



Guidance on the use of Homeless Prevention (HP) Funds

Using Traditional and COVID ESG HP Funding During and After Moratoriums

Issued October 2020

Office of Housing and Community Development
Patrick J. Sullivan, Director

OVERVIEW

The U.S. Department of Housing and Urban Development (HUD) provides **Emergency Solutions Grant (ESG) funding** to the City of New Bedford. One eligible program component of ESG funds is Homeless Prevention (HP). This funding, administered through the city's Office of Housing & Community Development (OHCD), is focused on preventing homelessness by providing the means for housing relocation and stabilization services as well as short and/or medium-term rental assistance to prevent individuals or families from moving into an emergency shelter, a place not meant for human habitation or any other place that HUD defines in its homeless definition¹.

In addition to this traditional ESG funding, the federal government enacted the CARES Act which allocated new funding for a COVID-19 Emergency Solutions Grant (ESG-CV). **ESG-CV funding** 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. As with ESG funding, ESG-CV funds may also be used for HP activities provided they are used in a manner consistent with the CARES Act.

This guidance is a primer intended to provide clarity about ways in which someone qualifies for HP assistance, what eligible costs are using ESG and ESG-CV funding under the HP program, standards for HP assistance set forth by the New Bedford Continuum of Care (CoC), and what happens at the intersection of such eligibility in the face of an eviction moratorium.

SNAPSHOT: Using HP during an Eviction Moratorium



Since eligibility requirements for the use of HP funds are closely connected to circumstances around tenancy, the presence of federal and state moratoriums prohibiting evictions has a direct effect on the ability to use ESG and ESG-CV for homeless prevention activities.

A moratorium on evictions is, itself, a tool to prevent homelessness. Because by virtue of their intent moratoriums are designed to prevent evictions, ESG and ESG-CV HP funding is superfluous during an eviction moratorium and are therefore, is not available to those who can take advantage of the moratorium's benefit. Once a moratorium lapses, HP funding can be used.

HP 101

As noted, Homeless Prevention (HP) funding centers on the provision of housing relocation and stabilization services as well as short and/or medium-term rental assistance to prevent individuals or families from becoming homeless. The costs associated with homeless prevention activities are only eligible to the extent that the assistance is necessary to help the program participant regain stability in their current housing or move into other permanent housing and achieve stability in that housing.

¹ Homelessness is defined in 24 CFR Parts 91, 582 and 583 in the HEARTH Act enacted into law on May 20, 2009. Category 1 of that definition is relative to "an individual or family who lacks a fixed, regular and adequate nighttime residence."

As of October 2020, HP funding is being provided in the City of New Bedford through two community-based agencies—PACE (People Acting in Community Endeavors) and Catholic Social Services (CSS)—and is supported by federal ESG and ESG-CV funds that have been allocated to the city. Additional agency appropriations and funding from other resources leverages the ESG/ESG-CV grants.

Performance standards have been established and adopted by the New Bedford Continuum of Care in order to provide metrics against which the efficacy of each agency’s HP program is monitored.

Program Eligibility

HUD establishes two different ways in which one can qualify for HP assistance for both ESG and ESG-CV funding, the first relying on the At Risk of Homelessness standards and the second relying on the definition of Homelessness.

At Risk of Homelessness

Under this standard, to qualify for HP an individual or family is considered at risk of homelessness and may receive ESG or ESG-CV HP assistance if they meet three criteria:

- They have an income of no greater than 30% AMI (under traditional ESG) or 50% AMI (under ESG-CV) *and*
- They do not have sufficient resources or support networks immediately available to prevent them from moving to an emergency shelter or another place defined in category 1 of the homeless definition *and*
- They meet risk standards as follows:
 - ESG Funding. Households must meet one of eight HUD risk factors including, but not limited to: having moved because of economic reasons two or more times during the 60 days immediately preceding the application for assistance and living in the home of another because of economic hardship.
 - ESG-CV Funding. Households must specifically meet Category 1(C) of the definition of At Risk of Homelessness which is: That the household has been notified that their right to occupy their current housing or living situation will be terminated within 21 days after the date of application for HP assistance.

Homeless Definition*

Under this standard, to qualify for HP an individual or family is considered homeless if they meet the following two criteria:

- They have an income of no greater than 50% AMI (under ESG-CV) or 30% AMI (under traditional ESG), *and*
- They meet Category 2 of the definition of Homelessness which encompasses households at imminent risk of homelessness:
 - The household will imminently lose their primary nighttime residence provided that the primary nighttime residence will be lost within 14 days of the date of application for assistance *and*
 - No subsequent residence has been found *and*
 - The individual/family lacks the resources or support networks needed to obtain other permanent housing.

**It’s important to note that in addition to situations where a household could lose its residence due to a landlord-initiated eviction action, individuals and families not on a lease could also meet Category 2 of the Homeless Definition if they are asked to leave a residence with no other place to go and no resources or support networks available to help them obtain other permanent housing.*

Cost Eligibility

Costs that are considered eligible under HP funding include:

- Rental Assistance: rental assistance and rental arrears
- Financial assistance: rental application fees, security and utility deposits, utility payments, last month's rent, moving costs
- Services: housing search and placement, housing stability case management, landlord-tenant mediation, and tenant legal services, credit repair (See 24 CFR 576.103).

CoC Standards

In addition to HUD-driven standards that address eligibility for HP funding and dictate what costs are eligible, the City of New Bedford's CoC has also established operational standards and performance standards guiding the use of HP dollars.

Operational Standards

The CoC's operational standards set forth two types of criteria:

1. Affecting all project types (including HP) that addresses a range of broad standards including Housing First, Equal Access, participation in HMIS and Coordinated Entry and case management expectations.
2. Project specific that provides standards directly related to HP activities.

Performance Standards

The CoC's performance standards set forth three specific measures to better understand the program's effectiveness:

1. Housing Stability that looks at the % of people in positive housing destinations at program exit;
2. Non-Cash Benefits at Exit measuring the % of persons increasing their non-cash benefits at program exit;
3. HMIS measuring the extent to which data quality is maintained.

Please refer to these documents for a complete discussion of the respective standards.

Waivers

Throughout the COVID public health crisis, HUD has made a series of waivers available to alleviate some programmatic requirements affecting a range of programs including those funded with ESG dollars. HUD waivers issued as of October 2020 are presented and discussed in the document, HUD Waiver Guidance for ESG and CoC Projects issued and amended by the OHCD and available at www.nbhspn.com.

Reviewing and understanding these waivers is critical to the successful and effective operation of ESG and ESG-CV Homeless Prevention Projects as they address and mitigate a range of operational requirements. As such all staff administering HP programs are encouraged to familiarize themselves with the relevant available waivers.

EVICTIONS IN MASSACHUSETTS²

As noted previously in this guidance, eligibility requirements for the use of HP funds are closely connected to circumstances around tenancy and evictions. This section is intended to provide a primer on how evictions occur under MA law as it is important to understand the process of evicting if one is administering the use of HP funding.

In Massachusetts, landlords must properly terminate a tenancy AND they must get permission from a court to legally take possession of a tenant's apartment. It is illegal for a landlord on his or her own, to remove tenants, occupants and their belongings from a rented apartment/room/home without first getting a court order.

The eviction process begins with the landlord seeking to end the tenancy which is done by issuing a Notice to Quit to their tenant. Unless the lease expires a written Notice to Quit is required and must include the specific day the tenancy will end.

The number of days identified on the Notice to Quit depends on the reason for the intended eviction:

- **14 Day Notices** are for tenants owing rent.
- **30 Day Notices** are if the landlord is evicting a tenant for no reason or for a reason they allege is the tenant's fault. This type of notice must allow the tenant 30 days or the interval between days of payment—whichever is longer as required by MA law and specifying the date on which the tenancy will end.
- **No Notice** is issued when a landlord accuses a tenant of illegal activity in their apartment.

(Special rules apply to a number of housing types including mobile homes, rooming houses and public housing so it is important to be aware of these).

If tenants don't move from the rental property by the time the Notice to Quit expires, the landlord must then serve tenants with a Summary Process Summons and Complaint from the court. This is a court form served on the tenant by an authorized constable or sheriff advising the tenant that the landlord is taking them to court and that there will be a hearing. It provides time/date/location of the hearing as well as a deadline by which tenants may file an answer.

MORATORIUMS and HOMELESS PREVENTION

Although the Massachusetts (MA) statewide moratorium on evictions ended on October 17, 2020, a federal moratorium remains in place through the end of the year, December 31, 2020. Regardless of whether the prevailing moratorium is federal or state, its intended result remains the same, that is, preserving the tenancy and preventing eviction.

A moratorium on evictions is itself, a means of preventing homelessness, albeit temporary. Ensuring that a landlord cannot issue a Notice to Quit and proceed through an eviction process effectively prevents the loss of one's housing during such a moratorium. Because of this, one's ability to document program eligibility under the At Risk of Homelessness Definition or under the Homeless Definition is negated making the use of HUD Homeless Prevention funding (both ESG and ESG-CV funding) ineligible during such moratoriums.

² The Massachusetts specific information presented is not intended to provide a comprehensive review of tenant/landlord rights and relationships in Massachusetts nor provide a review of an eviction process. Please consult with www.MassLegalHelp.org for additional up-to-date information.

It should be noted that the federal moratorium carries more conditions that limits the number of tenant households who can take advantage of its effect; conversely this means more people may now qualify for the ESG and/or ESG-CV HP programs. Documentation demonstrating participant eligibility under the HP program, therefore, should *always* include evidence as to why/how the HP applicant does not qualify for the benefits that accrue with the federal eviction moratorium.

Questions relative to this guidance can be directed to the OHCD at 508.979.1500 or via email to staff: Jennifer.Clarke@newbedford-ma.gov or Jose.Maia@newbedford-ma.gov.