Department of Housing and Community Development
California Emergency Solutions Grants (CA ESG) Program

Initial Statement of Reasons for the CA ESG Program Guidelines

Introduction:

Chapter 19 commencing with section 50899.1 of the Health and Safety Code establishes the California Emergency Solutions Grants (CA ESG) Program to be administered by the California Department of Housing and Community Development (Department). The statute provides that CA ESG shall be administered in a manner generally consistent with the requirements which govern the Department's federal Emergency Solutions Grants (ESG) funds. The statute also provides that the Department may adopt program guidelines to administer CA ESG Program differently from the federal ESG Program, as necessary to improve the effectiveness or efficiency of the program.

The following Initial Statement of Reasons explains the proposed program guidelines for the CA ESG Program:

Section 100. Purpose and Scope.

<u>Subsections (a - c)</u>

Purpose: The proposed subsections do the following:

a) Establish the name of the new program as California Emergency Solutions Grants Program.
b) Provide that the program be administered by the Department in a manner consistent the federal and State ESG regulations unless noted by the guidelines.
c) Provide that the changes in the guidelines shall supersede any discrepancies between the federal and state ESG regulations.

Rationale: The proposed language explains the general purpose for the guidelines as expressed in the program statute.

Section 101. Definitions.

<u>Subsection (a)</u>

Purpose: The proposed subsection adds the term "Administrative Entity" (AE) to the Definitions section.

Rationale: Utilizing AEs to administer the CA ESG Continuum of Care Allocation will enable local communities to have more control in the selection of funded providers and activities. AEs must be Units of General Purpose Local Government as specified in 25 CCR 8303 because these entities have direct experience with administering ESG funds. Since the Department will be utilizing several AEs to administer the Continuum of

Care allocation, it is important that the Department designate entities that have ESG administrative experience.

Subsection (b)

Purpose: The proposed subsection defines the acronym CA ESG Program.

Rationale: For clarity in reading and understanding the guidelines, subsection (b) defines the acronym whose meaning is unique to the CA ESG Program.

Subsection (c)

Purpose: The proposed subsection adds the term “Continuum of Care” to the Definitions section.

Rationale: Adding this term in the State guidelines enables the Department to correctly use it throughout the Guidelines without having to cite to federal or State ESG regulations each time the term is used.

Subsection (d)

Purpose: The proposed subsection clarifies the term “California ESG Regulations”.

Rationale: Clarifying this term in the proposed guidelines enables the Department to correctly use it throughout the guidelines without having to cite State ESG regulations each time the term is used.

Subsection (e)

Purpose: The proposed subsection clarifies the term “Subrecipient” to specifically refer to entities that enter into a Standard Agreement directly with the Department for CA ESG Program funds.

Rationale: Under the State ESG allocation system, within the Continuum of Care Allocation, the Department enters into a Standard Agreement with Entitlement Area AEs that select homeless service providers to utilize these funds. Within the Balance of State Allocation, the Department enters into a Standard Agreement directly with homeless service providers to utilize these funds.

There may be some confusion over which Subrecipients are directly responsible to the Department concerning State ESG Program funds, and which Subrecipients are responsible to the Department-designated AEs when both entities are considered Subrecipients for State funds under HUD’s definition at 24 CFR 576.2. Defining the term “Subrecipient” more clearly in the context of these State guidelines will eliminate this confusion.

Subsection (f)

Purpose: The proposed subsection clarifies the term "Subrecipient of the Administrative Entity" to specifically refer to entities that enter into a written agreement directly with an AE for CA ESG Program funds.

Rationale: See discussion above for the term "Subrecipient".

Section 102. Allocation of Funds.

Introductory Sentence

Purpose: The introductory sentence iterates that CA ESG Program funds awarded by an AE or the Department shall be used for Eligible activities as allocated pursuant to 25 CCR 8402 unless otherwise specified in the guidelines.

Rationale: Providers of funded activities and Continuums of Care (CoCs) need to know how ESG funds will be allocated. The proposed program guidelines generally keep the same requirements with respect to allocation of funds, except as noted in subsections (c) and (d) below consistent with the intent of the CA ESG statute.

Subsection (a)

Purpose: The proposed subsection permits the Department to distribute CA ESG Program funds over one or more years.

Rationale: The Department currently has an appropriation of $35 million for CA ESG Program. The proposed language will give the Department the flexibility to allocate these funds over multiple years rather than just a single year to keep program funding levels steady with the 2016 ESG funding level due to the uncertainty of funding from year to year. Having a steady funding level will help homeless service providers to better stabilize program operations and service provision.

Subsection (b)

Purpose: This provision iterates the authority of the Department under the CA ESG Program statute to permit local governments to take five percent of their available allocation for general administration costs under the Program.

Rationale: The statutory requirement is restated in the guidelines for purposes of clarity. Since AEs are local government entities that will have ongoing administrative responsibilities under the program, the statute permits local governments to receive these funds. Pursuant to current ESG requirements applicable to CA ESG Program, other local government and nonprofit homeless service providers can receive an indirect cost allocation of 10 percent or more of their award amount to cover their administrative expenses. No administrative funds are available to Balance of State CoCs since program administration funds were limited to ensure more funds are available for homeless services.

Subsection (c)

Purpose: Consistent with the statutory authority provided in Health and Safety Code section 50899.6 (a), this subsection expands eligibility of CA ESG Program funds to all CoC Service areas in the State.

Rationale: The Department's federal ESG funds can only be used by CoCs that have at least one nonentitlement area within their geographical service area. Since CA ESG is funded with state revenues, these funds will be made available to all CoCs in the State. This expands eligibility for CA ESG Program funds to CoCs that have no nonentitlement areas. (Currently, these are the San Francisco, Long Beach, Pasadena, and Glendale CoCs.)

Subsection (d)

Purpose: Consistent with the statutory authority provided in Health and Safety Code section 50899.6 subsections (a) and (b), this provision of the Guidelines permits the Department to modify the formula for allocation of CA ESG Program to utilize data from both the entitlement and nonentitlement areas of a CoC service area.

Rationale: As specified in 25 CCR 8402, the allocation formula for the Department's federal ESG funds utilizes data only for the nonentitlement areas of the State. Utilizing this same formula for CA ESG, but modifying it to include data from both entitlement and nonentitlement areas, is consistent with statutory intent and authorization to keep the requirements for ESG and CA ESG generally consistent but expand CA ESG to consider need in all areas of the State.

Section 103. Continuum of Care Allocation.

Introductory Sentence

Purpose: The introductory paragraph establishes that CA ESG Program funding for a Service Area in the Continuum of Care Allocation shall be administered by an approved AE in the Service area in which it is located pursuant to the requirements of 25 CCR 8403 unless noted in these guidelines.

Rationale: Currently**,** the ESG Program utilizes local entities to administer ESG funds within the Continuum of Care Allocation on behalf of the State. Utilizing AE's in same manner as the current ESG Program will enable local communities to continue to have more control in the selection of funded providers and activities, and complies with the general requirement under Health and Safety Code Section 50899.6 to administer ESG and CA ESG programs in a consistent manner.

Subsection (a)

Purpose: The purpose of this subsection is to notify Subrecipients and Subrecipients of the AE that the general match requirements in the State ESG regulations still apply except as noted in Section 110 of the guidelines (see Section 110 below).

Rationale: Keeping the CA ESG Program match requirements relatively consistent with the federal and State ESG requirements will help make the program easier to administer.

Subsection (b)

Purpose: For CoCs with no nonentitlement areas, this subsection clarifies that where Section 8403 makes specific reference to requirements for nonentitlement areas, these requirements will apply to their entitlement areas.

Rationale: This enables CoCs with no nonentitlement areas to be able to apply the requirements of Section 8403 to their particular circumstances.

Section 104. Balance of State Allocation.

Purpose: The subsection notifies Subrecipients in the Balance of State (BoS) Allocation of the Department's intention to govern the CA ESG Program in the same manner as the current ESG Program except for the changes to the matching requirements set forth in Section 110.

Rationale: Keeping the CA ESG relatively consistent with ESG with respect to BoS Allocation issues complies with the requirement under Health and Safety Code Section 50899.6 to administer ESG and CA ESG programs in a consistent manner, and will help avoid confusion in administration of the two programs.

Section 105. Notice of Funding Availability; Section 106. NOFA Application Process, and Section 107. Selection Criteria for NOFA Applicants.

Purpose: The purpose of these subsections is to clarify that CA ESG and ESG program funds will be issued under the same NOFA, subject to the availability of funds, and follow the same general rules for soliciting and reviewing applications under the BoS Allocation, with the exception of the differences in the CA ESG match requirements discussed in Section 110.

Rationale: Issuing one NOFA for both funding streams under the same rules for reviewing applications and making awards will enable CoCs to use the same process for making funding recommendations. It will also make both funding streams available at the same time making it easier for programs to plan for the use of the funds.

Section 108. Eligible Activities.

Subsection (a)

Purpose: The purpose of this subsection is to establish that CA ESG Program funds awarded by an AE or the Department shall be used for the same Eligible activities as permitted under the State ESG Program pursuant to 25 CCR 8408, in addition to the activities specified under subdivision (b) discussed below.

Rationale: Keeping CA ESG and ESG programs eligible activities relatively consistent will help homeless service providers better blend the two funding streams to increase service capacity and coordination.

Subsection (b)

Purpose: The purpose of this subsection is to enable up to 20 percent of an individual CA ESG formula allocation under 25 CCR 8402 to be used to support the development or operation of local Coordinated Entry systems. Coordinated Entry costs that involve capital development activities, such as, real property acquisition, construction, or rehabilitation activities will not be eligible under CA ESG.

Rationale: HUD requires ESG programs to participate in the local Coordinated Entry system. The existence of a well-functioning Coordinated Entry system is essential to the success of both ESG and affordable housing programs in implementing Housing First practices; however, most Coordinated Entry systems around the State are still being established. Funds for development and operation of these systems are scarce, particularly in rural areas. Although HUD does not permit the funding of Coordinated Entry activities through ESG, the CA ESG statute allows the Department to deviate from the federal ESG regulations, where necessary to improve the efficiency and effectiveness of the CA ESG Program.

Funds for Coordinated Entry activities will be limited so that CA ESG funds will still be used primarily for direct services. Coordinated Entry costs involving capital development activities will not be eligible costs due to the additional cost and complexity involved in funding and monitoring capital development activities and the limited amount of ESG funds available.

Section 109. Core Practices.

Subsection (a)

Purpose: The purpose of this subsection is to establish that all CA ESG-funded programs shall operate in a manner consistent with the Core Practices prescribed in 25 CCR 8809.

Rationale: The Core Practices prescribed in 25 CCR 8409 establish that all CA ESG funded programs will utilize Housing First and Progressive Engagement practices, including prioritizing services for those with the most severe and urgent needs and the most barriers to housing stability. These are critical practices to continue in the use of CA ESG Program funds.

Subsection (b)

Purpose: This subsection provides that all service providers receiving CA ESG Program funds shall take actions to create an effective, welcoming and affirming environment for all program participants and employees, including, but not limited to, persons of different races, ethnicities, sexual orientations, gender identities, and gender expressions.

Rationale: The Department wishes to encourage CA ESG Program grantees to take actions to improve cultural competency within their organizations, such as developing and implementing policies and procedures which promote inclusion, and conducting training sessions on cultural competency. In the coming months, the Department will make available on the ESG Program website training materials that organizations can use for this purpose.

Section 110. Matching Funds.

Purpose: This section provides that all CA ESG Program expenditures shall meet the matching requirements set forth under 24 CFR 576.201, except that the Department may establish a match requirement for CA ESG Program funds in the Department's annual ESG Action Plan for an amount lower than that required for ESG funds.

Rationale: Program stakeholders have expressed difficulty meeting HUD's one-to-one match requirement for ESG Program funds. The CA ESG Program statute permits the Department to deviate from ESG requirements to improve the efficiency or effectiveness of the Program. The Department recognizes that it may be difficult for many small localities to match CA ESG Program funds at the same level as ESG, particularly when localities are being asked to devote more resources to funding permanent supportive housing.

The Department would like to have the ability to lower the CA ESG Program match requirement on an annual basis through the HUD Annual Plan process when the Department makes other proposals specific to each ESG NOFA. All of these proposals will be subject to 30-day public comment prior to finalizing the NOFA.

Section 111. Standard Agreement.

Subsections (a) and (b)

Purpose: The purpose of these subsections is to notify CA ESG Subrecipients, (the term "Subrecipients" is defined in Section 101), that they will enter into a Standard Agreement with the Department after award of funds, and that one Standard Agreement will be executed for both ESG and CA ESG program funds.

Rationale: The Standard Agreement advises ESG and CA ESG program Subrecipients of their responsibilities and obligations under the relevant State and federal statutes, regulations, and guidelines. Within the CoC Allocation, most AEs will receive an allocation of both ESG and CA ESG funds. Within the BoS allocation, it is possible for one program to be funded through both ESG and CA ESG funding streams, since both funding streams will be made available as part of one competitive process. The Department will sign one Standard Agreement to award funds from both funding sources. This should create administrative efficiencies for both the Department and the Subrecipient.

Subsection (c)

Purpose: The purpose of this subsection is to clarify that the administration of CA ESG Program funds shall be maintained in the Department's own financial management system, rather than in HUD's IDIS system, and that references to IDIS within 25 CCR 8411 will instead pertain to the Department's own financial management system as applied to CA ESG Program funds.

Rationale: Only federal funds can be managed and disbursed through IDIS; therefore, the Department will use its own financial management system for CA ESG Program funds.

Subsection (d)

Purpose: The purpose of this subsection is to provide the authority for the Department to extend the expenditure period for CA ESG Program funds to up to 30 months.

Rationale: Although HUD regulations dictate that federal ESG funds must be spent within 24 months, the Department would like to provide Subrecipients the flexibility to spend CA ESG Program funds over 30 months as needed in order to expend all funds under contract.

Section 112. Disbursement Procedures.

Subsection (a)

Purpose: The purpose of this subsection provides that CA ESG Program funds will be disbursed in the same manner as the current ESG Program. The subsection also clarifies that the policies of the National Environmental Policy Act and the environmental review procedures in 24 CFR Parts 50 and 58 do not apply to the CA ESG Program.

Rationale: The changes to this subsection ensure that the disbursement of CA ESG Program funds is consistent with current ESG Program practice but does not impose requirements of other federal laws on CA ESG which are not necessary to achieve the objectives of the State program. Since CA ESG funds will not be used for renovation, conversion or rehabilitation activities pursuant to 25 CCR 8408, it is not necessary to have any environmental review requirements associated with these funds.

Subsection (b)

Purpose: The purpose of this subsection is to establish that should a Subrecipient receive both ESG and CA ESG program funds for the same activity, ESG funds will be disbursed prior to disbursing CA ESG Program funds.

Rationale: HUD regulations require that ESG funds be spent within 24 months from execution of its grant agreement with the Department. In order to avoid receiving a HUD monitoring finding, the Department must act to ensure that it can meet this expenditure deadline by disbursing Federal funds before State funds for the same activity.

Section 113. Reporting and Recordkeeping.

Subsection (a)

Purpose: The purpose of this subsection is to establish a records retention requirement for all program records pertaining to a Standard Agreement.

Rationale: The proposed language in this subsection makes clear that the Subrecipient shall retain all program records pertaining to the Standard Agreement for a period of five years from the date of expenditure of all funds under the Standard Agreement. This is consistent with the current ESG five-year retention rule.

Subsection (b)

Purpose: This subsection establishes reporting requirements for the CA ESG Program.

Rationale: The reporting requirements in subdivisions (1), (2), and (3) are necessary to ensure that CA ESG Program funds are being spent appropriately, and that the data is collected on CA ESG Program outcomes is similar to what is being collected for ESG funds. As the CA ESG Program continues, additional reports maybe requested in future years to meet State reporting or audit requirements.

Section 114. Monitoring Grant Activities.

Purpose: These provisions establish that the Department will monitor the CA ESG Program Subrecipient according to the current ESG Program requirements prescribed in 25 CCR 8414.

Rationale: The Department seeks to uniformly monitor Subrecipients regardless of their ESG funding source in order to streamline monitoring functions and provide consistent technical assistance to improve performance.

Section 115. Sanctions.

Purpose: These sections sets forth the sanctions the Department may impose upon a Subrecipient for failure to abide by CA ESG Program requirements.

Rationale: For purposes of consistency and clarity, the Department has chosen to impose similar sanctions as it has the authority to impose under the ESG Program.