



OFFICE OF COMMUNITY PLANNING
AND DEVELOPMENT

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

Special Attention of:

All CPD Directors
HUD Field Offices
HUD Regional Offices
All Continuums of Care
All ESG Program Recipients and
Subrecipients
Tribes
Tribally Designated Housing Entities

Notice: CPD-21-08**Issued:** July 19, 2021**Expires:** This notice is effective until amended, superseded, or rescinded. This notice supersedes Notice CPD-20-08.

TITLE: Waivers and Alternative Requirements for the Emergency Solutions Grants (ESG) Program Under the CARES Act**EFFECTIVE DATE:** July 19, 2021

SUMMARY: This Notice supersedes Notice CPD-20-08, published on September 1, 2020, and reestablishes the allocation formula and amounts and reestablishes and announces new requirements for the \$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. HUD may reassess any waivers established under this Notice prior to September 30, 2022.

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 Grants 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 amended these grant agreements for all 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 FY 2020 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_Met_hodology_rev.pdf. The 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, 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 was previously instructed to 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. The deadline for these submissions (whether made in the jurisdiction's FY 2020 action plan or an amendment to the jurisdiction's most recently approved plan) is August 16, 2021, consistent with the deadline the CARES Act established to supersede the deadline that would apply under 24 CFR 91.15 for the consolidated planning submissions for FY2019 and FY2020 funding for CPD formula programs.

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. With respect to ESG-CV funds to be awarded, each recipient must describe the activities they will fund with those 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 to receive the ESG-CV funds described in this Notice 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.

d. With respect to ESG-CV funds already received, recipients that wish to make a change described in 24 CFR 576.200(b), including changing the allocation, distribution, or use of ESG-CV funds, 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 planned changes, at a minimum, on the Internet at the appropriate Government web site or through other electronic media.

G. Applicability of Previously Published Waivers and Alternative Requirements

Notice [CPD-21-05 – Waiver and Alternative Requirements for the Emergency Solutions Grants \(ESG\) Program Under the CARES Act](#) will continue to apply as written and without alteration by this Notice. Recipients that received particularized waivers or exceptions in response to their specific circumstances may continue to apply those waivers and exceptions subject to the conditions provided in those waivers or exceptions, although they may also use any further flexibility provided in this Notice under the conditions and alternative requirements provided in this Notice.

H. Highlights of Changes

This Notice makes changes from Notice CPD-20-08, including:

1. *Emergency Shelter Activities.* The limitation in Notice CPD-20-08 that ESG-CV funds may only be used for the costs of providing emergency shelter until January 31, 2022 has been lifted. ESG-CV funds may be used to pay for emergency shelter costs, as needed, consistent with this Notice to prevent, prepare for, and respond to coronavirus.

2. *Temporary Emergency Shelter Activities.* The limitation in Notice CPD-20-08 that ESG-CV funds may only be used for the costs of providing temporary emergency shelter until January 31, 2022 has been lifted. ESG-CV funds may be used to pay for temporary emergency shelter costs, as needed, consistent with this Notice to prevent, prepare for, and respond to coronavirus. Additionally, as needed, recipients may convert temporary emergency shelter acquired or improved with ESG-CV funds into emergency shelter as defined at 24 CFR 576.2 without triggering the disposition requirements in 2 CFR 200.311(c). See Section III.E.3.a of this Notice for additional information.

3. *New Eligible Activities.* Section III.E of this Notice establishes new eligible activities to cover costs of loaning cell phones with wireless plans to program participants to conduct activities necessary for obtaining and maintaining housing, providing personal protective equipment to program participants, providing laundry services to individuals and families living in unsheltered locations, making vaccine incentive payments to people experiencing homelessness, providing furniture and household furnishings to program participants while they are receiving rapid re-housing or homelessness prevention assistance, providing essential services to households

receiving rapid re-housing and homelessness prevention assistance as well as program participants residing in hotels and motels paid for with ESG-CV funds, paying for renters insurance for households receiving rapid re-housing or homelessness prevention assistance, assuring the applicable coordinated entry system can quickly prioritize and connect people to appropriate housing and services to prevent and respond to coronavirus, and providing sponsor-based rental assistance for program participants receiving rapid re-housing or homelessness prevention assistance.

4. *Aligning Eligibility and Re-evaluation Income Limits.* The income limit of 30 percent of median family income, as determined by HUD, to be eligible for homelessness prevention and to continue to receive homelessness prevention or rapid re-housing assistance has been raised to Very Low Income as described in Section III.E.4 (eligibility) and Section III.F.13 (re-evaluation) of this Notice.

5. *New Rental Assistance Allowances.* As provided in Section III.E.4.b of this Notice, recipients or subrecipients providing project-based rental assistance may pay for rent for a maximum of 30 days from the end of the month in which the unit was vacated while the recipient or subrecipient attempts to house another eligible program participant in that unit. Additionally, if a program participant moves into a unit in the middle of the month, the Notice provides that the initial payment of a half month's rent does not count towards the program participant's total rental assistance. Further, recipients and subrecipients may allow program participants to enter into subleases when receiving rapid re-housing or homelessness prevention assistance.

6. *Helping Current ESG Program Participants Maintain Housing.* The limitation that a program participant may only receive services or rental assistance for up to 24 months in a 3-year period is waived for all program participants while receiving ESG-CV assistance. Further, if a program participant moves into a unit in the middle of the month, the Notice provides that the initial payment of a half month's rent does not count towards the program participant's total rental assistance. See Section III.E.4.g of the Notice for more information. Additionally, the limitation of medium-term rental assistance to 12-months has been lifted.

7. *Permanent Housing - Habitability and Housing Quality Standards.* As provided in Section III.F.14, recipients and subrecipients must ensure that housing meets minimum habitability standards established in 24 CFR 576.403(c) or Housing Quality Standards (HQS) established under 24 CFR 982.401 before helping a program participant remain or move into housing. Additionally, recipients may provide housing relocation and stabilization services for individuals and families receiving homelessness prevention assistance without conducting habitability or HQS inspections.

8. *Housing Stability Case Management.* Recipients and subrecipients providing housing stability case management as allowed at 24 CFR 576.105(b)(2) may pay for housing stability case management for up to 60 days while the program participant is seeking housing, instead of 30 days as currently permitted by 24 CFR 576.105(b)(2). See Section III.E.4.f of this Notice for more information.

9. *Permitting Recipients and Subrecipients to Subaward Funds to tribes and tribally-designated housing authorities.* The limitation that recipients and subrecipients may not subaward funds to Indian Tribes and Tribally Designated Housing Entities is waived. See Section III.A of this Notice for more information.

10. *Including Indian Tribes in the Definition of “Subrecipient.”* As provided in Section I.B.1.e of this Notice, the definition of “subrecipient” at 24 CFR 576.2 is waived to expressly include Indian tribes and tribally designated housing entities.

11. *Providing Additional Flexibilities for Puerto Rico and the Territories.* The definition of “State” in Section 411 of the McKinney-Vento Homeless Assistance Act and 24 CFR 576.2 is waived to include an instrumentality of the Commonwealth of Puerto Rico. Additionally, the definition of “Territory” is waived to include an instrumentality of a Territory. See Section I.B.1.d and III.A.3 for additional information.

I. 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. *Homeless* has the meaning established at 24 CFR 576.2 except that the limitation in paragraph (1)(iii) that an individual who is exiting an institution where he or she resided for 90 days or less and who resided in an emergency shelter or place not meant for human habitation immediately before entering that institution has been waived and the following alternative requirement established: An individual may qualify as homeless under paragraph (1)(iii) of the homeless definition in 24 CFR 576.2 so long as the individual is exiting an institution where the individual resided for 120 days or less and the individual resided in an emergency shelter or place not meant for human habitation immediately before entering that institution. This waiver and alternative requirement is necessary because recipients are reporting that program participants are residing in institutions for longer periods of time as a result of coronavirus (e.g., longer time in jail due to postponed court dates due to court closings or courts operating at reduced capacity and longer hospital stays when infected with coronavirus). Allowing someone who was residing in an emergency shelter or place not meant for human habitation prior to entering the institution to maintain their homeless status while residing in an institution for longer than 90 days is necessary to prevent the spread of coronavirus by expanding housing options for people who were experiencing homelessness and institutionalized longer than traditionally required due to coronavirus.

c. *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.

d. *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. In addition, as provided in section III.A of this Notice, “State” also includes an instrumentality of the Commonwealth of Puerto Rico as authorized by the following:

- (i) The governor’s written designation of the instrumentality to act on behalf of the state with respect to the Emergency Solutions Grants program; and
- (ii) Certification by the governor that the instrumentality meets each of the following criteria or evidence that otherwise shows the entity qualifies as an instrumentality of the state under its state law:
 - (a) The entity is used for a governmental purpose and performs a governmental function;
 - (b) The entity performs its function on behalf of the state;
 - (c) The state has the authority to appoint members of the governing body of the entity OR the control and supervision of the entity is vested in the state government;
 - (d) State statutory authority is needed to create and/or use the entity; and
 - (e) No part of the net earnings inures to the benefit of any private shareholder, member or individual.

e. *Subrecipient* means a local government, private nonprofit organization, public housing agency, local redevelopment authority, Indian tribe or tribally designated housing entity (as such terms are defined in the Native American Housing Assistance and Self-Determination Act of 1996, as amended) that receives a subaward of ESG funds as permitted under this Notice.

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 for FY2020 and earlier fiscal years 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. *Indian Area* means has the same meaning as that term is defined in section 4 of the Native American Housing Assistance and Self-Determination Act of 1996, as amended (25 U.S.C. 4103).

f. *Indian Tribe and Tribally Designated Housing Entity* have the same meaning as those terms are defined in section 4 of the Native American Housing Assistance and Self-Determination Act of 1996, as amended (25 U.S.C. 4103).

g. *Sponsor-based Rental Assistance* means rental assistance that is provided pursuant to a contract that (1) is between the recipient or subrecipient and a separate government agency, instrumentality, or nonprofit organization (“sponsor”) that owns or leases dwelling units; and (2) provides that rental assistance payments shall be made to sponsor and that program participants shall occupy such assisted units.

h. *Temporary Emergency Shelter* means any structure or portion of a structure, which is used during a Federal, state, or local emergency declaration, such as for a natural disaster or public health emergency, and for up to 12 months after that declaration expires, 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 which 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)(d) through (g).

i. *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, for example, providing Personal Protective Equipment to emergency shelter 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, for example, 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 or 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, for example, 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 at 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 for 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.2 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 requirement 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.

A. Means of Carrying Out Grant Activities. In general, the requirements at 24 CFR 576.202 apply, except as provided by the Housing Opportunity Through Modernization Act of 2016 (HOTMA) and MAP-21 Act changes clarified in [HUD Notice CPD-17-10](#) and as provided by the CARES Act waivers and alternative requirements below.

1. *For states other than territories, but including the Commonwealth of Puerto Rico.* The subgrant requirements and subrecipient limitations under section 414(a) and (c) of the McKinney-Vento Act, 24 CFR 576.2, and 24 CFR 576.202(a), which together require States to subgrant all of their funds except those used to carry out Homeless Management Information System (HMIS) activities and administrative activities to units of general purpose local government and private nonprofit organizations, are waived to the extent necessary to add the follow alternative requirements:

a. *States may use up to 100 percent of grant funds awarded to carry out activities directly.* This flexibility is needed to ensure that enough entities with capacity are available to administer ESG-CV funds and to provide additional administrative efficiency to States. 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.

b. *States may subaward funds to public housing agencies, as defined under section 3(b)(6) of the United States Housing Act of 1937, and local redevelopment authorities, as defined under state law.* This flexibility is needed to ensure that there are enough entities with capacity available to administer ESG-CV funds.

c. *States may subaward funds to Indian tribes and tribally designated housing entities.* This flexibility is needed to ensure that States can effectively distribute their ESG-CV funds to prevent, prepare for, and respond to coronavirus among all populations who are homeless, at risk of homelessness, or receiving homeless assistance, including in Indian Areas, provided the Indian Tribe with jurisdiction over the Indian Area consents to receiving such assistance and the recipient coordinates such assistance with the Indian tribe.

d. *The Commonwealth may subaward funds to an instrumentality of the Commonwealth, provided that the instrumentality has legal authority and capacity to carry out ESG activities.* This flexibility is needed to assure there is sufficient capacity in the Commonwealth to administer the funds efficiently to prevent, prepare for, and respond to coronavirus.

2. *For local governments and territories.*

a. *Local governments may subaward funds to Indian tribes and tribally designated housing entities.* The limitations on eligible subrecipients of local governments under Section 414(c) of the McKinney-Vento Act and limitations on eligible subrecipients under 24 CFR 576.2 and 24 CFR 576.202(b) are waived to the extent necessary to allow a local government to subaward ESG-CV funds to Indian Tribes and Tribally Designated Housing Entities. This flexibility is needed to ensure local governments can effectively distribute their ESG-CV funds to prevent, prepare for, and respond to coronavirus among all populations who are homeless, at risk of homelessness, or receiving homeless assistance, including in Indian Areas, provided the Indian

tribe with jurisdiction over the Indian Area consents to receiving such assistance and the recipient coordinates such assistance with the Indian tribe.

b. *Territories may subaward funds to an instrumentality or municipality.* The limitations on eligible subrecipients under Section 414 of the McKinney-Vento Act and limitations on eligible subrecipients under 24 CFR 576.2 and 24 CFR 576.202(b) are waived to the extent necessary to allow a territory (i.e., the Virgin Islands, Guam, American Samoa, or the Northern Mariana Islands) to subaward funds to an instrumentality or municipality, provided that the instrumentality or municipality has sufficient capacity and legal authority to carry out ESG activities. This flexibility is necessary to assure there is sufficient capacity in the territories to administer the funds efficiently to prevent, prepare for and respond to coronavirus.

3. Additional flexibility for Puerto Rico and the Territories.

The following flexibilities are provided in addition to the flexibilities established above in order to assure Puerto Rico and the territories have sufficient capacity to effectively and efficiently administer their ESG-CV funds to prevent, prepare for and respond to coronavirus. However, an instrumentality that is acting as the recipient may not also subaward funds to an instrumentality of the same government.

a. The definition of “State” in section 411 of the McKinney-Vento Homeless Assistance Act and 24 CFR 576.2 is waived to the extent necessary to allow a “State” to include an instrumentality of the Commonwealth of Puerto Rico that is authorized by:

- (i) The governor’s written designation of the instrumentality to act on behalf of the Commonwealth with respect to the ESG Program; and
- (ii) Certification by the governor of the Commonwealth that the instrumentality meets each of the following criteria or evidence that otherwise shows the entity qualifies as an instrumentality of the Commonwealth under its local laws:
 - (a) The entity is used for a governmental purpose and performs a governmental function;
 - (b) The entity performs its function on behalf of the Commonwealth;
 - (c) The Commonwealth has the authority to appoint members of the governing body of the entity OR the control and supervision of the entity is vested in the Commonwealth’s government;
 - (d) the Commonwealth’s statutory authority is needed to create and/or use the entity; and
 - (e) No part of the net earnings inures to the benefit of any private shareholder, member or individual.

b. The definition of “State” in section 411 of the McKinney-Vento Homeless Assistance Act and the definition of “Territory” in 24 CFR 576.2 are waived to the extent necessary to allow these terms to include an instrumentality of a territory (i.e., the Virgin Islands, Guam, American Samoa, or the Northern Mariana Islands) that is authorized by:

- (i) The Chief Executive of the territory’s written designation of the instrumentality to act on behalf of the territory with respect to the ESG Program; and
- (ii) Certification by the Chief Executive of the territory that the instrumentality meets each of the following criteria or evidence that otherwise shows the entity qualifies as an instrumentality of the territory under its local laws:
 - (a) The entity is used for a governmental purpose and performs a governmental function;
 - (b) The entity performs its function on behalf of the territory;

- (c) The territory has the authority to appoint members of the governing body of the entity OR the control and supervision of the entity is vested in the Territory's government;
- (d) the territory's statutory authority is needed to create and/or use the entity; and
- (e) No part of the net earnings inures to the benefit of any private shareholder, member or individual.

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 the recipient's total allocation of 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.a. 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.

b. Recipients that are metropolitan cities, urban counties, or territories have up to 240 days from the date HUD signs the grant agreement to obligate ESG-CV funds.

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. *Documentation in the Integrated Disbursement and Information System (IDIS).* Before drawing down funds for an activity, the recipient must enter complete, up-to-date information on that activity in the 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 ESG 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 200.1, 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 the 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.

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.F.8 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, and 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. The CARES Act exemption of ESG habitability standards and environmental review requirements do not exempt recipients and subrecipients from complying with state and local laws (such as safety or sanitation codes) that apply on their own terms to the recipient or subrecipient's activities and do not conflict with Federal law. Additionally, 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 requirements provided in section III.E.3.a(iii) of this Notice.

(c) 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;

(d) 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;

(e) 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;

(f) 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

(g) 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.

(iii) Additional requirements for property acquired or improved with ESG-CV funds. When the property is determined no longer necessary or appropriate for use as a temporary emergency shelter, as defined in this Notice, the property may be converted for use as an emergency shelter as described below without triggering the disposition requirements in 24 CFR 200.311(c).

However, when it becomes unnecessary or impracticable to use the property either as temporary emergency shelter or emergency shelter, as described in this Notice, the owner of the property must obtain disposition instructions from HUD as provided by 24 CFR 200.311(c).

(a) Before conversion to use as a normal emergency shelter under 24 CFR part 576, the property must undergo a satisfactory environmental review pursuant to 24 CFR part 58 and must be inspected and determined to meet the minimum shelter standards in 24 CFR 576.403.

(b) The recipient must notify HUD when it begins using the property as an emergency shelter as defined in 24 CFR 576.2 and must report the status of the property to HUD either on an annual basis or at a lesser frequency that HUD may specify as provided by 24 CFR 200.330.

(c) The recipient must maintain up-to-date documentation showing the property is being used as an emergency shelter as defined in 24 CFR 576.2 and operated in accordance with all requirements that apply to emergency shelters under 24 CFR part 576, subpart E;

(d) If the property was renovated with ESG-CV funds (including major rehabilitation or conversion), the property must be used as an emergency shelter under these requirements for at least the period specified in 24 CFR 576.102(c)(1), beginning on the date the building is first occupied by a homeless individual or family after the renovation.

(e) On or before the conversion of the property to an emergency shelter as defined in 24 CFR 576.2, the recipient must record a lien or other appropriate notice of record to indicate that the property has been acquired or improved with a Federal award and that the use and disposition conditions above apply to the property.

b. *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.

c. *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.

d. *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.

e. *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 for quickly re-housing people experiencing homelessness or at risk of homelessness, especially in tight rental markets, which 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 (these are separate from the costs of security deposits under 24 CFR 576.105(a) and, therefore, does not factor into the cap established in that section);
- (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.

To support these costs, the recipient must determine and document that each of these costs is reasonable under the program participant's particular circumstances, and not more than is necessary to house the program participant.

f. *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 the 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.

g. *Cell Phones and Internet.* 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 the costs of providing temporary cell phones for individuals and families experiencing homelessness, receiving rapid re-housing assistance under the Continuum of Care (CoC) Program, Youth Homelessness Demonstration Program (YHDP), and ESG Program, receiving homelessness prevention assistance under the ESG Program, or residing in permanent supportive housing funded under the CoC and YHDP Programs. To qualify as an eligible cost, the cell phone must be owned by the recipient/subrecipient, and the wireless service plan must be the recipient/subrecipient's, but the phone may be loaned to program participants and the wireless service cost may be paid as needed to enable program participants to participate in activities necessary to obtain or maintain housing (e.g., to interview for jobs, to receive health and mental health services, or to continue education). The phone and phone service may be loaned to the participant while stay-at-home or social distancing orders are in effect in the community in which the program participant resides, or while they continue to need it to participate in activities necessary to obtain and maintain housing that remain virtual even after social distancing measures are relaxed and must be returned to the recipient/subrecipient when no longer necessary for these purposes. Waiving the limitations on eligible costs under street outreach, emergency shelter, and housing relocation and stabilization services and allowing ESG-CV funds to pay for these costs will allow individuals and families experiencing homelessness, or receiving rapid re-housing or homelessness prevention assistance, or residing in permanent supportive housing to participate in important activities. Such activities include interviewing for jobs and receiving services necessary to obtain and maintain housing during the period that stay-at-home and social distancing measures are in effect to avoid exposure to and prevent the spread of coronavirus, as well as to continue participating in these activities to the extent that they remain virtual even after social distancing measures are relaxed (e.g., continued virtual employment and education) in order to obtain and maintain housing during the economic downturn caused by coronavirus.

h. *Personal Protective Equipment (PPE) for Program Participants.* While ESG-CV funds can currently be used to purchase PPE for program participants as an essential service under emergency shelter and street outreach and as necessary to participate in eligible activities under rapid re-housing and homelessness prevention assistance, the limitations on eligible activities provided in section 415(a) and 24 CFR 576.105(b) are waived and alternative requirements are established to the extent necessary to authorize ESG-CV funds to be used to buy PPE (such as masks, disposable gloves, and hand sanitizer) for program participants receiving homelessness prevention and rapid re-housing assistance to the extent the program participant needs the PPE to avoid exposure to and prevent the spread of coronavirus (e.g., to go out in public or enter common areas of housing).

i. *Furniture and Household Furnishings.* The limitations on eligible activities provided in 24 CFR 576.105(b) are waived and alternative requirements are established to the extent necessary to authorize ESG-CV funds to be used to buy furniture and household furnishings for use by program participants while they are receiving homelessness prevention and rapid re-housing assistance. Furniture and other household furnishings can help establish program participants in housing, which can contribute to housing stability. Therefore, this waiver and alternative requirement are necessary to help program participants obtain and maintain housing, which is critical to preventing the spread of coronavirus during the period that stay-at-home and social distancing measures are required or recommended. This waiver and alternative requirement are also needed in order to respond to coronavirus by assuring program participants can still obtain and maintain housing during the economic downturn caused by coronavirus when their incomes and resources are not enough to obtain the furniture necessary to contribute to housing stability. Additionally, recipients are reminded that if ESG-CV funds are used to purchase household furnishings, they will be subject to the requirements for equipment at 2 CFR 200.313, including the disposition requirements included in paragraph (e) of that section.

j. *Essential Services for Individuals and Families Receiving Rapid Re-housing and Homelessness Prevention Assistance.* The limitation on eligible activities provided in section 415(a) of the McKinney-Vento Act and 24 CFR 576.102(a)(1), 24 CFR 576.103, and 24 CFR 576.104 are waived to the extent necessary to allow ESG-CV funds to be used for the costs of providing essential services established at 24 CFR 576.102(a)(1) to program participants receiving rapid re-housing and homelessness prevention assistance as necessary to assist them to obtain and maintain housing. Recipients are reporting that program participants receiving rapid re-housing and homelessness prevention assistance require services beyond those allowed at 24 CFR 576.105(b) – such as mental health services, outpatient health services, transportation, substance abuse services – to help them obtain and maintain housing. Therefore, this waiver and alternative requirement are necessary to help program participants obtain and maintain housing, which is critical to preventing the spread of coronavirus and mitigating its impact on program participants during the economic downturn caused by coronavirus.

k. *Centralized or Coordinated Assessment.* 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 to the extent necessary to authorize ESG-CV funds to be used to pay for the additional costs needed to update, enhance, and operate the applicable centralized or coordinated

assessment system under 24 CFR 576.400(d) to prevent, prepare for, and respond to coronavirus, subject to the following alternative requirements:

(i) The cost documentation must show that the use of ESG-CV funds is limited to the increase in system costs due to coronavirus; and

(ii) The recipient's use of funds for this activity must be coordinated with the applicable Continuum of Care to ensure ESG-CV funding is used for the most critical centralized or coordinated assessment needs to allow the CoC to quickly prioritize and refer to assistance individuals and families experiencing homelessness and at risk of homelessness. Assuring the centralized or coordinated assessment system remains capable of quickly prioritizing and connecting individuals and families to appropriate housing and services is necessary to prevent the spread of coronavirus and to mitigate the economic impact by providing stability in housing to eligible individuals and families.

l. *Renters Insurance.* The limitations on eligible activities provided in 24 CFR 576.105(a) are waived to the extent necessary to authorize ESG-CV funds to pay for renters insurance for program participants receiving rapid re-housing or homelessness prevention assistance. In order to pay for renters insurance for program participants, the recipient or subrecipient must:

(i) demonstrate that the payment of renters insurance is necessary to obtain or maintain housing (e.g., the landlord requires renters to have renters insurance to reside in the unit); and

(ii) pay the renters insurance directly to the insurance company on behalf of the program participant.

Recipients and subrecipients report that some landlords require their renters to carry renters insurance and many program participants do not have the funds available to pay for renters assistance. Therefore, in these cases when renters insurance is required by a landlord, this waiver and alternative requirement is necessary to help program participants obtain and maintain housing, which is necessary to both prevent the spread of coronavirus and help program participants obtain and maintain housing in tight rental markets during the economic downturn caused by coronavirus.

m. *Vaccine 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 to the extent necessary to authorize recipients and subrecipients to make direct, cash payments of up to \$50 per dose to people experiencing homelessness as an incentive for receiving a coronavirus vaccine. ESG-CV funds may only be used for vaccine incentives to the extent that other vaccine incentives are inaccessible or unavailable to people experiencing homelessness within the community. Receiving the vaccine is critical to preventing the spread of coronavirus. However, getting vaccinated, including following up with the second dose required by some of the available vaccines, can be particularly challenging for people who do not have a stable place to call home. Research has demonstrated that providing incentives to people, including those experiencing homelessness, to receive vaccines increases the uptake of vaccination. Therefore, this waiver and alternative requirement is necessary to assure people experiencing homelessness receive vaccination and prevent the spread of coronavirus.

n. *Laundry*. The limitations on eligible activities provided in Section 415(a) of the McKinney-Vento Homeless Assistance Act and 24 CFR 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 the costs of providing laundry services to prevent the spread of coronavirus among individuals and families experiencing unsheltered homelessness, including by paying for laundry trucks to outdoor locations where people are residing. Allowing ESG-CV funds to pay for the costs of laundry services will help prevent the spread of coronavirus by providing people living in unsheltered locations regular access to laundry which cleans and disinfects clothing.

o. *Sponsor-based Rental Assistance*. As an alternative to tenant-based rental assistance and project-based rental assistance, sponsor-based rental assistance may be funded as provided below when necessary to use rapid re-housing and homelessness prevention assistance to re-house program participants quickly in permanent housing where landlords might not otherwise be willing to rent to them. Adding this flexibility is critical to limiting the spread of coronavirus among individuals and families experienced or at risk of homelessness and helping them obtain housing in tight rental markets during the economic downturn caused by coronavirus. Accordingly, the following waivers and alternative requirements are established for the provision of sponsor-based rental assistance with ESG-CV funds:

(i) The limitation of rental assistance to tenant-based rental assistance and project-based rental assistance in 24 CFR 576.106(a)(4) is waived, and 24 CFR 576.106(h) and (i) will not apply.

(ii) The recipient or subrecipient must execute a sponsor-based rental assistance agreement with a separate government agency, instrumentality, or nonprofit organization (“sponsor”) to subsidize the rent of program participants who are referred to be housed in units owned or leased by the sponsor. The rental assistance agreement may cover one or more permanent housing units owned or leased by the sponsor. Each unit covered by the rental assistance agreement (“sponsored unit”) may only be occupied by program participants, except as provided under paragraph (iii) below. Under no circumstances may the rental assistance agreement commit ESG funding to be expended or provide assistance beyond the applicable period of performance for the funding.

(iii) The recipient or subrecipient may pay up to 100 percent of the rent for the first month that the sponsored unit becomes available for rent to a new program participant, provided that a program participant signs a lease and moves into the unit before the end of the month for which that first month's rent is paid. This payment must not exceed the rent to be charged under the new program participant's lease, and unless the program participant moves in during the last half of the month that is paid, this payment must be included when determining that program participant's total rental assistance. This payment may be at the beginning of the agreement or after the payment permitted under paragraph (iv) below, as long as payments are made for different months.

(iv) The recipient or subrecipient may make monthly rental assistance payments only for each whole or partial month a sponsored unit is leased to a program participant, except that if a program participant moves out of a sponsored unit before expiration of the rental assistance agreement, the recipient or subrecipient may use ESG-CV funds to cover up to 100 percent of

the rent for the unit for up to 30 days from the end of the month in which the unit was vacated, while recipient or subrecipient work together with the sponsor to house another eligible program participant in that unit. This payment will not count toward the total rental assistance provided to the next program participant housed in the unit, unless the program participant moves in during the first half of the month that is paid using this flexibility. The limitations on eligible activities in section 415(a) of the McKinney-Vento Act are waived to the extent they would prohibit these payments.

(v) The initial requirement in 24 CFR 576.404(a), which prohibits conditioning any type or amount of ESG 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, is waived to the extent necessary to require that the program participant rent a unit owned by the sponsor to benefit from this form of rental assistance. However, in no case may a recipient or subrecipient execute a sponsor-based rental assistance agreement with itself or its parent or subsidiary organization.

(vi) In all other respects, sponsor-based rental assistance must be administered in accordance with the same requirements that apply to tenant-based and project-based rental assistance under 24 CFR part 576, the waivers and alternative requirements in this Notice, and other applicable ESG waivers; except that the references to “owner” and “housing owner” will be understood to refer to the “sponsor,” when those terms appear in 24 CFR 576.105, 576.106, 576.409, and 576.500(h); the references to “lease” in 24 CFR 576.105, 576.106, 576.409, and 576.500(h) will be understood to refer to the lease or sublease (as applicable) between the program participant and the sponsor for the “sponsored unit” in which the program participant will reside; and the references to “project-based rental assistance” in 24 CFR 576.409 will be understood to refer to “sponsor-based rental assistance.”

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

a. Eligibility for Homelessness Prevention Assistance. The requirements at 24 CFR 576.103 that provide that individuals or families who meet the criteria in paragraph (2), (3), or (4) of the “homeless” definition in 24 CFR 576.2 and have an annual income below 30 percent of median family income for the area, as determined by HUD, are eligible for homelessness prevention assistance is waived and an alternative requirement is established where individuals and families who meet the criteria in paragraph (2), (3), or (4) of the “homeless” definition and have an annual income that does not exceed the Very Low Income Limit for the area as established by HUD for HUD’s Section 8 and Public Housing Programs at www.huduser.gov/portal/datasets/il.html, are eligible for homelessness prevention assistance. This alternative requirement will ease administrative burden for recipients and subrecipients by establishing a single income limit for households qualifying for homelessness prevention assistance and assist more households maintain housing and prevent homelessness which is necessary to prevent the spread of coronavirus.

b. Short-Term and Medium-Term Rental Assistance.

(i) Providing rental assistance in units with rents above Fair Market Rent (FMR). The requirement at 24 CFR 576.106(d) that prohibits rental assistance where the rent for the unit

exceeds the FMR 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 to 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 the 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.

(ii) The limitations in section 415(a)(4) of the McKinney-Vento Act and 24 CFR 576.106(i)(3) are waived to the extent necessary to establish the following alternative requirement for project-based rental assistance provided under 24 CFR 576.106(i): The recipient or subrecipient may make monthly rental assistance payments only for each whole or partial month an assisted unit is leased to a program participant, except that if a program participant moves out of an assisted unit before expiration of the agreement, the recipient or subrecipient may use ESG-CV funds to cover up to 100 percent of the rent for the unit for up to 30 days from the end of the month in which the unit was vacated, while the recipient or subrecipient attempts to house another eligible program participant in that unit. This payment will not count toward the total rental assistance provided to the next program participant housed in the unit, unless the program participant moves in during the first half of the month that is paid using this flexibility. This payment will not prevent paying up to 100 percent of the first month's rent for the new program participant as provided under 24 CFR 576.106(i)(2), as long as the payments are made for different months. This flexibility is necessary to assure recipients and subrecipients can maintain the availability of assisted units in which individuals and families experiencing or at risk of homelessness can be quickly re-housed, which is critical to preventing the spread of coronavirus and helping individuals and families experiencing and at risk of homelessness obtain housing in tight rental markets during the economic downturn caused by 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 CoC or ESG Programs, receiving homelessness prevention

assistance 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. Further, funds can be used to provide essential services as established at 24 CFR 576.102(a)(1) to program participants residing in these hotels. 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) and to meet the service needs of program participants while they are residing there.

f. *Housing Stability Case Management.* Providing housing stability case management is necessary to help program participants maintain housing; however, recipients are reporting that the limitation of 30 days for providing housing stability case management while the program participant is seeking housing does not often provide enough time to help a program participant obtain new housing, particularly in tight rental markets and where landlords are reluctant to rent to households with limited income. Therefore, HUD is waiving the 30-day limit established in 24 CFR 576.105(b)(2) to the extent necessary to allow recipients or subrecipients to provide up to 60 days of housing stability case management while the program participant is seeking housing. This waiver and alternative requirement is necessary to help recipients and subrecipients continue to assist program participants in obtaining new housing, which is crucial to preventing the spread of coronavirus, and will continue to be necessary after social distancing measures are no longer in effect but rental markets remain tight due to the economic downturn caused by coronavirus.

g. *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 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; 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.

h. *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.

i. *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.

j. *Assisting Program Participants with Subleases.* To the extent that the references to “owner” and “lease” in 24 CFR 576.105 and 576.106 restrict program participants from receiving assistance in units they sublease from the primary leaseholder, that restriction is waived and the following alternative requirement is established: When a program participant chooses to rent a unit through a legally valid sublease with the primary leaseholder for the unit, the terms “owner” and “housing owner” are waived and replaced with “primary leaseholder,” and the term “lease” will be understood to refer to the sublease, when those terms appear in 24 CFR 576.105, 576.106, 576.409, and 576.500(h). This additional flexibility will expand the permanent housing options for individuals and families experiencing and at risk of homelessness, which is critical to preventing the spread of coronavirus and helping individuals and families experiencing and at risk of homelessness obtain housing in tight rental markets during the economic downturn caused by coronavirus.

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

1. *Activities Carried out in Indian Areas.* ESG recipients may carry out activities in Indian Areas. Recipients carrying out projects in Indian Areas through employees, contractors, or subrecipients must obtain the consent of the Indian tribe with jurisdiction over the Indian Area.

2. *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).

3. *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.

4. *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.

5. *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.

6. *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 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.12. 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.

7. *Shelter and Housing Standards.* The requirements at 24 CFR 576.403 apply to all emergency shelter and housing supported with ESG funds except as provided below:

a. *Lead-Based Paint Remediation and Disclosure Requirements.* The lead-based paint remediation and disclosure 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.

b. *Temporary Emergency Shelter.* 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).

c. Habitability Inspections when Providing Housing Relocation and Stabilization Services – Homelessness Prevention. The requirement at 24 CFR 576.403(c) that recipients and subrecipients may not use ESG funds to help a program participant remain in housing that does not meet minimum habitability standards outlined in that section is waived to the extent necessary to allow the recipient or subrecipient to provide housing relocation and stabilization services under 24 CFR 576.105(b) to help individuals and families remain in their existing housing or move into new housing. During the coronavirus pandemic the best way to help prevent the spread of coronavirus is to help individuals and families at risk of homelessness maintain their current housing or remain in their existing housing until a different housing unit can be identified. Additionally, the coronavirus pandemic created an economic downturn that put many at risk of losing their housing, including housing they rent or share with others. Providing housing relocation and stabilization services can help these households maintain their current housing by avoiding eviction records or additional economic insecurity caused by having to pay security deposits and other costs related to renting a new unit. Therefore, allowing recipients and subrecipients to provide housing relocation and stabilization services under the homelessness prevention component is necessary to prevent, prepare for, and respond to coronavirus. This alternative requirement does not waive the requirements at 24 CFR 576.403(c) with respect to other activities under the homelessness prevention component or with respect to any activity under the rapid re-housing component.

8. 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>).

9. *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.

10. *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.

11. *Prohibitions on Internet and Telecommunications Equipment*. The use of ESG-CV funds to maintain or establish any computer network is subject to the prohibition in section 417 of the Transportation, Housing and Urban Development, and Related Agencies Appropriations Act, 2020 (Pub. L. 116-94, Div. H, §417), which section 23003 of the CARES Act applies to all CARES Act funding. Recipients and subrecipients must comply with the prohibition on certain telecommunications and video surveillance services or equipment under 2 CFR 200.216. Recipients and subrecipients must take reasonable steps to prevent payment of ESG funds for use of internet and telecommunications equipment for unauthorized purposes and activities prohibited by Federal, state, or local law.

12. *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.

13. *Re-evaluations.*

a. As required by 24 CFR 576.401(b), the recipient or subrecipient must re-evaluate a program participants eligibility and the types and amounts of assistance the program participant needs in accordance with the requirements of that section. However, HUD is waiving 24 CFR 576.401(b)(i), which requires that the re-evaluation must verify the program participant does not have an annual income that exceeds 30 percent of median family income for the area, as determined by HUD, and establishing the alternative requirement that the re-evaluation must verify the program participant does not have an annual income that exceeds the Very Low-Income limit for the area, as established for HUD's Section 8 and Public Housing programs at www.huduser.gov/portal/datasets/il.html. HUD has determined that increasing the annual income allowance for program participants receiving rapid re-housing and homelessness prevention assistance will help program participants maintain housing, thus preventing the spread of coronavirus.

b. 24 CFR 576.401(b), which requires recipients or subrecipients providing homelessness prevention assistance to re-evaluate a program participant's eligibility, and the types and amounts of assistance the program participant needs not less than once every three months is waived so long as recipients and subrecipients providing homelessness prevention assistance re-evaluate a program participant's eligibility, and the types and amounts of assistance the program participant needs, not less than once every six months. HUD has determined this waiver and alternative requirement is necessary to help program participants remain stable in housing during the economic uncertainty caused by coronavirus. This waiver and alternative requirement 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 lifting the two-year limit on the waiver so that this flexibility applies throughout the period the recipient uses funds to prevent, prepare for, and respond to coronavirus.

14. As required by 24 CFR 576.403(c), the recipient or subrecipient cannot use ESG-CV funds to help a program participant remain or move into housing that does not meet the minimum habitability standards provided in that section. However, HUD is waiving this requirement for recipients or subrecipients who apply the applicable Housing Quality Standards (HQS) under 24 CFR 982.401, except 24 CFR 982.401(j) need only be applied to housing occupied by program participants receiving tenant-based rental assistance. HUD has determined waiving the requirement at 24 CFR 576.403(c) is necessary to allow recipients and subrecipients to use the housing inspection process with which they are most familiar, easing administrative burden, while continuing to ensure housing meets minimum quality standards and quickly housing or helping program participants maintain housing thus preventing the spread of coronavirus.

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 through submission of project data to the Sage HMIS Repository. In addition to the Consolidated Annual Performance and Evaluation Report (CAPER), recipients are required to submit quarterly reports to HUD regarding their ESG-CV grants 30 days after the close of each

quarter. Recipients will submit data on program participants served, report on expenditures, and provide narratives on unique CARES Act activities.

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. HUD 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, HUD will release further guidance 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 flexibilities (including statutory exemptions, waivers, and additional eligible activities) established for ESG-CV funds in the CARES Act and this Notice apply to FY2020 and prior fiscal year ESG funds (“annual ESG funds”) a recipient uses to prevent, prepare for, and respond to coronavirus until September 30, 2022, 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, or respond to coronavirus in the IDIS activity description before drawing down funds in accordance with the flexibilities provided in this Notice;
2. The recipient must report the amount of annual ESG funds expended to prevent, prepare for, and respond to coronavirus in the CAPER by component type for each annual grant;
3. The recipient must amend its consolidated plan in accordance with 24 CFR 576.200(b) and 24 CFR 91.550, subject to any applicable HUD waivers and the conditional ESG-CV exemption from consultation and citizen participation requirements;
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; and

b. the use of annual ESG funds under the ESG-CV flexibilities meets the same conditions that apply to the use of ESG-CV funds under those flexibilities (including the prohibition against conditioning homeless assistance as provided in Section III.F.12 of this Notice), except that –

- (i) The prohibition against conditioning homeless assistance as provided in Section III.F.12 of this notice only applies as a condition for using ESG-CV flexibilities with respect to expenditures made with annual ESG funds after the date that is 30 days from the date of this Notice; and
- (ii) The waivers and alternative requirements with respect to the expenditure and recapture requirements in section III.B.2 of this Notice and the reporting requirements in section III.G of this notice do not apply to annual ESG funds.

5. 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.

B. Clarification of Changes from CPD Notice 20-08. The key differences between these conditions and the conditions provided in the corresponding section of CPD Notice 20-08 are as follows:

1. The extension of ESG-CV flexibilities (including statutory exemptions, waivers, and additional eligible activities) to annual ESG funds used to prevent, prepare for, and respond to coronavirus now includes the CARES Act’s exemption from consultation and citizen participation to annual ESG funds, provided that the recipient publishes its planned use of annual ESG funds under these flexibilities, at a minimum, on the Internet at the appropriate government web site or through other electronic media (as provided above for ESG-CV funds);
2. Although the CARES Act prohibition described in Section III.F.12 of this Notice did not apply to the use of annual ESG funds prior to this notice, HUD is adding that prohibition to the conditions for applying ESG-CV flexibilities to expenditures of annual ESG funds after the date that is 30 days from the date of this Notice;
3. The conditions for extending the waivers and alternative requirements to annual ESG funds no longer exclude alternative requirements that are more limiting than 24 CFR part 576, because HUD has removed the alternative requirements in CPD Notice 20-08 that were more limiting on medium-term rental assistance and emergency shelter costs;
4. The conditions have been revised to clarify that annual ESG grants are not subject to the enhanced CARES Act reporting requirements and the expenditure timeframes provided for the ESG-CV grants.

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 FY 2020 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.

A. 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.

B. 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.

C. HUD provided Interim ESG-CV Certifications 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.

D. 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.”

E. Annual ESG funds

1. *States.* 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 sections” 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.

2.. *Non-States.* 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” sections. 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.

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:

a. 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);

- b. 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).
- c. 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. 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.

3. 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).

4. 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.

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>.

James A. Jemison II
Principal Deputy Assistant Secretary
for Community Planning and Development