U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-7000

OFFICE OF COMMUNITY PLANNING
AND DEVELOPMENT

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

Notice: CPD-20-08
Issued: September 1, 2020
Expires: This notice is effective until amended, superseded, or rescinded.

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

EFFECTIVE DATE: September 1, 2020

SUMMARY: This Notice announces the allocation formula, amounts, and requirements for the additional $3.96 billion in funding provided for the Emergency Solutions Grants Program (ESG) under the Coronavirus Aid, Relief, and Economic Security Act (CARES Act). These ESG-CV funds must be used 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. Requirements at 24 CFR Part 576 will apply to the use of these funds, unless otherwise provided by the alternative requirements and flexibilities established under the CARES Act, this Notice, or subsequent waivers, amendments or replacements to this Notice. The alternative requirements established by this Notice that limit activities in comparison with the requirements in 24 CFR 576 and the CARES Act are not retroactive. Accordingly, any ESG or ESG-CV activities included in an action plan or substantial amendment for which HUD completed its review must comply with the requirements in effect at the time of the recipient's consolidated plan submission, except where this Notice provides new flexibility as authorized by the CARES Act.

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).

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

D. Catalog of Federal Domestic Assistance (CFDA) Number: 14.231 Emergency Solutions Grant Program (ESG).

E. Obligations: HUD executed initial grant agreements for the first allocation of $1,000,000,000 of the available CARES Act ESG-CV funding. HUD will amend these grant agreements for some

recipients to add further amounts based on the formula described in Section F.1 of this Notice to distribute up to $2,960,000,000 of the remaining funds. Recipients must follow the obligation deadlines established in Section III.B of this Notice.

F. Additional Overview Content Information:

1. Funding Allocations. HUD allocated $1,000,000,000 of the funds to recipients of FY 2020 ESG funds based on the same formula HUD used under 24 CFR 576.3 to allocate the FY2020 funds. The remaining $2,960,000,000 in funds were allocated directly to States and units of general local government according to a formula developed by the Secretary, as required by the CARES Act: https://www.hud.gov/sites/dfiles/CPD/documents/ESG_CARES_Act_Round_2_Allocation_Methodology_rev.pdf. list of recipients is provided at: https://www.hud.gov/program_offices/comm_planning/budget/fy20/.

2. Modified Requirements for the Consolidated Plan (Con Plan). The requirements at 24 CFR 576.200, as modified by this Notice and waivers for ESG-CV funds HUD established previously or under this Notice, shall apply to the application and review process for ESG-CV funds.

a. In order to receive the ESG-CV funds described in this Notice, each eligible recipient must
(i) Prepare and submit a substantial amendment to its Action Plan that was most recently approved as provided under 24 CFR part 91 to include ESG-CV amounts or include the ESG-CV amounts in their FY 2020 Annual Action Plan submission; and
(ii) Submit the signed certifications required by 24 CFR 91.225(a) and 91.325(a) and the relevant program-specific certifications as discussed in Section VI of this Notice.

b. The ESG-CV funds described in this Notice are not subject to the consultation and citizen participation requirements that otherwise apply to the Emergency Solutions Grants program, including the requirements under 24 CFR 91.100, 91.105, 91.110, and 91.115. However, as required by the CARES Act, each recipient must publish how it has used and will use its allocation, at a minimum, on the Internet at the appropriate government website or through other electronic media. In this publication, each recipient must describe the activities they will fund with ESG-CV funds and indicate whether, as of the date the notice is published, the activity has already occurred and the recipient is reimbursing itself or the activity has yet to occur. In its notification and communication methods, recipients and subrecipients must also ensure effective communication with individuals with disabilities and take reasonable steps to ensure meaningful access to persons with limited English proficiency (LEP). See also 24 CFR 576.407(a) and (b).

c. Each substantial amendment submitted to HUD will be subject to the review process set forth in 24 CFR 91.500, except that HUD will expedite its review with respect to CARES Act funding.

G. 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. Persons with hearing or speech impairments may access the above telephone number via TTY by calling the Federal Information Relay Service at 800-877-8339 (this is a toll-free number).

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I. FUNDING OPPORTUNITY DESCRIPTION

A. Program Description

The CARES Act made $4,000,000,000 available for the Emergency Solutions Grants 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.

To accomplish the above, this additional funding for ESG recipients can be used to provide emergency shelter, temporary emergency shelter, or rapid re-housing, as well as other crisis response activities. Additionally, funds may be used for homelessness prevention assistance.

B. Definitions.

1. *Definitions from 24 CFR 576.2*. For purposes of ESG-CV funds, the definitions at 24 CFR 576.2 apply, except that:

a. *At Risk of Homelessness.* The CARES Act raised the income limit in paragraph (1)(i) of the "at risk of homelessness" definition at 24 CFR 576.2 from 30 percent of area median income to the Very Low-Income limit of the area, as determined by the Secretary. The entire definition of "at risk of homelessness," incorporating the higher income limit for ESG-CV activities, is included below for reference.

At Risk of Homelessness means
(i) an individual or family who:
(a) Has an annual income that does not exceed the Very Low-Income Limit of the area, as established for HUD's Section 8 and Public Housing programs at www.huduser.gov/portal/datasets/il.html;

(b) Does not have sufficient resources or support networks, *e.g.,* family, friends, faith-based or other social networks, immediately available to prevent them from moving to an emergency shelter or another place described in paragraph (1) of the "homeless" definition in 24 CFR 576.2; and
(c) Meets one of the following conditions:
(I) Has moved because of economic reasons two or more times during the 60 days immediately preceding the application for homelessness prevention assistance;
(II) Is living in the home of another because of economic hardship;
(III) Has been notified in writing that their right to occupy their current housing or living situation will be terminated within 21 days after the date of application for assistance;
(IV) Lives in a hotel or motel and the cost of the hotel or motel stay is not paid by charitable organizations or by Federal, State, or local government programs for low-income individuals;
(V) Lives in a single-room occupancy or efficiency apartment unit in which there reside more than two persons or lives in a larger housing unit in which there reside more than 1.5 persons reside per room, as defined by the U.S. Census Bureau;
(VI) Is exiting a publicly funded institution, or system of care (such as a health-care facility, a mental health facility, foster care or other youth facility, or correction program or institution); or
(VII) Otherwise lives in housing that has characteristics associated with instability and an increased risk of homelessness, as identified in the recipient's approved consolidated plan.
(ii) A child or youth who does not qualify as "homeless" under 24 CFR 576.2, but qualifies as "homeless" under section 387(3) of the Runaway and Homeless Youth Act (42 U.S.C. 5732a(3)), section 637(11) of the Head Start Act (42 U.S.C. 9832(11)), section 41403(6) of the Violence Against Women Act of 1994 (42 U.S.C. 14043e-2(6)), section 330(h)(5)(A) of the Public Health Service Act (42 U.S.C. 254b(h)(5)(A)), section 3(m) of the Food and Nutrition Act of 2008 (7 U.S.C. 2012(m)), or section 17(b)(15) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(b)(15)); or
(iii) A child or youth who does not qualify as "homeless" under 24 CFR 576.2, but qualifies as "homeless" under section 725(2) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(2)), and the parent(s) or guardian(s) of that child or youth if living with her or him.

b. *Local government* and *unit of general purpose local government* mean a "unit of general purpose local government," as defined in 24 CFR 576.2 (i.e., any city, county, town, township, parish, village, or other general purpose political subdivision of a State) and, as established by section 100261(1) of the Moving Ahead for Progress in the 21st Century Act (MAP-21 Act), Public Law 112–141, includes:
(i) an instrumentality of a unit of general purpose local government, provided that the instrumentality is not a public housing agency, is established pursuant to legislation, and is designated by the chief executive of the general purpose local government to act on that government's behalf with regard to activities funded under title IV of the McKinney-Vento Homeless Assistance Act; and
(ii) a combination of general purpose local governments, such as an association of governments that is recognized by HUD.

c. *State* means a "State" as defined in 24 CFR 576.2 (i.e., each of the several States and the Commonwealth of Puerto Rico); and, as provided by section 100261(2) of the MAP-21 Act, includes any instrumentality of any of the several States designated by the Governor to act on behalf of the State and does not include the District of Columbia;

2. *Definitions not in 24 CFR 576.2.*
a. *The McKinney-Vento Act* means the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11371 *et seq.*).

b. *Coronavirus* means SARS–CoV–2 or another coronavirus with pandemic potential, as defined by section 23005 of the CARES Act.

c. *ESG* means, unless otherwise specified, the Emergency Solutions Grants Program whether funded through annual fiscal year (FY) appropriations or CARES Act funding. For example, a program participant assisted using only FY2020 ESG funding and a program participant assisted using only ESG-CV funding are both ESG program participants.

d. *ESG-CV* means the Emergency Solutions Grants Program as funded by the CARES Act and governed by requirements HUD establishes in accordance with that Act. ESG-CV funds do not include annual ESG funds (e.g., FY 2020 ESG grant funds), although annual ESG funds may be used in accordance with the requirements established for purposes of ESG-CV funds as further described in Section IV of this Notice.

e. *Temporary Emergency Shelter* means any structure or portion of a structure, which is used for a limited period of time because of a crisis, such as a natural disaster or public health emergency, to provide shelter for individuals and families displaced from their normal place of residence or sheltered or unsheltered locations. Examples of temporary emergency shelters include:
(i) an overnight, daytime, or 24-hour shelter in which program participants are only provided a safe place to sleep, rest, bathe, and eat;
(ii) a shelter where one or more services are made available on-site, whether by shelter staff or contractors or through a memorandum of understanding with another subrecipient or service provider; and
(iii) a shelter designed to facilitate the movement of homeless individuals and families into permanent housing within a fixed period of time (e.g., within 12 months) and employs or contracts with one or more case managers or service providers to provide services as specified under sections III.E.3.a.(i)(e) and III.E.3.a.(ii)(e) through (h).

f. *Prevent, Prepare for, and Respond to Coronavirus*. To assist recipients in ensuring that an activity being paid for with ESG-CV funds is eligible, or determining whether annual ESG funding may follow the waivers and alternative requirements established in this Notice, recipients and subrecipients should consider the following:

(i) *Prevent…coronavirus* means an activity designed to prevent the initial or further spread of the virus to people experiencing homelessness, people at risk of homelessness, recipient or subrecipient staff, or other shelter or housing residents. This includes providing Personal Protective Equipment to staff and program participants, paying for non-congregate shelter options such as hotels and motels, paying for handwashing stations and portable toilets for use by people living in unsheltered situations, and providing rapid re-housing or homelessness prevention assistance to individuals and families who are homeless or at risk of homelessness (as applicable) to reduce their risk of

contracting or further spreading the virus.

(ii) *Prepare for…coronavirus* means an activity carried out by a recipient or subrecipient prior to or during a coronavirus outbreak in their jurisdiction to plan to keep people healthy and reduce the risk of exposure to coronavirus and avoid or slow the spread of disease. This includes updating written standards to prioritize people at severe risk of contracting coronavirus for shelter and housing consistent with fair housing and nondiscrimination requirements, adapting coordinated entry policies and procedures to account for social distancing measures or increased demand, developing a strategy and recruiting landlords to provide housing to people experiencing homelessness or at risk of homelessness, training homeless providers on infectious disease prevention and mitigation, and implementing a non-congregate shelter strategy to reduce the spread of coronavirus.

(iii) *Respond to coronavirus* means an activity carried out once coronavirus has spread to people experiencing homelessness, provider staff, or once individuals and families lose or are at risk of losing their housing as a result of the economic downturn caused by coronavirus. This includes transporting individuals and families experiencing homelessness to medical appointments, paying for shelter to isolate individuals who have contracted coronavirus from other program participants and people experiencing homelessness, providing rental assistance to those who are at risk of losing their housing, have already become homeless, or continue to experience homelessness due to the economic downturn caused by coronavirus, and providing hazard pay to recipient or subrecipient staff who put their own health at risk to continue to provide necessary services to individuals and families experiencing and risk of homelessness.

II. ALLOCATIONS

A. Initial Allocations. The ESG-CV grant funds are available through two allocations as follows:

1. First Allocation. $1 billion has been allocated to recipients allocated FY 2020 ESG funding based on the same formula used under 24 CFR 576.3 for the FY 2020 ESG funding; and

2. Second Allocation. $2.96 billion has been allocated to States and units of general local government based on a formula developed by the Secretary, as provided by the CARES Act.

B. Reallocation.

1. Funds Not Awarded by HUD due to Failure of the Recipient to Submit and Obtain HUD Approval of a Substantial Amendment to its Action Plan or FY 2020 Annual Action Plan. ESG-CV funds are provided to prevent, prepare for, and respond to coronavirus, among individuals and families who are homeless or receiving homeless assistance and homelessness prevention activities to mitigate the impacts created by coronavirus. In order to quickly deploy these resources it is important that they are awarded to recipients with experience administering annual ESG funding. Therefore, HUD reserves discretion to issue a separate notice providing waivers and alternative requirements to replace the process for reallocating ESG-CV funds from states and territories under at 24 CFR 576.300, 567.302, and 576.303, which address how HUD will reallocate funds not awarded due to the states' and territories' failure to submit a Substantial Amendment to their Action Plan including the ESG-CV funds or the states' and territories' failure to submit their FY 2020

Annual Action Plan including ESG-CV funds in accordance with the requirements of 24 CFR part 91.

Funds recaptured from metropolitan cities and urban counties due to failure to submit a Substantial Amendment to its Action Plan including the ESG-CV funds or the recipient's failure to submit its FY 2020 Annual Action Plan including ESG-CV funds in accordance with the requirements of 24 CFR part 91 will continue to be reallocated in accordance with 24 CFR 576.301.

2. *Funds Recaptured by HUD after Award.* ESG-CV funds are provided 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. It is important that resources be targeted to communities that need and can use additional funding to support these efforts. Therefore, HUD is establishing expenditure deadlines and recapture provisions (as discussed in section III.B.3 below), and HUD reserves discretion to issue a separate notice providing waivers and alternative requirements to replace the process for reallocating recaptured ESG-CV funds under section 24 CFR 576.300(2).

III. APPLICABLE RULES, STATUTES, WAIVERS, AND ALTERNATIVE REQUIREMENTS

This Section describes the statutes, regulations, waivers, and alternative requirements that apply to ESG-CV grants.

The CARES Act authorizes the Secretary to 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 these amounts, except for requirements related to fair housing, nondiscrimination, labor standards, and the environment. The Notice describes when temporary emergency shelter is exempt from environmental review and outlines standards for temporary emergency shelter. Regulatory waiver authority is also provided by 24 CFR 5.110 and 91.600. For the reasons stated with each waiver or alternative requirement established in this Notice, HUD has determined that good cause exists for each waiver or alternative requirement and that the waiver or alternative is necessary to prevent, prepare for, and respond to coronavirus.

Except as otherwise stated in this Notice, waivers and alternative requirements 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. Certain alternative requirements established by this Notice that limit activities in comparison with the requirements in 24 CFR 576 and the CARES Act are not retroactive.

A. Means of Carrying Out Grant Activities. In general, the requirements at 24 CFR 576.202 apply, except that:

1. *States may use up to 100 percent of grant funds awarded to carry out activities directly*. The requirements at Section 412 of the McKinney-Vento Act and 24 CFR 576.202(a), which provide that States must subgrant all of their funds except those used to carry out HMIS activities and administrative activities to units of general purpose are waived to ensure that enough entities with capacity are available to administer ESG-CV funds and to provide additional administrative efficiency to States. States may use up to 100 percent of grant funds awarded to carry out activities directly. However, before a State can use this flexibility to carry out ESG activities directly, the State's consolidated plan/action plan must specify the activities the State will carry out and the amount allocated for those activities, whether in the State's initial FY 2020 action plan submission or an amendment to its most recently approved action plan, and the State must submit the new certifications that HUD is providing in the Appendices to this Notice, as further explained in section VI, to account for this new program flexibility.

2. *States and local governments may subaward funds to public housing agencies and local redevelopment authorities.* As authorized by Section 414(c) of the McKinney-Vento Act, a local government may subaward funds it receives to a public housing agency, as defined under section 3(b)(6) of the United States Housing Act of 1937, or to a local redevelopment authority, as defined under state law. Where the recipient is a State, the requirement at Section 412 of the McKinney-Vento Act, further defined at 24 CFR 576.202(a), is waived, to allow states to subaward funds it receives to a public housing agency, as defined under section 3(b)(6) of the United States Housing Act of 1937, or to a local redevelopment authority, as defined under state law to ensure that there are enough entities with capacity available to administer ESG-CV funds. ESG recipients who subaward funds are responsible for ensuring grants are carried out in accordance to this notice.

B. Obligation, Expenditure, and Payment Requirements and Recapture Process.
1. *Obligation Deadlines.* To assure that all funding and flexibilities provided by the CARES Act and HUD under this Notice can be used as necessary to prevent, prepare for, and respond to coronavirus, HUD is waiving the regulatory obligation deadlines and standards for meeting those deadlines and establishing alternative requirements as follows. ESG-CV funds must be obligated by the recipient in accordance with 24 CFR 576.203(a)(1) and (2), except as provided below. The applicable period for obligating ESG-CV funds begins on the date HUD signed the recipient's grant agreement for the first allocation of ESG-CV funds. The obligation deadlines below apply to the both the first and second allocation of ESG-CV funds. HUD is also providing further flexibility for recipients (including states and non-states) to provide additional time to identify entities that have capacity and expertise to mitigate the impacts of coronavirus, including those who have not previously or recently received ESG funding.

a. Recipients that are states have:

(i) 180 days from the date HUD signs the grant agreement to obligate funds for activities it will carry out directly, as permitted in Section III.A.1. This obligation may be evidenced by a written designation of a department within the government to carry out an eligible activity directly; and
(ii) up to 240 days from the date HUD signs the grant agreement to obligate ESG-CV funds to subrecipients. Recipients must maintain in the program records a description of any changes the

recipient implemented to identify and select new subrecipients.

b. Recipients that are metropolitan cities, urban counties, or territories may have up to 240 days from the date HUD signs the grant agreement to obligate ESG-CV funds. Recipients must maintain in their program records a description of any changes the recipient implemented to identify and select new subrecipients.

2. *Expenditures.* The requirements at 24 CFR 576.203(b) generally apply, except that the provision that all of the recipient's grant must be expended for eligible activity costs within 24 months after the date HUD signs the grant agreement with the recipient is waived and the following alternative requirements are established:
a. Before drawing down funds for an activity, the recipient must enter complete, up-to-date information on that activity in the Integrated Disbursement and Information System (IDIS), including the total funding allocated to that activity and a description of how the activity prevents, prepares for, and responds to coronavirus . This requirement is necessary to assure the use of funds for eligible activities to prevent, prepare for, and respond to coronavirus and facilitate compliance with the CARES Act's reporting requirement, which is described in section III.G.2 of this Notice.

b. *Overall Deadline for Expending First and Second Allocations.* All funds awarded to a recipient through the first and second allocations of ESG-CV funds must be expended for eligible activity costs by September 30, 2022. Establishing this standardized expenditure deadline for all recipients discourages recipients from delaying their expenditure deadline by delaying the execution of their grant agreements, thus making funds more quickly available to prevent, prepare for, and respond to coronavirus.

c. *Progressive Expenditure Deadlines and Recapture Provisions.* To ensure ESG-CV funds are spent quickly on eligible activities to address the public health and economic crises caused by coronavirus, the following alternative requirements are established:
(i) HUD may recapture up to 20 percent of a recipient's total award, including first and second allocation amounts, if the recipient has not expended at least 20 percent of that award by September 30, 2021.
(ii) HUD may recapture up to 80 percent of a recipient's total award, including first and second allocation amounts, if the recipient has not expended at least 80 percent of that award by March 31, 2022.
(iii) Prior to recapturing funds as described above, HUD will follow the enforcement process described in 24 CFR 576.501 and provide the recipient with an opportunity to provide a spending plan demonstrating to HUD's satisfaction that all of the recipient's ESG-CV funds from the first and second allocations will be expended by September 30, 2022.

d. *Reallocation process*. HUD reserves its discretion to make subsequent waivers and alternative requirements to assure recaptured funds are reallocated in a manner consistent with the statutory purposes and conditions for ESG-CV funds.

C. Match. As provided by the CARES Act, ESG-CV funds are not subject to the match

requirements that otherwise apply to the Emergency Solutions Grants program.

D. Program Income. Because ESG-CV program income cannot be used as match without the ESG matching requirement, HUD is waiving the ESG provisions for program income under 24 CFR 576.2 and 576.407(c)(1) and establishing alternative requirements, as follows:

1. Program income is defined as provided by 2 CFR 200.80, except that:

a. Program income includes any amount of a security or utility deposit returned to the recipient or subrecipient, as provided by 24 CFR 576.2; and

b. Costs that are incidental to generating program income and not charged to the ESG-CV grant or subgrant may be deducted from gross income to determine program income, as allowed under 2 CFR 200.307(b).

2. As allowed under 2 CFR 200.307(e), program income may be treated as an addition to recipient's grant (or the subrecipient's subgrant, if the income is generated by the subrecipient's activities), provided that the program income is used in accordance with the purposes and conditions of that grant or subgrant. Program income otherwise must be deducted from allowable costs as provided by 2 CFR 200.307(e)(1).

These changes to the otherwise applicable program income requirements are necessary to maximize the capacity and efficiency of ESG-CV recipients and subrecipients to prevent, prepare for, and respond to coronavirus.

E. Program Components and Eligible Activities. The requirements of 24 CFR Part 576 – Subpart B apply, except that:

1. *Emergency Shelter and Street Outreach cap.* As provided by the CARES Act, the cap established for street outreach and emergency shelter activities in section 576.100(b) does not apply. Recipients may expend as much of their funding on street outreach and emergency shelter activities as needed to prevent, prepare for, and respond to coronavirus among people experiencing homelessness including mitigating the impacts caused by coronavirus. HUD strongly encourages recipients to coordinate housing and services for those individuals with the Continuum of Care in their geographical region.

2. *Pre-Award Costs.* To account for the urgent activities and costs ESG recipients and subrecipients have undertaken to prevent, prepare for, and respond to coronavirus, the recipient is authorized to use ESG-CV funds to cover or reimburse costs incurred before the period of performance provided that the cost to be covered or reimbursed would be otherwise allowable under the flexibilities and requirements established for ESG-CV funds and was incurred by a recipient or subrecipient on or after January 21, 2020 to prevent, prepare for, and respond to coronavirus. In addition, where this Notice limits activities in comparison with 24 CFR Part 576 (e.g., the maximum rental assistance per program participant in Section III.E.5.b.(i)@ of this Notice), a recipient may cover or reimburse costs incurred before the period of performance, provided that the cost to be covered or reimbursed

would be otherwise allowable under 24 CFR Part 576 and either:

(a) The costs were incurred prior to the publication of this Notice; or

(b) For costs not incurred prior to the publication of this Notice, the recipient has included the activities in its substantial amendment or action plan for ESG-CV funds, which has been submitted to HUD and not disapproved prior to the publication of this Notice.

An environmental review, as applicable, must be completed and a Request for Release of Funds must be approved in accordance with 24 CFR Part 58 and Section III.E.6 of this Notice, prior to a commitment to cover or reimburse with ESG funds.

3. *Additional Eligible Activities*. In addition to the eligible activities listed in 24 CFR 576 – Subpart B, funds may be used for the following activities:

a. *Temporary emergency shelters*. As permitted by the CARES Act, ESG-CV funds may be used to pay for temporary emergency shelters for individuals and families experiencing homelessness in order to prevent, prepare for, and respond to coronavirus.
(i) Eligible costs include:
(a) Leasing existing real property or temporary structures to be used as temporary emergency shelters;
(b) Acquisition of real property (e.g. hotels, ancillary structures, parking lots). The total amount of ESG-CV funds used for acquisition must not exceed $2.5 million per real property;
(c) Renovation (including major rehabilitation and conversion) of real property (e.g., hotels) into temporary emergency shelters. Eligible costs include labor, tools, and other costs for renovation;
(d) Shelter operations costs including the costs of maintenance (including minor or routine repairs), rent, security, fuel, equipment, insurance, utilities, food, furnishings, supplies necessary for the operation of the temporary emergency shelter;
(e) Services, including essential services under 24 CFR 576.102(a)(1), housing search and placement services under 24 CFR 576.105(b)(1), and housing search and counseling services as provided under 24 CFR 578.53(e)(8); except as otherwise stated in this Notice or 24 CFR part 576.408; and,
(f) Other shelter costs HUD pre-approves in writing.
(ii) Requirements:
(a) As permitted by the CARES Act, the use of funds for these shelters will not be subject to the habitability standards under section 417(c) of the McKinney-Vento Act, shelter standards at 24 CFR 576.403(b), or the environmental review requirements that otherwise apply to the use of ESG funds if the shelters have been determined by State or local health officials to be necessary to prevent, prepare for, and respond to coronavirus. Recipients and subrecipients must still comply with nondiscrimination and applicable accessibility requirements, including requirements under Section 504 of the Rehabilitation Act, the Americans with Disabilities Act, the Fair Housing Act, and their implementing regulations. See also 24 CFR 576.407(a);
(b) These temporary emergency shelters shall not be subject to the minimum periods of use required by section 416(c)(1) of the McKinney-Vento Act and 24 CFR 576.102(c) and shall be considered as excluded by law from any certifications recipients submit pursuant to 24 CFR 91.225(c)(1) through (c)(4) or 91.325(c)(4)(i) through (c)(4)(iv); however, if funds were used for acquisition or

renovation (including conversion or major rehabilitation), the property's use and disposition will be subject to the real property requirements in 2 CFR 200.311;
(c) In general, funds may be used to support temporary emergency shelters to prevent, prepare for, and respond to coronavirus until January 31, 2022. This January 31, 2022 limit will ensure that ESG-CV funds are available to serve more individuals and families with assistance to prevent, prepare for, and respond to coronavirus. However, upon written request by the recipient, HUD may grant an exception to the January 31, 2022 limit, if the recipient demonstrates:
(i) Why additional funding for a longer period of time is necessary and what planned activities the recipient will forgo to continue funding the temporary emergency shelter;
(ii) The number of additional months the recipient will fund the temporary emergency shelter; and
(iii) The plan for connecting program participants to permanent housing when the temporary emergency shelter is no longer funded;
(d) In addition to the records required at 24 CFR 576.500, the recipient must retain documentation that the property or structure or portion of a structure used as temporary emergency shelter met the definition of temporary emergency shelter during the time it was so used. For example, a recipient could document that the property is typically a hotel and is only being used as an emergency shelter for the period of time that public health officials determine special measures are needed to prevent the spread of coronavirus;
(e) Whether or not services are provided as part of temporary emergency shelter, the recipient or subrecipient must assure that for each program participant receiving shelter, the individual or family's service needs are evaluated as required by 24 CFR 576.401(a) and appropriate services are made available as needed in accordance with 24 CFR 576.401(d)), and a program participant in temporary emergency shelter shall be eligible to receive essential services from the recipient or subrecipients other than the program participant's shelter provider;
(f) A temporary emergency shelter may provide space for program participants to receive services consistent with 24 CFR 576.401(d) even if the services are not ESG-funded or not funded as part of the shelter project;
(g) Program participants cannot be required to sign leases or occupancy agreements, receive treatment, or perform any other prerequisite activities as a condition for staying in any shelter or receiving services; and
(h) In all other respects, the funding and operation of temporary emergency shelters must comply with the ESG-CV requirements for emergency shelters under this Notice and 24 CFR part 576.

c. *Training*. As permitted by the CARES Act, ESG-CV funds may be used for training on infectious disease prevention and mitigation for staff working directly to prevent, prepare for, and respond to coronavirus among persons who are homeless or at risk of homelessness and the use of funding shall not be considered administrative costs for purposes of the 10 percent cap. In addition, the limitations on eligible activities provided in section 415(a) of the McKinney-Vento Homeless Assistance Act and 24 CFR part 576, subpart B are waived and alternative requirements are established to the extent necessary to authorize ESG-CV funds to be used for training on infectious disease prevention and mitigation for homeless assistance providers, including those who do not receive funding through the CARES Act, to help them best prevent, prepare for, and respond to coronavirus among persons who are homeless or at risk of homelessness. These training costs are eligible as a standalone activity and are not to be charged to an activity under 24 CFR 576.101 to 24 CFR 576.109.

d. *Hazard Pay*. As permitted by the CARES Act, funds may be used to pay hazard pay for recipient- or subrecipient-staff working directly to prevent, prepare for, and respond to coronavirus among persons who are homeless or at risk of homelessness. Examples of recipient or subrecipient staff working directly in support of coronavirus response include emergency shelter intake staff, street outreach teams, emergency shelter maintenance staff, emergency shelter security staff, staff providing essential services (e.g., outpatient health or mental health, housing navigators), and staff in proximity to persons with coronavirus or working in locations with a high likelihood of contracting coronavirus.

e. *Handwashing Stations and Portable Bathrooms*. The limitations on eligible activities provided in section 415(a) of the McKinney-Vento Homeless Assistance Act and 24 CFR part 576, subpart B are waived and alternative requirements are established to the extent necessary to authorize ESG-CV funds to be used under 24 CFR 576.101(a) for installing and maintaining handwashing stations and bathrooms (e.g., porta potties) in outdoor locations for people experiencing unsheltered homelessness. Allowing ESG-CV funds to pay for the costs of handwashing stations and bathroom facilities will help prevent the spread of coronavirus by providing people living in unsheltered locations regular access to bathrooms and the ability to wash their hands.

f. *Landlord Incentives*. The limitations on eligible activities under section 415(a) of the McKinney-Vento Act and 24 CFR 576.105 are waived and alternative requirements are established to the extent necessary to authorize ESG-CV funds to be used under 24 CFR 576.105 to add the eligible cost of paying for landlord incentives as reasonable and necessary to obtain housing for individuals and families experiencing homelessness and at risk of homelessness. However, a recipient may not use ESG-CV funds to pay the landlord incentives set forth below in an amount that exceeds three times the rent charged for the unit. Waiving the limitation on eligible costs under housing relocation and stabilization services to pay for the costs of landlord incentives will increase the number of housing units available to people experiencing homelessness or at risk of homelessness, especially in tight rental markets and obtaining and maintaining housing is critical to preventing the spread of coronavirus and helping mitigate the economic impact of the crisis. The limitation to three times the rent charged for each unit ensures enough ESG-CV funds remain available to provide other eligible activities necessary to prevent the spread of coronavirus. Eligible landlord incentive costs include:
(i) Signing bonuses equal to up to 2 months of rent;
(ii) Security deposits equal to up to 3 months of rent;
(iii) Paying the cost to repair damages incurred by the program participant not covered by the security deposit or that are incurred while the program participant is still residing in the unit; and,
(iv) Paying the costs of extra cleaning or maintenance of a program participant's unit or appliances.

g. *Volunteer Incentives.* The limitations on eligible activities provided in section 415(a) of the McKinney-Vento Homeless Assistance Act and 24 CFR part 576, subpart B are waived and alternative requirements are established to the extent necessary to authorize ESG-CV funds to be used under 24 CFR 576.101(a), 24 CFR 576.102(a)(1), and 24 CFR 576.105(b) for cost of providing reasonable incentives to volunteers (e.g., cash or gift cards) who have been and are currently helping to provide necessary street outreach, emergency shelter, essential services, and housing relocation and stabilization services during the coronavirus outbreak. Waiving this requirement to allow the payment of reasonable costs of volunteer incentives will increase the number of people available to provide the needed services and connections to housing to individuals

and families experiencing homelessness to prevent the spread of coronavirus.

5. *Waivers, Alternative Requirements and Statutory Flexibilities for Existing Eligible Activities.*

a. *Emergency Shelters.* The requirements at 24 CFR 576.102 apply, except funds may be used only for the costs of providing emergency shelter during the period beginning on the date the recipient or subrecipient began preventing, preparing for, and responding to coronavirus and ending on January 31, 2022, and only for those costs that are necessary to prevent, prepare for, and respond to coronavirus. This alternative requirement will ensure that ESG-CV funds are used efficiently to provide more individuals and families with assistance needed to prevent, prepare for, and respond to coronavirus.

b. *Short-Term and Medium-Term Rental Assistance*.
(i) 24 CFR 576.106(a)(2), where medium-rent is defined as "for more than 3 months but not more than 24 months of rent" is waived and an alternative requirement is established where medium-term is established as for more than 3 months but not more than 12 months. This alternative requirement will allow more households to receive rapid re-housing and homelessness prevention assistance, which is necessary to prevent, prepare for, and respond to coronavirus.
(ii) The requirement at 24 CFR 576.106(d) that prohibits rental assistance where the rent for the unit exceeds the Fair Market Rent established by HUD, as provided under 24 CFR Part 888, is waived so long as the rent complies with HUD's standards of rent reasonableness, as established under 24 CFR 982.507. Waiving this requirement will allow recipients to help program participants move quickly into housing or retain their existing housing, which is especially critical at reducing the spread of coronavirus and responding to coronavirus. This waiver provides additional flexibility beyond the waiver made available to the ESG Program on March 31, 2020 and extended to ESG-CV funds on May 22, 2020 by permitting ESG recipients to provide rental assistance for program participants, whose current rent exceeds FMR and by allowing recipients to use this waiver as needed throughout the period they are providing rental assistance to prevent, prepare for, and respond to coronavirus.

c. *Administrative Costs*. As permitted by the CARES Act, a recipient may use up to 10 percent of its total ESG-CV grant for administrative costs specified in 24 CFR 576.108.

d. *No Cap for Emergency Shelter and Street Outreach Activities*. As permitted in the CARES Act, ESG-CV funds may be used for emergency shelter and street outreach activities without regard to the spending cap established by section 415(b) of the McKinney-Vento Act and 24 CFR Part 576.100(b). The same flexibility applies to using ESG-CV funds to establish and operate temporary emergency shelters.

e. *Hotel/Motel Costs*. As permitted under 24 CFR 576.102(a)(3), eligible costs include a hotel or motel voucher for homeless individuals and families where no appropriate emergency shelter is available. Additionally, the limitations on eligible activities provided in section 415(a) of the McKinney-Vento Act and 24 CFR part 576, subpart B are waived and alternative requirements are established to the extent necessary to authorize ESG-CV funds to be used for the following hotel or motel costs for individuals and families experiencing homelessness, receiving rapid re-housing assistance under the Continuum of Care (CoC) or ESG programs, receiving homelessness

prevention under the ESG program, or residing in permanent supportive housing: The recipient or subrecipient may pay for a hotel or motel room directly or through a hotel or motel voucher. Additionally, funds can be used to pay for cleaning of hotel and motel rooms used by program participants as well as to repair damages caused by program participants above normal wear and tear of the room. These flexibilities are provided to allow recipients to secure hotel and motel rooms more quickly to be available when needed to prevent the spread of coronavirus (for example, when a program participant needs to isolate to keep from spreading the virus to other shelter occupants or household members).

f. *Helping current ESG program participants maintain housing.* In order to ensure current program participants receiving homelessness prevention and rapid re-housing assistance do not lose their housing during the coronavirus public health crisis and the subsequent economic downturn caused by the crisis, the requirements in 24 CFR 576.105(c) and 576.106(a) are waived and alternative requirements are established as follows:
(i) The requirement at 24 CFR 576.105(c) limiting the total period of time for which any program participant may receive the services under paragraph (b) to 24 months during any 3-year period is waived solely for those program participants who reach their 24-month maximum assistance during the period beginning on the presumed start of this crisis, January 21, 2020 – the date the first confirmed case was reported in the United States, and ending 6 months from the date of publication of this Notice, provided that the services are only extended for these program participants for up to a maximum of an additional 6 months; and
(ii) The requirement at 24 CFR 576.106(a) limiting the total number of months a program participant can receive rental assistance to 24 months in a 3-year period is waived solely for those program participants who reach their 24-month maximum during the period beginning on the presumed start of this crisis, January 21, 2020 – the date the first confirmed case was reported in the United States, and ending 6 months from the date of publication of this Notice, provided that the rental assistance is only extended for these program participants for up to a maximum of an additional 6 months.

g. *HMIS Lead Activities.* The limitations on eligible activities provided in section 415(a) of the McKinney-Vento Act and 24 CFR Part 576, subpart B are waived to the extent necessary to authorize ESG funds to be used under 24 CFR 576.107 to pay for HMIS costs beyond where they are related to collecting data on ESG program participants and ESG program activities to the extent they are necessary to help the geographic area prevent, prepare for, and respond to coronavirus. Additionally, 24 CFR 576.107 that limits recipients to paying for the costs at 24 CFR 576.107(b) is waived to allow recipients that are not the HMIS Lead, as designated by the Continuum of Care, to pay for costs at 24 CFR 576.107(b), either directly or by sub-granting to the HMIS Lead if the HMIS Lead is an eligible subrecipient to the extent that the HMIS costs are necessary to help the geographic area prevent, prepare for, and respond to coronavirus. This waiver and these alternative requirements provide additional flexibility beyond the waiver made available to the ESG Program on March 31, 2020 and extended to ESG-CV funds on May 22, 2020 by permitting ESG recipients who are not also HMIS Leads to pay for the costs eligible at 24 CFR 576.107(b) and lifting the 6-month limit on the waiver so that this flexibility applies throughout the period the recipient or subrecipient uses funds to prevent, prepare for, and respond to coronavirus. Additionally, this waiver provides additional flexibility for ESG funds to be used on HMIS costs even when they are not related to ESG program participants or ESG activities when necessary to collect and report

better data about the impact of coronavirus across the community. These flexibilities will allow communities to collect data that is necessary to coordinate and report on activities to prevent, prepare for, and respond to coronavirus among individuals and families experiencing homelessness, at risk of homelessness, and receiving homeless assistance.

h. *Legal Services.* Legal services established in 24 CFR 576.102(a)(1)(vi) and 24 CFR 576.105(b)(4) are limited to those services necessary to help program participants obtain housing or keep a program participant from losing housing where they currently reside.

F. Program Requirements. The requirements at 24 CFR part 576, subpart E apply, except as otherwise established in this Notice.

1. *Consultation with the Continuum of Care*. As provided under the CARES Act, ESG-CV funds are not subject to the CoC consultation requirements at 24 CFR 576.400(a).

2. Coordination with other targeted homeless services. To ensure funds are deployed quickly to address the immediate public health crisis and prevent the spread of coronavirus, the coordination requirements at 24 CFR 576.400(b) are waived.

3. *System and Program Coordination with Mainstream Resources.* To ensure funds are deployed quickly to address the immediate public health crisis and prevent the spread of coronavirus, the coordination requirements at 24 CFR 576.400(c) are waived.

4. *Centralized or Coordinated Assessment, Written Standards for Administering Assistance, and HMIS.* With respect to costs incurred between January 21, 2020 and June 30, 2020 that are allowable under this Notice but not under 24 CFR Part 576, the requirements to use the CoC's centralized or coordinated assessment under 24 CFR 576.400(d), administer the assistance in accordance with written standards as provided under 24 CFR 576.400(e), and participate in HMIS under Section 416(f) of the McKinney-Vento Act and 24 CFR 576.400(f) are waived for the first 60 days of the project's operation. HUD has determined this waiver is necessary to allow jurisdictions to quickly implement activities necessary to prevent the spread of coronavirus and account for the time needed to integrate these activities into centralized or coordinated assessment and HMIS, and revise the written standards for administering assistance to account for the new program flexibilities.

5. *Housing Stability Case Management*. As required by 24 CFR 576.401(a) and (c), the recipient and its subrecipient must determine the available services and assistance that each ESG-CV program participant will need to achieve independent living and avoid further housing instability or homelessness, and the recipient and its subrecipient must assist each ESG-CV program participant, as needed, to obtain those services and assistance. However, HUD is making an across-the-board waiver of the ESG requirement in 24 CFR 576.401(e)(1) that housing stability case managers to meet not less than once per month with each program participant receiving homelessness prevention or rapid re-housing assistance. HUD is waiving this requirement for all program participants receiving this assistance after qualifying as homeless, in order to be consistent with the CARES Act prohibition stated in section III.F.10. Additionally, HUD is waiving the requirement for all program participants receiving assistance after qualifying as at risk of homelessness, in order to prevent the

spread of coronavirus and reduce the barriers to providing the homelessness prevention that is necessary to respond to coronavirus. This waiver provides additional regulatory relief beyond the waiver HUD made available on March 31, 2020 for annual ESG funds and extended on May 22, 2020 for annual ESG funds and ESG-CV funds, by lifting the 3-month limitation established May 22, 2020, and making the waiver of 24 CFR 576.401(e)(1) apply throughout the period the recipient or subrecipient uses funds to prevent, prepare for, and respond to coronavirus.

6. *Shelter and Housing Standards*. The lead-based paint remediation requirements of 24 CFR 576.403(a) apply to all shelters for which ESG-CV funds are used and all housing occupied by program participants. The habitability requirements at 24 CFR 576.403(b) do not apply to temporary emergency shelters that have been determined by State or local health officials to be necessary to prevent, prepare for, and respond to coronavirus. However, recipients and subrecipients must still comply with nondiscrimination and applicable accessibility requirements, including requirements under Section 504 of the Rehabilitation Act, the Fair Housing Act, the Americans with Disabilities Act, and their implementing regulations. See also 24 CFR 576.407(a). All other shelters and housing for which ESG-CV funds must meet the applicable standards in 24 CFR 576.403(b) and 576.403(c).

7. *Environmental Review Requirements*. Except as otherwise provided in this notice for temporary emergency shelters that have been determined by State or local health officials to be necessary to prevent, prepare for, and respond to coronavirus, "responsible entities" (as defined in 24 CFR 58.2) must assume all of the responsibilities with respect to environmental review, decision making, and action required under 24 CFR Part 58. Also, as required by 24 CFR 58.4(a), when a State distributes funds to a responsible entity, the State must provide for appropriate procedures by which these responsible entities will evidence their assumption of environmental responsibilities. In accordance with these requirements and section 100261(3) of the MAP-21 Act, 24 CFR 576.407(d) does not apply.

Environmental regulations at 24 CFR 58.22 prohibit ESG recipients and any other participant in the development process from committing HUD or non-HUD funds to a project until the environmental compliance review process has been successfully completed or until receipt of the Authority to Use Grant Funds, if applicable. In addition, until the environmental compliance review process has been successfully completed or until receipt of the Authority to Use Grant Funds, neither a recipient nor any participant in the development process may commit non-HUD funds on or undertake an activity or project if the activity or project would have an adverse environmental impact or limit the choice of reasonable alternatives.

Emergency Environmental Review Procedures: HUD's environmental review regulations in 24 CFR Part 58 include two provisions that may be relevant to environmental review procedures for activities to prevent, prepare for, or respond to coronavirus. The first is 24 CFR § 58.34(a)(10), which provides an exemption for certain activities undertaken in response to a national or locally declared public health emergency. The second is a streamlined public notice and comment period in the regulation at 24 CFR 58.33, which may apply in some cases for emergency activities undertaken to prevent, prepare for, or respond to coronavirus. The application of these two provisions following a presidentially-declared or locally-declared public health emergency are discussed in the Notice, *Guidance on conducting environmental review pursuant to 24 Part 58 for*

activities undertaken in response to the public health emergency as a result of COVID-19 (available at: https://www.hud.gov/sites/dfiles/OCHCO/documents/2020-07cpdn.pdf).

8. *Procurement*. As provided by the CARES Act, the recipient may deviate from the applicable procurement standards (e.g., 24 CFR 576.407(c) and (f) and 2 CFR 200.317-200.326) when procuring goods and services to prevent, prepare for, and respond to coronavirus. If the recipient deviates from its procurement standards then the recipient must establish alternative written procurement standards, and maintain documentation on the alternative procurement standards used to safeguard against fraud, waste, and abuse in the procurement of goods and services to prevent, prepare for, and respond to coronavirus. This alternative requirement is necessary to ensure the funds are used efficiently and effectively to prevent, prepare for, and respond to coronavirus. Notwithstanding this flexibility, the debarment and suspension regulations at 2 CFR part 180 and 2 CFR part 2424 apply as written.

9. *Prohibition Against Duplication of Benefits*. Section 312 (42 U.S.C. 5155) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended (42 U.S.C. 5121 et seq.) prohibits duplication of benefits for programs that provide financial assistance to people or entities suffering losses because of a major disaster or emergency. "Duplication of benefits" occurs when Federal financial assistance is provided to a person or entity through a program to address losses resulting from a Federally-declared emergency or disaster, and the person or entity has received (or would receive, by acting reasonably to obtain available assistance) financial assistance for the same costs from any other source (including insurance), and the total amount received exceeds the total need for those costs. Recipients must establish and maintain adequate procedures to prevent any duplication of benefits with ESG-CV funds. HUD will issue additional guidance to facilitate compliance with this requirement.

10. *Provision of Supportive Services*. Although HUD strongly encourages the use of supportive services when necessary, as required by the CARES Act, individuals and families experiencing homelessness must not be required to receive treatment or perform any other prerequisite activities as a condition for receiving shelter, rental assistance, or other services provided with ESG-CV funds.

G. Reporting Requirements. The requirements at 24 CFR 576.500 apply except as otherwise established in this notice

1. *Reporting Requirement.* Recipients will be required to report on uses of the ESG-CV funds, in their Consolidated Annual Performance and Evaluation Report (CAPER) and through submission of project data to the Sage Homeless Management Information System (HMIS) Repository. HUD is waiving 24 CFR 91.520(a) to allow recipients up to 180 days from their program year end date to submit their CAPER to allow additional time for reporting as recipients respond to coronavirus.

2. *Additional CARES Act Reporting.* Section 15011 of the CARES Act requires that recipients of $150,000 or more of CARES Act funding submit, not later than 10 days after the end of each calendar quarter, a report containing information regarding the amount of funds received; the amount of funds obligated or expended for each project or activity; a detailed list of all such projects or activities, including a description of the project or activity; and detailed information on any

subcontracts or subgrants awarded by the recipient. As outlined in the Office of Management and Budget (OMB) memorandum, M-20-21, existing reporting requirements are anticipated to meet the requirements of section 15011, but the content and format for this reporting is still under development and will need to be reviewed against current program practices. The Department will work in coordination with OMB to ensure that this requirement can be fulfilled by recipients of CARES Act funding in a manner that utilizes to the greatest extent possible existing reporting streams, providing the necessary transparency and accountability with minimal additional burden. If additional reporting is necessary, further guidance will be released by the Department in the near future.

IV. PRIOR ESG APPROPRIATIONS

A. Applicability of this Notice to Annual ESG Funds. In accordance with the authority provided by the CARES Act, the same waivers and additional eligible activities established for ESG-CV funds in this Notice apply to annual ESG funds (including FY2020 and prior fiscal year grant funds) a recipient uses to prevent, prepare for, and respond to coronavirus, subject to the following conditions:

1. The recipient identifies the specific activities and funding allocated to prevent, prepare for, or respond to coronavirus in the Integrated Disbursement and Information System (IDIS) activity description before drawing down funds in accordance with the flexibilities provided in this Notice;

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. The recipient amends it consolidated plan in accordance with 24 CFR 576.200(b), 24 CFR 91.550, and the recipient's citizen participation plan, subject to any applicable HUD waivers (the consultation and citizen participation exemptions for ESG-CV funds do not apply to annual ESG funds);

4. Any alternative requirements established in this Notice which limit activities in comparison with the requirements at 24 CFR Part 576 (e.g., the further limitations on rental assistance and costs related to emergency shelter) shall not apply to the use of annual ESG funds that are used to prevent, prepare for, and respond to coronavirus; and

5. The recipient must develop and implement policies and procedures to assure and document that these flexibilities are used only for activities and costs that are to prevent, prepare for, and respond to coronavirus and the annual ESG funds specifically identified in paragraph 1 meet HUD's requirements for ESG-CV funds (except as provided in the preceding paragraph).

6. Before using any annual ESG funds to carry out eligible activities directly as permitted by section III.A.1 of this Notice, a recipient that is a State must amend their annual action plan as discussed in that section and submit the new certifications that HUD is providing in the Appendices to this Notice, as further explained in Section VI.

V. PROCESS FOR REQUESTING ADDITIONAL FLEXIBILITY

The CARES Act provides the Secretary the authority to waive, or specify alternative requirements, for any provision of any statute or regulation that the Secretary administers in connection with ESG-CV funds (except for requirements related to fair housing, nondiscrimination, labor standards, and the environment), if the Secretary finds that good cause exists for the waiver or alternative requirement and such waiver or alternative requirement is necessary to prevent, prepare for, and respond to coronavirus. The CARES Act also permits the Secretary to apply these waivers and alternative requirements to annual ESG funds (including FY2020 and prior fiscal year ESG grant funds) to the extent recipients use those funds to prevent, prepare for, and respond to coronavirus.

If a recipient or subrecipient needs more flexibility than is provided in this Notice, the recipient may request a waiver by submitting a request addressed to the Secretary of HUD. The request must include the following: a description of the project; the citation to the statutory and regulatory requirements that the recipient is requesting to waive; an explanation of the reasons why the Secretary should determine that good cause exists for the waiver and how the waiver is necessary to prevent, prepare for, and respond to coronavirus.

HUD may find that additional information is needed to make a determination regarding a submitted waiver request. In these cases, HUD may contact the recipient at any time to request additional information to support a previous request.

VI. CERTIFICATIONS

For purposes of all ESG funds, recipients must submit certifications as required by the McKinney-Vento Act. However, the program flexibilities provided under the Cares Act and this Notice make the following exceptions and clarifications necessary.

1. As provided by the CARES Act HUD cannot require ESG-CV funds to be matched and under this Notice, HUD is extending this match exemption to annual ESG grant funds used to prevent, prepare for, and respond to coronavirus. Accordingly, any match certification submitted is not valid with respect to those funds.

2. As provided by the CARES Act, period of use certifications required by Section 416(c)(1) of the McKinney Vento Act do not apply to temporary emergency shelters funded in accordance with that Act. Accordingly, any period of use certification is not valid with respect to the use of those funds for temporary emergency shelters.

3. HUD provided Interim ESG-CV Certifications posted on https://www.hudexchange.info/resource/2396/consolidated-plan-certifications-state-and-non-state/ that reflect program flexibilities under the CARES Act. If a recipient submitted interim certifications for the first or second allocation of ESG-CV funding, then it does not need to resubmit certifications in Appendix I for that allocation unless the recipient is a State that is exercising the flexibility to carry out activities directly as provided in Section III.A.I. States electing to exercise the flexibility to carry out activities directly must submit the new ESG-CV certifications in Appendix I.

4. Except as otherwise provided in paragraph 3 above, the ESG-CV certifications in Appendix I must be submitted by all States and non-States applying to receive Emergency Solutions Grants Program funding under the CARES Act for each allocation of ESG-CV funding. These certifications are the same standard ESG certifications HUD requires from non-States, except that the match certification is removed and the CARES Act's exemption of temporary emergency shelters is expressly stated in the "Major rehabilitation/conversion/renovation" and "Essential Services and Operating Costs."

5. Annual ESG funds

a. The ESG certifications in Appendix II are required to be submitted for each annual ESG grant under which the State will exercise HUD's waiver allowing the State to carry out ESG activities directly in order to prevent, prepare for, or respond to coronavirus and are allowed but required to be submitted for each annual ESG grant under which the State will otherwise use its available funds to prevent, prepare for, or respond to coronavirus in accordance with the flexibilities and requirements established for ESG-CV funds. These certifications reflect the same standard ESG certifications HUD requires from non-States, except that the match certification is removed and the CARES Act's exemption of temporary emergency shelters is expressly stated in the "Major rehabilitation/conversion/renovation" and "Essential Services and Operating Costs." For purposes of annual ESG funds that are not used to prevent, prepare for, or respond to coronavirus in accordance with flexibilities and requirements established for ESG-CV funds, however, these certifications cannot be used in place of the standard ESG certifications the recipient must submit for its annual ESG grants.

b. The ESG certifications in Appendix III are allowed, but not required to be submitted for each annual ESG grant under which an ESG recipient, other than a State, intends to use its available funds to prevent, prepare for, and respond to coronavirus in accordance with flexibilities and requirements established for ESG-CV funds. These certifications are the same standard ESG certifications HUD requires from non-States, except that the match certification is removed and the CARES Act's exemption of temporary emergency shelters is expressly stated in the "Major rehabilitation/conversion/renovation" and "Essential Services and Operating Costs." For purposes of annual ESG funds that are not used to prevent, prepare for, and respond to coronavirus in accordance with flexibilities and requirements established for ESG-CV funds, these certifications cannot be used in place of the standard ESG certifications the recipient must submit for its annual ESG grants. Standard certifications for non-states can be found here: https://files.hudexchange.info/resources/documents/Emergency-Solutions-Grants-Esg-Program-Certifications-Non-State.pdf.

VII. POLICY PRIORITIES

This section, which includes policy priorities and reminders of existing program requirements, provides additional context regarding the waivers and alternative requirements granted above:

A. Policy Priorities.

1. *Selecting Subrecipients.* ESG-CV funding will substantially increase many jurisdictions' ESG allocation. While necessary to shelter and house individuals and families experiencing and at risk of homelessness, this influx of funding may stress the capacity of existing ESG subrecipients. Therefore, recipients should consider funding organizations that have not traditionally received ESG funding. This may involve using already established criteria for selecting subrecipients. However, if a recipient changes its criteria for selecting subrecipients, it should consider criteria related to:
(i) The organization's demonstrable history and familiarity with operating the type of activity for which it will receive funding (e.g., street outreach, emergency shelter);
(ii) The organization's experience serving the population experiencing homelessness and at severest risk of complications from coronavirus (e.g., individuals experiencing homelessness over age 50, having particular health issues, minority and indigenous populations).
(iii) Previous performance of the organization in providing housing, shelter, or services to individuals and families experiencing or at risk of homelessness (e.g., the length of time individuals and families remain homeless before they are housed, overall reduction in the number of homeless individuals and families, success at reducing the number of individuals and families who become homeless, etc.).

Recipients are encouraged to subgrant funds to community-based non-profit organizations, including faith-based organizations. HUD will publish technical assistance materials to assist recipients in expanding their subrecipients.

2. *Providing Essential Services to Promote Independent Living, Sobriety, Employment, Self-Sufficiency, and Residential Stability.* Recipients are encouraged to use ESG-CV funds to provide essential services and housing relocation and stabilization services to program participants to promote independent living, sobriety, employment, self-sufficiency, and housing stability. The CARES Act, however, prohibits requiring treatment or other activities as a condition of receiving assistance.

Recipients are especially encouraged to provide services that promote these outcomes when providing emergency shelter or temporary emergency shelter. Recipients are also encouraged to consider their ability to provide these services, and the success of subrecipients on helping individuals on their pathway to achieving outcomes related to independent living, sobriety, employment, self-sufficiency, and housing stability when making funding decisions and seeking waivers for ESG-CV funds.

Finally, recipients are reminded that being able to provide services to support program participants on their pathway to independent living, sobriety, employment, self-sufficiency, and housing stability can be a powerful marketing tool to encourage landlords to rent their unit to an individual or family experiencing or at risk of homelessness.

3. *Prioritize Households Based on Need.* HUD encourages recipients to prioritize households that are most in need of this assistance, and encourages recipients to use this opportunity to develop strategies within the community's public health response that respond to the immediate crisis needs of individuals and families experiencing homelessness and at risk of homelessness as well as to develop a plan to respond to the economic effects of coronavirus for individuals and families experiencing homelessness and at risk of homelessness.

4. *Use ESG-CV Funds to Prevent the Spread of Coronavirus.* To ensure ESG-CV funds are used effectively and efficiently to prevent, prepare for, and respond to coronavirus, recipients should carefully evaluate the appropriateness and cost effectiveness of interventions needed to immediately respond to the public health emergency (e.g., establishing temporary emergency shelters or using funds for hotel and motel vouchers).

5. *Use ESG-CV Funds to Quickly Provide Needed Connections to Housing.* People experiencing homelessness are at risk for infection during community spread of coronavirus and lack of housing contributes to poor physical and mental health outcomes. HUD encourages recipients to quickly obligate and expend their ESG-CV funds to ensure housing and services are available to people experiencing homelessness and at risk of homelessness.

B. Program Requirements. As a reminder, the following requirements, which apply to annual ESG funding, also apply to ESG-CV funds:

1. *Participation of Faith-Based organizations*. All requirements of 24 CFR 5.109 apply, and the lawful participation of faith-based entities must not be hindered when administering ESG-CV funds.

2. *Prohibition on the provision of illegal or addictive substances*. As established in 2 CFR 200.303, 200.404, and 200.423 and Subpart B of 24 CFR Part 576, HUD reminds recipients that using ESG funds to provide alcohol, marijuana, or illegal substances, or any paraphernalia used to partake of any such substance, to program participants is a strictly prohibited.

3. *Legal Services Must be Necessary to Obtain or Retain Housing.* To be eligible under the ESG program, legal services established in 24 CFR 576.102(a)(1)(vi) and 24 CFR 576.105(b)(4) must be necessary to help program participants obtain housing or keep a program participant from losing housing where they currently reside.

4. *Use of hotels and motels.* While ESG-CV funds may be used to provide hotel or motel stays for program participants consistent with 24 CFR 576.102 and this Notice, providing permanent housing in hotels and motels is an ineligible use of ESG funds (including ESG-CV funds) under section 415(a) of the McKinney-Vento Act and 24 CFR part 576, subpart B.

VIII. 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.

John Gibbs

Digitally signed by JOHN GIBBS
Date: 2020.09.01 13:14:42 -04'00'

Acting Assistant Secretary
for Community Planning and Development