

HUD RESPONSES TO NHAP QUESTIONS ON ESG

NHAP submitted the following questions to HUD through the electronic portal on HUD's website. The following are HUD's responses, to date (11/13/13)

TOPIC #1: Subrecipient Subgranting/Subcontracting

NHAP Question (05/15/13):

Under ESG, can a subrecipient that is a nonprofit organization subcontract with another entity to provide some of the ESG-allowable services? For example, when the State recipient contracts with a nonprofit organization (subrecipient) to provide services across multiple counties, can that organization (subrecipient) subcontract with another organization to provide services in some of the counties that are a great distance from the subrecipient's main office?

HUD Response (05/20/13):

Yes, subrecipients may carry out all eligible activities through their employees, procurement contracts, or subgrants to private nonprofit organizations (see 24 CFR § 576.202(b)). Sub-subrecipients are subject to the same requirements that are applicable to a subrecipient.

It is important to note that requirements differ depending on whether a subgrant or a procurement is being made. A subgrant of ESG funds can only be made to an eligible ESG subrecipient, which includes a unit of general purpose local government or a private nonprofit organization. A recipient or subrecipient could procure any organization to carry out eligible ESG activities, so long as the recipient and its subrecipients retain copies of all procurement contracts and documentation of compliance with the procurement requirements in 24 CFR § 85.36 and 24 CFR § 84.40–84.48, as applicable.

Please also note that the procurement rules are based on free and open competition for the subrecipient to get the best deal for its grant dollars in obtaining goods and services from a qualified organization. The noncompetitive proposal method (procurement through solicitation of a proposal from only one source, or after solicitation of a number sources, competition is determined inadequate) is only permitted by 24 CFR § 85.36(d)(4) if other methods of procurement are infeasible and one of the specified circumstances applies.

TOPIC #2: Rent-To-Own Situations

NHAP Question (10/17/12):

Can ESG be used to pay for a utility payment under Homeless Prevention when the family has a 'rent-to-own' agreement with the housing unit owner?

HUD Response (03/26/13):

Yes, as long as the requirements in 24 CFR 576.103, 576.105, 576.401 and 576.403 are satisfied, ESG can be used to pay the family's utility payment, even if the family has a "rent-to-own" agreement with the housing owner.

Please remember, however, the household must be eligible to receive ESG assistance, and that, in accordance with the threshold requirements in 24 CFR 576.103, the recipient or subrecipient must determine that the assistance is necessary to prevent the family from entering an emergency shelter or another place described in paragraph (1) of the "homeless" definition in § 576.2. There are laws in many states that prevent utility companies from shutting off power to households during winter months, and which may also require the utility company to offer payment plans to households that miss payments. Also, there may be other forms of utility assistance available to prevent shut-off, such as LIHEAP. The recipient or subrecipient should consider whether factors like these make it unlikely that ESG utility assistance will make the difference between the family staying housed and the family sleeping in shelter or on the streets. HUD encourages recipients and subrecipients to target homelessness prevention assistance to those families who are most likely to enter shelter or the streets if they are not assisted under ESG, because not all families who qualify as at risk of homelessness will actually become homeless without ESG assistance.

To learn more about these requirements, please read the ESG Interim Rule, which can be found at

<http://www.hudhre.info/index.cfm?do=viewResource&ResourceID=4517>.

TOPIC #3: Mental Health Services and ESG Outreach

NHAP Question (02/13/13):

As Emergency Mental Health services are an allowable cost under ESG Street Outreach (24 CFR 576.101a4), would these services include emergency substance abuse services provided by a licensed qualified provider to an individual meeting HUD's definition of 'homeless,' such as alcohol and drug evaluations and/or emergency alcohol or drug counseling?

HUD Response (02/26/13):

No. Under the Street Outreach component, emergency substance abuse services provided by a licensed qualified provider, such as alcohol and drug evaluations

and/or emergency alcohol or drug counseling, would not be an allowable cost as part of the emergency mental health services. However, the cost of transporting an individual to emergency substance abuse treatment is an allowable cost under the Street Outreach Component.

Under the Emergency Shelter component, however, ESG funds may be used to provide essential services to individuals and families in emergency shelters, which include substance abuse treatment. ESG funds may only be used for these services to the extent that other appropriate substance abuse treatment services are unavailable or inaccessible within the community. For additional guidance see § 576.102(a)(1)(ix) of the ESG regulation.

TOPIC #4: Cost of Temporary Post Office Box

NHAP Question (11/20/12):

This question applies to ESG Emergency Shelter and Rapid Rehousing. Can ESG funds cover the cost of a temporary PO Box for an individual/family that is relocating to permanent housing or to the shelter with a plan to move to permanent housing? It isn't workable for the individual/family to change their mailing address to the shelter and then change it again to their new housing unit. In situations involving domestic violence, there is also the safety issue. Under ESG Shelter, it seems like this cost could be covered under 'Case Management - Developing an individualized housing and service plan, including planning a path to permanent housing stability.' Under ESG Rapid Rehousing, it seems like this cost could be covered under 'Financial Assistance - Moving Costs.'

HUD Response (12/13/12):

No, ESG funds cannot be used to cover the costs of a PO Box under either the Emergency Shelter or Rapid Re-Housing components. Under the Emergency Shelter component, essential services are limited to those costs listed. (See § 576.102(a)(1)). Under the Rapid Re-Housing component, moving costs are intended to cover the costs of transporting and storing personal possessions. (See § 576.105(a)(6)).

TOPIC #5: Utility Payment Late Fees

NHAP Question (12/12/12):

In addition to the utility payment, can ESG homeless prevention funds be used to pay for the late fees assessed on the utility payment?

HUD Response (12/13/12):

ESG funds may be used to pay for late fees associated with utility arrears, as long as the payment enables the program participant to remain housed or become rehoused.

TOPIC #6: Household Pests

NHAP Question (11/01/12):

Can ESG funds be used to fund homeless prevention assistance when the participant is residing in an apartment with bed bugs? Our environmental health staff have told us bed bugs are not a health or safety hazard, just a major annoyance. Would your answer (whatever it is) also apply to an apartment with cockroaches? If the landlord states he is spraying to get rid of any infestation does that make a difference?

HUD Response (11/19/12):

This Help Desk cannot make a determination as to whether a particular condition is a health or safety hazard; this is a local decision.

ESG funds cannot be used to help a program participant remain or move into housing that does not meet the minimum habitability standards provided in § 576.403(c). The habitability standards include a requirement that the housing be maintained in a sanitary condition. Depending on local standards, a unit that shows evidence of infestation may not meet minimum habitability standards.

TOPIC #7: Cost of Changing Lock

NHAP Question (10/24/12):

Is the cost associated with changing the lock on a housing unit an allowable cost under ESG Homeless Prevention and/or Rapid Rehousing, in situations where the program participant is "fleeing or attempting to flee, domestic violence, dating violence, sexual assault, stalking, or other dangerous or life threatening conditions that relate to violence against the individual or a family member, including a child, that has either taken place within the individual's or family's primary nighttime residence or has made the individual or family afraid to return to their primary nighttime residence" [24 CFR 576.2]? If so, would it be considered a "moving cost" (under Financial Assistance), a "housing search and placement cost" (under Services) or "rental assistance" (under Rental Assistance)?

HUD Response (11/06/12):

No, changing locks on a housing unit is not an allowable cost under ESG Homelessness Prevention or Rapid Re-Housing assistance.

TOPIC #8: Combining ESG Payments from More Than One Source

NHAP Question (10/10/12):

Under the paragraph on 'Use with other subsidies' for ESG Housing Relocation and Stabilization Services [24 CFR 576.105(d)] the regulations state that "Financial assistance under paragraph (a) of this section cannot be provided to a program

participant who is receiving the same type of assistance through other public sources..." If two agencies are coordinating the assistance provided to a single program participant (to avoid duplicate payment), can the first agency use ESG funds to pay a portion of the participant's security deposit or utility deposit and the other agency paying the remaining amount (either with ESG funds or with other funds)?

HUD Response (11/06/12):

As you correctly point out, ESG financial assistance cannot be provided to a program participant who is receiving the same type of assistance through other public sources (§ 576.105(d)). If a program participant is receiving security deposit or utility deposit assistance from another public source (either a full or partial subsidy), ESG funds must not be used to pay the remaining portion of the security or utility deposit for that program participant. ESG funds may be used to pay a portion of the participant's security deposit or utility deposit if the other agency paying the remaining amount uses ESG funds.

Please note, however, that the "same type of assistance" refers to each of the various types of financial assistance listed under paragraph (a) of section 576.105. In the situation you described, an eligible individual or family could receive ESG assistance for a security deposit at the same time that they are receiving assistance for a utility payment from another public funding source.

TOPIC #9: Income of Partner in Domestic Violence Situations

NHAP Question (10/09/12):

Under the initial participant assessment for ESG Homeless Prevention eligibility and the re-evaluations for Homeless Prevention and Rapid Rehousing eligibility, the regulations state that the participant's income must not exceed 30% of HUD's AMI and the participant must "lack sufficient resources." (24 CFR 5.609). However, in situations where the participant is "fleeing or attempting to flee domestic violence," and the participant is not able to access or safely access the family income or resources, does HUD allow only the participant's income and resources to be included in the calculation or does the requirement mandate that the spouse's income and resources also be included in the calculation, even if the participant has no means or no safe means to access these funds?

HUD Response (10/24/12):

If a client cannot access the family's income or resources without putting him/herself at risk of continued violence, the income and resources should not be included in the initial eligibility evaluation. At re-evaluation, program staff should assess whether there are changes in the program participant's income or other circumstances (e.g., whether the program participant now has access to the family's

income and resources) that affect the program participant's need for assistance under ESG.

As a reminder, the following information provides specifics about the ESG income requirements and the correct regulatory information (please see 24 CFR part 576, rather than 24 CFR part 5). In order to be eligible for Homelessness Prevention assistance, a household must have an income BELOW 30% of median family income for the area, as determined by HUD, at initial evaluation (24 CFR § 576.103). At re-evaluation - which must take place not less than once every three months for homelessness prevention - the participant must have an annual income THAT DOES NOT EXCEED 30 percent of median family income for the area, as determined by HUD (24 CFR § 576.401(b)). The income assessment required for receiving Homelessness Prevention assistance applies regardless of whether the household is receiving housing relocation and stabilization assistance, or short- or medium-term rental assistance.

In addition there is a second requirement to consider when assessing eligibility for homelessness prevention or re-evaluating eligibility for rapid re-housing: whether the participant lacks sufficient resources and support networks to retain housing without ESG assistance (24 CFR § 576.401(b)(ii)).

TOPIC #10: Move to an Unknown or Out-of-Town/State Location

NHAP Question (10/09/12):

Under ESG Homeless Prevention and Rapid Rehousing, certain 'moving costs' are reimbursable (24 CFR 576.105(a)(6)). In situations involving a participant who is "fleeing or attempting to flee domestic violence," does HUD require an inspection of the housing unit to ensure it meets HUD's standards in order to pay for moving costs or are the moving costs reimbursable without this inspection if, to be safe, the participant is moving to an unknown location or a location out-of-town or out-of-state?

HUD Response (10/19/12):

ESG funds cannot be used to help a program participant remain or move into housing that does not meet the minimum habitability standards. Housing should be located within a reasonable distance. For example, ESG may not be used to move an individual or household across the country. ESG assistance may not be provided until the unit has been documented to be in compliance with the minimum habitability standards. Please note that as required by § 576.500(j), your documentation records must include documentation of compliance with the shelter and housing standards in § 576.403, including inspection reports.

TOPIC #11: Security Deposit Payment in Subsidized Housing

NHAP Question (10/04/12):

Is payment of a security deposit for an individual moving into federally-subsidized housing allowable under Rapid Re-housing? 24 CFR 576.105(d) states, "Use with other subsidies. Financial assistance under paragraph (a) of this section cannot be provided to a program participant who is receiving the same type of assistance through other public sources..." Does this include the subsidized housing-required security deposit?

HUD Response (10/05/12):

ESG funds may be used to provide security deposit assistance to recipients moving into federally subsidized housing as long as the following criteria are met:

- First, the individual or family must meet the eligibility criteria for ESG rapid re-housing (§ 576.104) or homelessness prevention assistance (§ 576.103). This means that the payment of the security deposit would be the only factor preventing them from literally moving into an emergency shelter or other place not meant for human habitation.
 - Second, ESG assistance cannot be provided to a program participant who is receiving the same type of assistance through other public sources (§ 576.105(d)). Therefore, ESG funds may be used for security deposit assistance only if a federally subsidized housing program has not provided funds for the household's security deposit.
 - Finally, please note that ESG funds may be used to pay for a security deposit that is equal to no more than 2 months' rent (§ 576.105(a)(2)).
-

TOPIC #12: Arrearage Dates that Cross Grant Periods

NHAP Question (10/04/12):

As Homeless Prevention Rental Assistance (24 CFR 576.106) allows for the one-time payment of rental arrears, can the past time period covered by the arrearage payment include dates prior to the start of the grant period?

HUD Response (10/05/12):

Payment of rental arrears consists of a one-time payment for up to 6 months of rent in arrears during any 3-year period. (See § 576.106(a) and (a)(3)). So an individual's arrears may be paid for once in any three-year period, regardless of whether the period for which the individual owes is prior to the beginning of the grant period.

Please note that the costs of homelessness prevention, including rental arrears assistance, are only eligible to the extent that the assistance is necessary to help the program participant regain stability in his/her current permanent housing or move into other permanent housing and achieve stability in that housing. (See § 576.103). This means that ESG funds should be used to pay for rental arrears ONLY if failing to

pay the arrears would result in the potential participant moving into an emergency shelter or place not meant for human habitation.

TOPIC #13: Street Outreach & Substance Abuse Service Costs

NHAP Question (02/13/13):

Emergency Mental Health services are an allowable cost under ESG Street Outreach (24 CFR 576.101a4), would these services include emergency substance abuse services provided by a licensed qualified provider to an individual meeting HUD's definition of 'homeless,' such as alcohol and drug evaluations and/or emergency alcohol or drug counseling?

HUD Response (02/26/13):

No. Under the Street Outreach component, emergency substance abuse services provided by a licensed qualified provider, such as alcohol and drug evaluations and/or emergency alcohol or drug counseling, would not be an allowable cost as part of the emergency mental health services. However, the cost of transporting an individual to emergency substance abuse treatment is an allowable cost under the Street Outreach Component.

Under the Emergency Shelter component, however, ESG funds may be used to provide essential services to individuals and families in emergency shelters, which include substance abuse treatment. ESG funds may only be used for these services to the extent that other appropriate substance abuse treatment services are unavailable or inaccessible within the community. For additional guidance see § 576.102(a)(1)(ix) of the ESG regulation.

TOPIC #14: Use of Rapid Rehousing versus Homelessness Prevention

NHAP Question (09/17/13):

We recently had a bad apartment fire in Lincoln that displaced residents who are temporarily staying with family or friends. If they qualify for ESG services, would it be under Rapid Rehousing or Homelessness Prevention? In one situation, the woman has an income slightly above 30% AMI, so if the answer is Homelessness Prevention, she wouldn't qualify. This is a somewhat urgent situation.

HUD Response (10/02/13):

In order to serve any family with ESG rental assistance, the family must be determined eligible under either the homeless definition or the at-risk of homelessness definition and must meet the eligibility criteria for ESG rapid rehousing or homelessness prevention assistance (24 CFR §§ 576.103 and 104). This may include determining at intake whether an individual or family lacks the resources to obtain other permanent housing. For homelessness prevention

assistance, this also includes the requirement that they have an annual income below 30% of AMI. So you are correct, if an applicant has an income slightly above 30% AMI, she would not qualify for homelessness prevention assistance.

To be eligible for rapid re-housing assistance, an individual or family would need to be living in an emergency shelter or a place not meant for human habitation. For homelessness prevention assistance, they would need to lack the resources and support networks to prevent them from moving to an emergency shelter or another place not meant for human habitation. In this case, because the families have alternative temporary housing available, they would not meet the criteria for receiving either rapid re-housing or homelessness prevention assistance. Even under the type of emergency situation you describe, the ESG recipient/subrecipient would need to determine that the potential participant is eligible for ESG assistance.

Should a family's temporary housing situation cease to be an option, keep in mind that the case managers would need to assess and document eligibility – as they must do for all applicants.

TOPIC #15: Payment of Pet Deposits

NHAP Question (03/25/13):

Can ESG cover the cost of a pet deposit under Rapid Rehousing, if the combined cost of the security deposit and the pet deposit does not exceed the cost of 2 month's rent (24 CFR 576.105)?

HUD Response (10/24/13):

Thank you for your inquiry. HUD sincerely appreciates your sensitivity and patience as we successfully implement the Emergency Solutions Grants (ESG) Program. We respect the importance of your question and regret the delay in a response.

Pet deposits are not directly related to the cost of housing and are not an eligible ESG expense. However, recipients of ESG funds must meet their obligations under Section 504 of the Fair Housing Act and the service animal provisions of the Americans with Disabilities Act and make reasonable accommodations as required. If your question involves a service animal then please submit another question to the Ask-A-Question help desk.

Please note: the response provided in this email is specific to the question you submitted and may not apply to similar questions. Therefore, please use discretion in providing the response to others, as the answer may not apply to their particular situations.

TOPIC #16: Payment of Homelessness Prevention Costs for Case Management Costs Prior to Discovery that Housing Unit and/or Participant is Ineligible

NHAP Question (05/15/13):

Are subrecipient costs associated with Homelessness Prevention services (e.g. housing search and placement, housing stability case management) eligible for ESG reimbursement when they are provided to the program participant prior to the point in time when it was discovered the housing unit did not meet HUD's habitability standards?

NHAP Follow up Question (09/17/13):

I submitted this question on May 15, 2013. Do you have a response yet?

HUD Response (11/19/13):

We apologize for the delay in responding to your question.

The ESG Interim Rule prohibits a recipient or subrecipient from using any ESG funds to help a program participant remain or move into housing that does not meet the minimum habitability standards specified in 24 CFR 576.403(c). The habitability standards generally consist of basic health and safety standards. In most cases, if a unit does not meet these standards, it is not appropriate for federal assistance to be used to keep someone in that unit. Further, HUD implemented habitability standards for ESG instead of the more stringent Housing Quality Standards (HQS), because HUD recognizes that the rapid and temporary assistance provided under ESG is different from other HUD programs.

It is not clear from your question whether the program participant about which you are asking is being assisted to stay in the same unit, or if you are assisting an individual or family that is at risk of becoming homeless to move to a different unit. However, the rule applies to all activities under the homelessness prevention and rapid re-housing components:

- If an eligible program participant needs homelessness prevention assistance to remain in the existing unit, the assistance can only be provided if that unit meets the minimum habitability standards specified in 24 CFR 576.403(c).
- If a program participant needs homelessness prevention or rapid re-housing assistance to move to a new unit, assistance specific to placing a program participant in that unit can only be provided if the new unit meets the minimum habitability standards.
- If the program participant needs ESG Homelessness Prevention or Rapid Re-housing assistance to obtain housing (move into a housing unit), the unit must be inspected before the program participant signs the lease and before the recipient or

subrecipient provides any rental assistance or housing relocation and stabilization services specific to the unit into which the program participant will be moving. This means that a recipient/subrecipient could provide a few select housing relocation and stabilization services that are not tied to a particular unit prior to conducting a habitability inspection, if there is not yet a unit to inspect. For example, if you are assisting a program participant staying in an emergency shelter with credit repair under the Rapid Re-housing component in order to help them prepare for housing, no inspection is required since there is no unit to inspect yet. However, in general, all rental and financial assistance costs involve helping a program participant move into a particular unit and therefore require a habitability inspection prior to expending ESG funds for those costs.

Note: Compliance with the ESG habitability standards must always be documented in the case file, even if the program participant receives only a small amount of one-time assistance, such as rental arrears, or a security deposit to move into a unit assisted with a different program.

As explained above, ESG assistance that involves placing a program participant into a particular unit cannot be provided until the unit is documented to meet the standards. However, the ESG Interim Rule does not specifically address the timing of inspections. This means that a recipient/subrecipient could, before an inspection is done, use non-ESG funds to pay for an eligible program participant's rental arrears, rental assistance, or financial assistance, or to provide services to keep an individual or family in their unit so long as the unit is inspected and determined to meet the habitability standards **before** the costs are charged to the ESG grant or matching funds. If the unit does not meet the habitability standards at the time of the inspection, ESG funds may not be used to reimburse the recipient or subrecipient for the assistance provided before the unit passes the inspection.

Please note that under the homelessness prevention component, when a program participant is being re-housed in a different unit, the unit the household is ***leaving*** does NOT need to be inspected; only the unit the household will be moving into must meet the minimum habitability standards specified in 24 CFR 576.403(c).

Finally, you should be aware that the recipient or subrecipient may establish standards that exceed or add to HUD's minimum standards, but the ESG regulation does not specify the point at which those standards must be met.

Please note: the response provided in this email is specific to the question you submitted and may not apply to similar questions. Therefore, please use discretion in providing the response to others, as the answer may not apply to their particular situations.

TOPIC #17: Payment of Rental Application Fees Prior to Discovery that Housing does not meet Habitability Standards

NHAP Question (11/01/13):

An allowable cost under ESG Rapid Rehousing or Homelessness Prevention activities is 'Rental Application Fees' (24 CFR 576.105). However, under 24 CFR 576.403(c), the regulation states, "The recipient or subrecipient cannot use ESG funds to help a program participant remain or move into housing that does not meet the minimum habitability standards provided in this paragraph (c)." Additionally, HUD has said ESG funds cannot be spent until the subrecipient knows the housing unit meets these and other standards. However, an inspection of the housing unit is often not possible until the owner has accepted the resident's application. Is it allowable for ESG funds to be spent on 'rental application fees' prior to an inspection of the housing unit?