



Guidance on the use of Homeless Prevention (HP) Funds

Using Traditional and COVID ESG HP Funding in a Post-Moratorium Environment

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Office of Housing and Community Development
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OVERVIEW

The Office of Housing and Community Development (OHCD) issued guidance in October of 2020 in the midst of the Covid-19 Pandemic in the midst of an eviction moratorium. This guidance builds upon and updates that original information in order to focus on post-moratorium homeless prevention efforts, particularly as they intersect with Massachusetts General Law (MGL) and U.S. Department of Housing and Urban Development (HUD) Homeless Prevention standards.

In so doing, this guidance will first briefly summarize the eviction process in Massachusetts, address MGL c.257 enacted in 2020 as it effects evictions and reinforce the use of Homeless Prevention (HP) funding, particularly focusing on the two different standards one can use to meet eligibility requirements for the use of HP dollars. From that point the discussion will then address the actual application of the different HP standards focusing on the documentation one must be able to produce to satisfactorily demonstrate eligibility for HP funds and a summary as to how that effects the extent to which HP can be used given MA law.

GUIDANCE SNAPSHOT



- MA eviction process summary
- MGL c.257 as it effects evictions
- A primer on HP funding
- Differing HP eligibility standards
- Required documentation and the application of standards
- Summary: Practical effects of definitions, documentation, and standards in considering how to satisfy HP eligibility given MGL

MA EVICTION PROCESS SUMMARY

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/or 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 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 eviction¹:

- **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.

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

¹ 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.

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.

Once the case gets to the court, if the court finds for the landlord, permission is granted for possession (judgement and execution). Oftentimes this order is granted with a caveat that provides one last additional period during which payment can be made, (i.e. the court might order its judgement for possession within 14 days if the payment is not made in full by that time, or similar).

MGL c.257 AS IT EFFECTS EVICTIONS

This provision of MGL (<https://malegislature.gov/Laws/SessionLaws/Acts/2020/Chapter257>) signed into law by Governor Baker on December 31, 2020 introduces new regulations affecting Notices to Quit served for rent nonpayment and eviction filings until the State of Emergency is lifted.

Section 2 of this law directs courts to grant delays in any nonpayment eviction cases resulting from the COVID pandemic and economic response if tenants have applications pending for emergency rental assistance.

This law also affects those with pre-existing or newly filed nonpayment cases in the following way:

- For newly filed nonpayment cases, Section 2 directs courts to grant a continuance “for a period as the court may deem just and reasonable,” in any summary process cases in which:
 - 1.) the tenancy is being terminated for rent nonpayment;
 - 2.) rent nonpayment was due to COVID financial impact; and
 - 3.) the tenant can demonstrate that they have a pending application for emergency rental assistance, to RAFT, ERMA or another program [such as Homeless Prevention].Counterclaims may be considered by courts pertaining to this section, pending decisions from RAFT and ERMA.
- For pre-existing nonpayment cases, the courts are prohibited from entering judgments or issuing executions where the tenant has a pending application for rental assistance.

Although MGL c.257 provides a mechanism through which the court to issue a continuance in a non-payment eviction case, (application for emergency rental assistance as noted in the previous item #3), Homeless Prevention (HP) funding may not be the vehicle that can be used to secure such a continuance.

A PRIMER on HP FUNDING

The U.S. Department of Housing & Urban Development 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 definition².

In addition to this traditional ESG funding, the federal government enacted the CARES Act which allocated additional 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

² 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.”

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

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.

DIFFERING HP ELIGIBILITY STANDARDS

HUD establishes two different ways in which one can qualify as eligible for HP assistance (for both ESG and ESG-CV funding), the first relying on HUD’s Definition of Homelessness standard and the second relying on HUD’s At Risk of Homelessness standards.

Homeless Definition*

Category #2

Under this standard, to qualify for HP an individual or family is considered to meet the HUD definition of homelessness (imminent risk) if they meet *both* of the following 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 by meeting all three of the following:
 - 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.

**Additional categories of homelessness are also defined by HUD. In this instance, 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.*

At Risk of Homelessness

Factor (c)

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 *all 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.

While there are additional standards one must consider in the use of HP funding including cost, operational and performance standards, this discussion is limited to eligibility issues, only. See previously issued HP Guidance released in October 2020 for a discussion of additional HP standards.

REQUIRED DOCUMENTATION AND THE APPLICATION OF HUD HP STANDARDS

Homeless Definition | Category 2 **14 day**

In relying on the Homeless Definition in an effort to document imminent homelessness, evidence must include:

- A court order resulting from an eviction action that requires the individual or family to leave their residence within 14 days after the date of their application for homeless assistance; OR
- The equivalent notice under applicable state law such as the Notice to Quit in MA, OR
- A Notice to Terminate under state law.

Acceptable documentation must substantiate that the criteria of Category 2 of the Homeless definition has been met; that is, that the household will lose their residence within 14 days.

- A Notice to Quit or a Notice to Terminate issued under state law does not need to be equivalent to a court-ordered eviction action (so in MA a Notice to Quit would suffice) BUT
- If there is no reasonable expectation that a household will lose their residence within 14 days as a result of the issuance of a Notice to Quit, (more often than not the case in MA) then the criteria of Category 2 has not been met. This is tricky because you generally don't lose your housing in 14 days unless an actual 48 hour execution has been granted from the court which is rare. In MA there's a Notice to Quit that says 14 days for tenants owing rent, then if there's no payment made the tenant is served with a Summary Process Summons & Complaint from the court stipulating the court date. On the court date the court can then issue a possession for judgement (execution) to take effect in x number of days.

Although you can admit folks into the HP program with only a Notice to Quit 14 day notice, you cannot assist them financially without a court order. (It is because of this that in MA it is best to have the court order, not simply a Notice to Quit whenever possible).

At Risk of Homelessness Factor (c) **21 day**

In relying on the At Risk of Homelessness standard in an effort to document the risk of homelessness, evidence does NOT need to be equivalent to a court ordered eviction action but documentation must substantiate that a household's right to occupy housing will be terminated within 21 days (not necessarily that the household will be required to leave the unit within 21 days.). Here the documentation focuses on the Notice to Quit rather than the court order for possession.

Acceptable documentation must demonstrate that criteria for this risk factor category has been met; this includes an eviction notice prepared by the landlord must effectively terminate a household's right to occupy the unit within 21 days (Notice to Quit). If that documentation provides a way for the tenant to avoid eviction (such as paying off the arrears balance) the HP applicant must have a demonstrated lack of ability to meet the terms of avoiding eviction in order to be eligible for HP.

The At Risk of Homelessness 21 day criteria is less strict than HUD's Homeless Definition Category 2 criteria so its likely that more tenants would actually qualify under this criteria.

If the HP applicant doesn't voluntarily vacate the unit and instead opts to go through the court-ordered eviction process (a likely prospect) it could take months before they actually exit the unit. Because of this, HUD is allowing the "Notice" that their "Right to occupy" is terminated (known as the Notice to Quit in MA) as sufficient documented evidence.

PRACTICAL EFFECTS OF HP USE in MA GIVEN MGL

To summarize—while MGL c. 257 directly effects how federal Homeless Prevention funds can be used in Massachusetts, it does not change the regulations governing the use of HP funds, themselves.

With respect to eligibility, there are two approaches to qualifying someone for HP funding: using the homeless definition or using the at-risk of homelessness definition. Each route has differing eligibility standards that ultimately are impacted by the way state eviction laws are written.

- Documentation needed³ to meet the Homelessness Definition (#2) can simply be a Notice to Quit—however if that is used and the household does not lose housing within 14 days (which is most often the case in MA), eligibility under this definition hasn't been met and this approach cannot be used.

The Homeless Definition #2 standard relies on the issuance of a court order to ensure eligibility. Because MGL c.257 has the effect of continuing the court action on the eviction case (rather than issuing the court order) if rental assistance has been applied for (such as HP dollars), a tenant seeking to use HP funding under this approach would not meet the eligibility standard. Though an application can be made, MGL c.257 has the effect of deferring the eviction action; as such, the use of HP funding cannot be established under the Homeless Definition since the criteria of Category 2 of the Homeless definition will not have been met.

- Documentation needed³ to meet the At Risk of Homelessness definition (Category 1 Risk Factor c) can simply be a Notice to Quit, stipulating that a household's right to occupy housing will be terminated within 21 days. In MA, this standard is easier to meet because the Notice to Quit (rather than a Court ordered eviction requiring the household to leave the unit within 21 days) suffices.

In general, the criteria for Category 1 (Risk Factor c) are easier to meet than the criteria one needs for Category 2 of the Homeless Definition. In particular, because MGL c.257's effect on the use of the Homeless Definition presents such a challenge, the use of the At-Risk standard becomes easier to document and therefore rely upon.

Of note: HUD does encourage the CoC to focus as much of its ESG funding as possible on prioritizing those with the greatest need of assistance which could mean targeting Homeless Prevention assistance on those households that are more likely to be evicted without ESG assistance (meaning those households meeting Category 2 of the Homeless Definition rather than Category 1 Risk Factor c for the At-Risk Definition).

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.

³ Documentation needed to demonstrate HP eligibility addressed in this section is limited to the discussion of court orders and notices to quit. Additional documentation such as income, resources, etc. are also required in order to meet eligibility. See HP Guidance eligibility information at <https://www.nbhspn.com/nbhspn/wp-content/uploads/2020/11/GUIDANCE-ON-HP.pdf> for more information on those additional elements.