



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

WASHINGTON, DC 20410-7000

OFFICE OF COMMUNITY PLANNING  
AND DEVELOPMENT

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**Special Attention of:**

All CPD Division Directors  
HUD Field Offices  
HUD Regional Offices  
All ESG Formula Recipients  
All Continuums of Care (CoC)  
Recipients of the Continuum of Care (CoC)  
Program

**Notice: CPD-17-10**

**Issued: October 23, 2017**

**Expires:** This Notice is effective until it is amended, superseded, or rescinded

**Cross Reference:** 24 CFR Part 576 and  
42 U.S.C. 11373 and P.L. 114-201

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**Subject: Sub-awarding Emergency Solutions Grants Program Funds to Public Housing Agencies and Local Redevelopment Authorities**

**I. Purpose**

This Notice provides guidance on how Emergency Solutions Grants (ESG) Program funds can be sub-awarded to Public Housing Agencies (PHAs) and Local Redevelopment Authorities (LRAs) following the recent amendment to section 414(c) of the McKinney-Vento Homeless Assistance Act (McKinney-Vento Act) (42 U.S.C. 11373(c)).

**A. Background**

On July 29, 2016, President Obama signed into law the Housing Opportunity Through Modernization Act of 2016, Public Law 114-201 (HOTMA), which amended the McKinney-Vento Act to permit local governments receiving ESG funding to sub-award their ESG funds to PHAs and LRAs for eligible ESG activities. Prior to HOTMA, ESG recipients and subrecipients were not permitted to sub-award ESG Program funds to PHAs. As indicated in the October 24, 2016 HOTMA Federal Register Notice (81 FR 73030), HUD is issuing this Notice to explain the conditions and requirements that apply to subawarding ESG funds to PHAs and LRAs.

**B. Applicability**

HUD is providing the guidance in this Notice to all ESG recipients. The HOTMA amendment to the McKinney-Vento Act only permits recipients or subrecipients of ESG funds that are units of general purpose local government to sub-award funds to PHAs and LRAs.

**C. Key Terms and Definitions**

- 1. Public Housing Agency (PHA)**—means any State, county, municipality, or other governmental entity or public body or agency or instrumentality thereof which is authorized to engage in or assist in the development or operation of public housing, or a consortium of such entities or bodies as approved by the Secretary.<sup>1</sup>

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<sup>1</sup> See section 3(b)(6) of the United States Housing Act of 1937 (42 U.S.C. 1437a(b)(6)), which is incorporated by reference in section 414(c) of the McKinney-Vento Act.

2. **Local Redevelopment Authority (LRA)**—means any entity defined as a local redevelopment authority under applicable State law.
3. **Local Government**—means a unit of general purpose local government; an instrumentality of a unit of general purpose local government, other than a public housing agency, that is established pursuant to legislation and designated by the chief executive to act on behalf of the local government with regard to ESG activities; or a combination of general purpose local governments, such as an association of governments, that is recognized by HUD.<sup>2</sup>

## II. HOTMA Amendment to the McKinney-Vento Act

The HOTMA amendment permits ESG recipients and subrecipients that are local governments to sub-award funds to PHAs and LRAs. Specifically, section 414(c) of the McKinney-Vento Act, as amended by HOTMA, states:

“DISTRIBUTIONS TO NONPROFIT ORGANIZATIONS, **PUBLIC HOUSING AGENCIES, AND LOCAL REDEVELOPMENT AUTHORITIES.** Any local government receiving assistance under this subtitle may distribute all or a portion of such assistance to private nonprofit organizations providing assistance to homeless individuals, **to public housing agencies (as defined under section 3(b)(6) of the United States Housing Act of 1937), or to local redevelopment authorities (as defined under State law).** Any State receiving assistance under this subtitle may distribute all or a portion of such assistance to private nonprofit organizations providing assistance to homeless individuals, if the local government for the locality in which the project is located certifies that it approves of the project.” (emphasis added).

This change became effective upon enactment of HOTMA on July 29, 2016, and no regulations are needed to implement this change.

## III. Allowable Sub-awards to PHAs and LRAs

- A. **ESG Program Grants to Metropolitan Cities and Urban Counties.** The HOTMA amendment provides explicit authority to local governments to sub-award funds to PHAs and LRAs. Any local government that received an ESG Program grant from HUD or received ESG Program funds from an urban county as a member government may sub-award all or a portion of those funds to a PHA or LRA, subject to the requirements in Section IV. of this Notice.
- B. **ESG Program Grants to States.** The HOTMA amendment does not authorize States to directly sub-award ESG funds to PHAs or LRAs. However, subject to the requirements of Section IV. of this Notice, any local government that receives ESG Program funds from a State may sub-award such funds to a PHA or LRA. As a result of changes made by MAP-21, a State may sub-award to an LRA if the LRA is an instrumentality of a unit of general purpose local government, other than a PHA, that is established pursuant to legislation and

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<sup>2</sup> The definition of “local government” reflects a change made by the Moving Ahead for Progress in the 21st Century (MAP-21) Act, Public Law No. 112-141 (2012).

designated by the chief executive to act on behalf of the local government with regard to ESG activities.

- C. Private Nonprofit Organizations.** Private nonprofit organizations that receive ESG Program funds as subrecipients are prohibited from sub-awarding ESG Program funds to PHAs or LRAs.

#### **IV. Key Requirements**

The statutory authority to sub-award ESG Program funds to a PHA or LRA applies to all ESG Program grant funds, including funds awarded before July 29, 2016. However, this authorization is subject to certain conditions and requirements.

##### **A. Consistency with the Consolidated Plan**

1. ESG Program recipients and subrecipients must ensure that the sub-award to a PHA or LRA is consistent with the applicable Consolidated Plan. If a current Consolidated Plan or Annual Action Plan identifies specific ESG activities or subrecipients that would change as a result of a sub-award to a PHA or LRA, the ESG Program recipient must amend its plan as required under the recipient's citizen participation plan.
2. The ESG Program interim rule requires that the ESG Program recipient amend its approved Consolidated Plan in order to:
  - a. make a change to its allocation priorities;
  - b. make a change in its method of distributing funds;
  - c. carry out an activity not previously described in the plan; or
  - d. change the purpose, scope, location, or beneficiaries on an activity (see 24 CFR 576.200(b)).

##### **B. Consistency with Contractual Obligations and State Law**

1. If a local government that received ESG Program funds from a State or urban county intends to sub-award some of those funds to a PHA or LRA, the local government must make sure that the sub-award is permissible under the local government's agreement with the State or urban county.
2. The ESG Program recipient is ultimately responsible for administering ESG Program funds, including funds that are administered by its subrecipients.
3. Recipients and subrecipients must also ensure that sub-awarding funds to a PHA or LRA does not conflict with existing contracts or subgrant agreements. HOTMA does not authorize local governments to reallocate funds that are already obligated through a binding contract or subrecipient agreement.
4. ESG Program recipients and subrecipients must ensure the sub-award to a PHA or LRA is consistent with the functions the PHA or LRA is authorized to carry out under State law.

## C. Consistency with ESG Program Requirements

ESG program recipients and subrecipients, including any PHAs and LRAs that receive an ESG sub-award, must comply with the ESG Program requirements under 24 CFR part 576. It is important to note that some ESG Program requirements are similar but not the same as requirements PHAs must follow in administering other HUD programs; these should be taken into consideration when sub-awarding ESG Program funds to a PHA or LRA. Local governments and PHAs must take care to ensure that PHAs and LRAs apply the ESG Program requirements when administering ESG Program rental assistance. For example, the housing standards for ESG (§576.403) are similar but not the same as HUD's Housing Quality Standards (HQS); a unit that meets HQS might not necessarily meet the ESG Program habitability standards and vice versa. The following requirements are particularly important to consider when sub-awarding ESG Program funds to a PHA or LRA:

### 1. Organizational Conflicts of Interest (24 CFR 576.404(a))—Prohibited Practices

- a. Recipients and subrecipients are prohibited from conditioning the provision of any type or amount of ESG Program assistance on an individual's or family's acceptance or occupancy of emergency shelter or housing owned by the recipient, the subrecipient, or a parent or subsidiary of the subrecipient.
- b. If subrecipients or their parents or subsidiaries own housing, those subrecipients are prohibited from conducting the initial evaluation for ESG assistance and from administering ESG homelessness prevention assistance for occupants of that housing.

### 2. Prohibitions against Using ESG Program Funds with Other Subsidies (24 CFR 576.105(d) and 576.106(c))

- a. Except for a one-time payment of rental arrears on the tenant's portion of the rental payment, recipients and subrecipients are prohibited from providing rental assistance to a program participant who is receiving tenant-based rental assistance, or living in a housing unit receiving project-based rental assistance or operating assistance, through other public sources.
- b. Recipients and subrecipients are prohibited from providing rental assistance to program participants who have been provided with replacement housing payments under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) during the period of time covered by the URA payments.
- c. Recipients and subrecipients are prohibited from providing financial assistance under 24 CFR 576.105(a) to a program participant who is receiving the same type of assistance through other public sources or to a program participant who has been provided with replacement housing payments under the URA, during the period of time covered by the URA payments.

**Note:** HUD strongly discourages PHAs and LRAs from using ESG funds to pay for rental arrears owed to them by a program participant. PHAs/LRAs are prohibited from paying themselves rental arrears unless the cost: a) meets the criteria for allowable costs under 24 CFR 200.403; b) is necessary to help a homeless individual or family move as quickly as possible into permanent housing and achieve stability in that housing (24 CFR

576.104); and c) is not prohibited by the conflict of interest requirements in 24 CFR 576.404(a).

**V. Questions Regarding this Notice**

Questions regarding this Notice should be submitted to HUD's Ask A Question at:  
[www.hudexchange.info/get-assistance/my-question/](http://www.hudexchange.info/get-assistance/my-question/)