



Special Attention of:

All CPD Directors
HUD Field Offices
HUD Regional Offices
All Continuums of Care
All ESG Program Recipients and Subrecipients

Notice: CPD-21-05

Issued: April 14, 2021

Expires: This notice is effective until amended, superseded, or rescinded

TITLE: Waiver and Alternative Requirements for the Emergency Solutions Grants (ESG) Program Under the CARES Act

SUMMARY: This Notice announces additional flexibility for recipients and subrecipients administering rapid re-housing (RRH) assistance with Emergency Solutions Grants Program funds provided under the CARES Act (ESG-CV funds). Specifically, this notice establishes new waiver and alternative requirements to allow ESG-CV funds to be used for short- and medium-term rental assistance and housing relocation and stabilization services for individuals and families who are residing in housing and receiving time limited subsidies funded by another source and who met the definition of “homeless” prior to entering that housing and whose subsidy is within 30 days of expiring. Additionally, it allows recipients and subrecipients to accept inspections conducted by other providers indicating that the housing is safe and sanitary instead of having to conduct their own habitability inspections prior to providing RRH assistance funded by ESG-CV, as set forth below. This Notice does not add, remove, or change any existing flexibility or requirements other than as specifically stated in this Notice.

OVERVIEW INFORMATION

A. Federal Agency Name: Department of Housing and Urban Development, Office of Community Planning and Development.

B. Authority: *Coronavirus Aid, Relief, and Economic Security Act (CARES Act), Public Law 116-136 (2020) and McKinney-Vento Homeless Assistance Act, Title IV, Subtitle B, as amended, 42 U.S.C. 11371-78.*

C. Publication. This Notice is initially being published on HUD’s website.

D. Assistance Listing Number: 14.231 Emergency Solutions Grants Program (ESG).

E. For Further Information: Written questions may be sent to: Norm Suchar, Director, Office of Special Needs Assistance Programs, Department of Housing and Urban Development, 451 Seventh Street, SW, Room 7266, Washington, DC, 20410 or ESG-CV@hud.gov. Additionally, persons with hearing or speech disabilities may access further information via TTY by calling the Federal Information Relay Service at 800-877-8339 (this is a toll-free number).

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I. BACKGROUND

On March 27, 2020, the president signed the Coronavirus Aid, Relief, and Economic Security (CARES) Act (P.L. 116-136) into law. The CARES Act provided \$4 billion for the Emergency Solutions Grants (ESG) Program to prevent, prepare for, and respond to coronavirus, among individuals and families who are homeless or receiving homeless assistance and to support additional homeless assistance and homelessness prevention activities to mitigate the impacts created by coronavirus. HUD allocated the first \$1,000,000,000 of this ESG-CV funding on April 2, 2020 and allocated the remaining \$2.96 billion of this ESG-CV funding on June 9, 2020. HUD issued its primary notice establishing ESG-CV funding requirements and flexibilities (HUD Notice CPD-20-08) on September 1, 2020. Other ESG-CV flexibilities were made available as announced on May 22, 2020 and September 30, 2020 (although some of these flexibilities have since expired by their own terms). This notice adds to the ESG-CV flexibilities that are currently available.

II. WAIVER AUTHORITY

As provided by the CARES Act, HUD may waive, or specify alternative requirements for, any provision of any statute or regulation that the Secretary administers in connection with the obligation by the Secretary or the use by the recipient of ESG-CV funds, except for requirements related to fair housing, nondiscrimination, labor standards, and the environment.

III. WAIVER AVAILABILITY

Based on the reasons stated in the justification for each waiver and alternative requirement below, HUD has determined that good cause exists for each waiver and alternative requirement and that each waiver and alternative requirement is necessary to prevent, prepare for, and respond to coronavirus. Accordingly, HUD is adding these waivers and alternative requirements for all ESG-CV funds. Subject to the respective conditions in sections IV and V below, these waivers and alternative requirements have the same retroactive effect as the waivers and alternative requirements in Notice CPD-20-08 and are extended to cover annual ESG grant funds used to prevent, prepare for, and respond to coronavirus. This Notice does not add, remove, or change any existing flexibility or requirements other than as specifically stated in this Notice.

1. Eligibility for Rapid Re-housing (RRH) Assistance

Requirement: An individual or family must meet the criteria under paragraph (1) of the definition of “homeless” at 24 CFR 576.2 or meet the criteria under paragraph (4) of the “homeless” definition and live in an emergency shelter or other place described in paragraph (1) of the “homeless” definition to be eligible for rapid re-housing assistance.

Citation: Section 415(a)(4) and (5) of the McKinney-Vento Homeless Assistance Act and 24 CFR 576.104

Explanation: Section 415(a)(4) of the McKinney-Vento Homeless Assistance Act makes eligible short- or medium-term rental assistance to individuals and families experiencing homelessness or at risk of homelessness while Section 415(a)(5) makes eligible housing relocation and stabilization services for individuals and families experiencing homelessness or at risk of homelessness. 24 CFR 576.104 establishes the RRH component and makes eligible housing relocation and stabilization services and short- and/or medium-term rental assistance as necessary to help individuals and families who meet the criteria under paragraph (1) of the “homeless” definition at 24 CFR 576.2 or under paragraph (4) of the “homeless” definition who live in an emergency shelter or other place described in paragraph (1) of the “homeless” definition.

Applicability: HUD is establishing alternative requirements and waiving section 415(a)(4) and (5) of the McKinney-Vento Homeless Assistance Act and 24 CFR 576.104 to the extent necessary to provide that:

- a. In addition to individuals and families who meet the existing requirements in 24 CFR 576.104, a recipient may expand the scope of eligible RRH beneficiaries to include individuals and families who meet ALL of the following criteria:
 - i. Qualified as “homeless” as defined in 24 CFR 576.2 immediately before moving into their current housing;
 - ii. Have been residing in housing with time-limited rental assistance provided under a homeless assistance program (which means assistance limited to or reserved, either federally or locally, for people who are “homeless” as defined in 24 CFR 576.2) other than the ESG program (e.g., time-limited rental assistance that was funded under the Supportive Services for Veteran Families Program or the Coronavirus Relief Fund and provided only to people who qualified as “homeless” as defined in 24 CFR 576.2);
 - iii. Would not have any overlap in rental assistance between the non-ESG program and the ESG program, due to

- exhaustion or expiration of the non-ESG assistance or program funds;
- iv. Would not have a gap of more than one month (or equivalent amount of days) between the end of the non-ESG rental assistance and the beginning of their ESG RRH rental assistance; and
 - v. Do not have the resources or support networks (beyond an eviction moratorium) (e.g., family, friends or other social networks) needed to retain their existing housing without ESG assistance;
- b. Recipients that expand the scope of RRH beneficiaries as provided above must amend their consolidated plans as provided by 24 CFR 91.505 and 576.200(b), except that the recipient is not required to comply with any consultation or citizen participation requirements (as provided by the CARES Act), provided that the recipient publishes its plan to include these newly eligible RRH beneficiaries, at a minimum, on the Internet at the appropriate Government web site or through other electronic media.
 - c. If individual or family meets the new RRH criteria above but is already an ESG RRH program participant (because they have been receiving services under 24 CFR 576.105), the individual or family may be provided ESG-funded rental assistance without being treated as a new applicant or program participant for purposes of HUD's coordinated assessment, written standards, HMIS, initial evaluation, re-evaluation, housing stability plan, and recordkeeping and reporting requirements (24 CFR 576.400(d), (e), (f); 576.401(a), (b), (e)(1)(ii), and 576.500). However, with respect to any other individuals and families for which the recipient exercises the new flexibilities provided in this notice, the recipient must account for the new RRH beneficiaries by making corresponding changes as appropriate to the applicable written standards for administering RRH assistance (including beneficiary eligibility and prioritization criteria), HMIS, and procedures for centralized or coordinated assessment, initial evaluation, re-evaluation, and recordkeeping and reporting.

Justification:

Many individuals and families experiencing homelessness are able to be housed with time-limited rental assistance funded by homelessness assistance resources other than ESG. In some cases, despite the efforts of local service providers, some households continue to be unable to afford housing at the end of the assistance period and would lose their housing without continued assistance. Waiving the eligibility criteria for ESG funded RRH as discussed above will ensure individuals and families currently receiving time-limited rental assistance funded through other sources will not lose their housing during the coronavirus public health crisis and the

subsequent economic downturn. This will reduce the spread and harm of coronavirus by enabling households receiving homelessness assistance who had previously experienced homelessness to continue to practice social distancing, isolate, or quarantine in their housing.

2. Minimum Standards for Permanent Housing

- Requirement:** Recipients or subrecipients cannot use ESG funds to help program participants remain in or move into housing that does not meet minimum habitability standards provided at 24 CFR 576.403(c).
- Citation:** 24 CFR 576.403(c)
- Explanation:** 24 CFR 576.403(c) requires recipients and subrecipients to ensure housing meets minimum habitability standards related to structure and materials, space and security, interior air quality, water supply, sanitary facilities, thermal environment, illumination and electricity, food preparation, sanitary conditions, and fire safety before ESG funds can be used to help a program participant move into or remain in that housing.
- Applicability:** For recipients who choose to serve individuals and families made eligible for RRH assistance in Section III.1 of this Notice, the requirements at 24 CFR 576.403(c) are waived and the ESG recipient or subrecipient can provide rental assistance and housing relocation and stabilization services without first inspecting the unit so long as:
- a. The recipient or subrecipient maintains documentation showing the prior rental assistance provider determined that the housing meets:
 - i. The habitability standards established at 24 CFR 576.403(c); or
 - ii. Housing Quality Standards (HQS) established at 24 CFR 982.401; or
 - b. The recipient or subrecipient provides no more than 90 days of RRH assistance to the program participant; or
 - c. The recipient or subrecipient conducts an inspection within the first 90 days and determines the housing meets the habitability standards established at 24 CFR 576.403(c) or the HQS established at 24 CFR 982.401.
- Justification:** The habitability standards established at 24 CFR 576.403(c) are meant to ensure that program participants are residing in housing that is safe and sanitary. Accepting the housing inspection reports of previous rental assistance providers as evidence and allowing up to 90 days to conduct initial inspections to determine the housing is safe and sanitary will allow recipients and subrecipients to provide rental assistance and housing relocation and stabilization services to households that qualify for RRH

assistance in Section III.1 of this Notice without a gap between their prior assistance and ESG funded RRH assistance while still ensuring their housing is safe and sanitary. This will help maintain positive relationships with landlords while helping program participants maintain housing during the public health crisis and subsequent economic downturn. This will reduce the spread and harm of COVID-19 by enabling affected households to continue to socially distance, isolate, or quarantine in their housing.

IV. RETROACTIVE EFFECT

As authorized by the CARES Act, the additional ESG-CV flexibilities provided in this Notice shall be deemed to be effective as of the date a State or unit of local government began preparing for coronavirus, which HUD shall presume to be January 21, 2020 – the date the first confirmed case was reported in the United States. However, each recipient must maintain adequate documentation to assure these waivers and alternative requirements are used only with respect to ESG- or ESG-CV eligible activities the recipient or its subrecipients implemented to prevent, prepare for, and respond to coronavirus, including documentation demonstrating when their particular state or local government began preparing for coronavirus, such as notes on formal planning meetings or calls.

V. PRIOR ESG APPROPRIATIONS

A. General. The waivers and alternative requirements in this Notice (“new ESG-CV RRH flexibilities”) apply to FY 2020 and prior fiscal year ESG grant funds a recipient uses to prevent, prepare for, and respond to coronavirus, as defined in Section I.B.2.f of HUD Notice CPD-20-08, subject to the following conditions:

1. If the recipient has not already done so, it must identify the specific activities and funding allocated to prevent, prepare for, and respond to coronavirus in the Integrated Disbursement and Information System (IDIS) activity description before drawing down funds in accordance with these new ESG-CV RRH flexibilities;
2. The recipient reports the amount of annual ESG funding expended to prevent, prepare for, and respond to coronavirus in the CAPER by component type for each annual grant;
3. Alternative requirements that limit activities in comparison with the requirements at 24 CFR Part 576 do not apply to the use of annual ESG funds that are used to prevent, prepare for, and respond to coronavirus; and
4. The recipient must develop and implement policies and procedures to assure and document that:
 - a. The ESG-CV flexibilities are used only for activities and costs that are to prevent, prepare for, and respond to coronavirus, as defined in Section I.B.2.f of HUD Notice CPD-20-08; and
 - b. The annual ESG funds specifically designated in IDIS for use in preventing, preparing for, and responding to coronavirus meet the same waiver conditions and alternative requirements that apply for ESG-CV funds, except for the requirements that limit activities in comparison with the requirements at 24 CFR Part 576.

B. Consultation and citizen participation requirements. To allow for effective use of the flexibilities provided in this notice, HUD is extending the CARES Act’s exemption from

consultation and citizen participants to FY2020 or prior year funds only to the extent necessary to amend recipients' plans to include the newly eligible RRH beneficiaries as provided by this notice and make corresponding changes with respect to the applicable written standards for ESG assistance and only if the recipient publishes its plan to include the newly eligible RRH beneficiaries, at a minimum, on the Internet at the appropriate Government web site or through other electronic media (as provided above for ESG-CV funds). For all other purposes (including changing the amounts allocated to ESG activities to account for the newly eligible RRH beneficiaries), FY2020 and prior year funds remain subject to the consultation and citizen participation requirements that otherwise apply.

VI. Finding of No Significant Impact

A Finding of No Significant Impact (FONSI) with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The FONSI is available for inspection at HUD's Funding Opportunities web page at:

<https://www.hud.gov/coronavirus/grantees>.

James A. Jemison II

A handwritten signature in black ink, appearing to read 'James A. Jemison II', with a stylized, cursive script.

Principal Deputy Assistant Secretary
for Community Planning and Development