH Act)).

(a) Procurement. For the procurement of property (goods, supplies, or equipment) and services, the recipient and its subrecipients must comply with the codes of conduct and conflict-of-interest requirements under 24 CFR 85.36 (for governments) and 24 CFR 84.42 (for private nonprofit organizations).

(b) Continuum of Care board members. No Continuum of Care board member may participate in or influence discussions or resulting decisions concerning the award of a grant or other financial benefits to the organization that the member represents.

(c) Organizational conflict. An organizational conflict of interest arises when, because of activities or relationships with other persons or organizations, the recipient or subrecipient is unable or potentially unable to render impartial assistance in the provision of any type or amount of assistance under this part, or when a covered person's, as in paragraph (d)(1) of this section, objectivity in performing work with respect to any activity assisted under this part is or might be otherwise impaired. Such an organizational conflict would arise when a board member of an applicant participates in decision of the applicant concerning the award of a grant, or provision of other financial benefits, to the organization that such member represents. It would also arise when an employee of a recipient or subrecipient participates in making rent reasonableness determinations under § 578.49(b)(2) and § 578.51(g) and housing quality inspections of property under § 578.75(b) that the recipient, subrecipient, or related entity owns.

(d) Other conflicts. For all other transactions and activities, the following restrictions apply:

(1) No covered person, meaning a person who is an employee, agent, consultant, officer, or elected or appointed official of the recipient or its subrecipients and who exercises or has exercised any functions or responsibilities with respect to activities assisted under this part, or who is in a position to participate in a decision-making process or gain inside information with regard to activities assisted under this part, may obtain a financial interest or benefit from an assisted activity, have a financial interest in any contract, subcontract, or agreement with respect to an assisted activity, or have a financial interest in the proceeds derived from an assisted activity, either for him or herself or for those with whom he or she has immediate family or business ties, during his or her tenure or during the one-year period following his or her tenure.

(2) Exceptions. Upon the written request of the recipient, HUD may grant an exception to the provisions of this section on a case-by-case basis, taking into account the cumulative effects of the criteria in paragraph (d)(2)(ii) of this section, provided that the recipient has satisfactorily met the threshold requirements of paragraph (d)(2)(ii) of this section.

(i) Threshold requirements. HUD will consider an exception only after the recipient has provided the following documentation:

(A) Disclosure of the nature of the conflict, accompanied by a written assurance, if the recipient is a government, that there has been public disclosure of the conflict and a description of how the public disclosure was made; and if the recipient is a private nonprofit organization, that the conflict has been disclosed in accordance with their written code of conduct or other conflict-of-interest policy; and

(B) An opinion of the recipient's attorney that the interest for which the exception is sought would not violate State or local law, or if the subrecipient is a private nonprofit organization, the exception would not violate the organization's internal policies.

(ii) Factors to be considered for exceptions. In determining whether to grant a requested exception after the recipient has satisfactorily met the threshold requirements under paragraph (c)(3)(i) of this section, HUD must conclude that the exception will serve to further the purposes of the Continuum of Care program and the effective and efficient administration of the recipient's or subrecipient's project, taking into account the cumulative effect of the following factors, as applicable:

(A) Whether the exception would provide a significant cost benefit or an essential degree of expertise to the program or project that would otherwise not be available;

(B) Whether an opportunity was provided for open competitive bidding or negotiation;

(C) Whether the affected person has withdrawn from his or her functions, responsibilities, or the decision-making process with respect to the specific activity in question;

(D) Whether the interest or benefit was present before the affected person was in the position described in paragraph (c)(1) of this section;

(E) Whether undue hardship will result to the recipient, the subrecipient, or the person affected, when weighed against the public interest served by avoiding the prohibited conflict;

(F) Whether the person affected is a member of a group or class of persons intended to be the beneficiaries of the assisted activity, and the exception will permit such person to receive generally the same interests or benefits as are being made available or provided to the group or class; and

(G) Any other relevant considerations.