

# **Emergency Solutions Grants Program Draft Guidelines**



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**[July 16, 2024](#)**

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## **Article I. General**

### **§ 100. General**

- (a) Pursuant to California Health and Safety Code 50899.1 through 50899.8, these Guidelines are adopted with the purpose to administer ESG funds awarded after the effective date of <<<DATE>>> (“Guidelines”) and establish procedures for the State of California (“State”) administration of federal funds from the Emergency Solutions Grants Program (the “ESG” or “ESG program”) and establish policies and procedures for use of these funds to meet the purposes contained in Title IV of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11371-11378), as amended by S.896 The Homeless Emergency Assistance and Rapid Transition to Housing (HEARTH) Act of 2009 (103-105 and 401-418) (in whole referred to as the “Act”).
- (b) These Guidelines are intended to be updated as necessary to address changes in state and federal statutes and federal regulations regarding the ESG program.

NOTE: Authority cited: Health and Safety Code 50899.1 through 50899.8

### **§ 101. Primary Objectives**

- (a) The Act, and any amendments thereto, provide for State administration of the ESG program. These Guidelines set forth policies and procedures governing the administration of these funds within the California Department of Housing and Community Development (the “Department”). In addition to these Guidelines, ESG program participants will comply with the federal regulations applicable to the ESG program as indicated below and as set forth in 24 CFR 58 and 24 CFR 576. The Department’s ESG awards and the Subrecipients of those awards, including Unit of General Purpose Local Government and Private Nonprofit Organizations, are subject to the Uniform Administrative Requirements, Cost Principles and Audit Requirements for federal Awards at 2 CFR 200. In the event that any federal or state laws, regulations, or state Guidelines, including without limitation regulations by the U.S. Department of Housing and Urban Development (“HUD”), add, delete, modify, or otherwise change any statutory or regulatory requirements concerning the use or administration of these funds, ESG program participants must comply with such requirements, as amended.
- (b) Projects are required to adhere to all applicable California state law (“state law”), federal law, regulations, and Guidelines which include but are not limited to the ESG federal regulations (24 CFR 576) and the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for federal Awards (2 CFR 200). Elements of these requirements are incorporated into these

Guidelines; however, Contractors are strongly encouraged to independently review all applicable requirements independent of this document.

- (c) In the event of a conflict between the State ESG Guidelines and 24 CFR 58, 2 CFR 200, or the federal ESG regulations at 24 CFR 576, the federal regulations shall prevail. See Health and Safety Code 50406(n). See also 42 U.S.C. 11371-11378 (103-105 and 401-418), 24 CFR 58, 2 CFR 200, and 24 CFR 576.

NOTE: Authority cited: Health and Safety Code 50406(n), and 50899.1 through 50899.8

## **§ 102. Definitions**

In addition to the definitions found in 42 USC 11371 (2011) and 24 CFR 576.2 and 91, the following definitions apply to these Guidelines.

- (a) "Annual Action Plan" or (AAP) means a concise summary of the actions, activities, and the specific federal and non-federal resources that will be used each year to address the priority needs and specific goals identified by the Consolidated Plan.
- (b) "Annual Funding Cycle" means the NOFA issued as a result HUD's approval of the Department's Annual Action Plan and issuance of a grant agreement to the Department.
- (c) "Annual Performance Report" means a report prescribed by HUD for all jurisdictions receiving funding under the ESG program provided in 24 CFR 576, that includes the number of persons helped, the types of help provided, and the project or program outcomes data measured under the performance standards developed in consultation with the Continuum(s) of Care.
- (d) "Application" means Contractor's ESG application submitted in response to an ESG NOFA.
- (e) "Board of Directors" means a group of individuals who are elected to govern and oversee the nonprofit organization's operations. The board is responsible for setting the organization's mission, strategy, and goals, and ensuring that the organization operates in compliance with legal and ethical standards.
- (f) "Build America, Buy America (BABA)" means the Contractor must comply with the requirements of the Build America, Buy America (BABA) Act, 41 USC 8301

and all applicable rules and notices, as may be amended, if applicable to the Grantee's infrastructure project. Pursuant to HUD's Notice, "Public Interest Phased Implementation Waiver for FY 2022 and 2023 of Build America, Buy America Provisions as Applied to Recipients of HUD federal financial assistance" (88 FR 17001), any funds obligated by HUD on or after the applicable listed effective dates, are subject to BABA requirements, unless exempted by a waiver.

- (g) "Continuum of Care" means the group composed of representatives of relevant organizations, which generally includes nonprofit homeless providers; victim service providers; faith-based organizations; governments; businesses; advocates; public housing agencies; school districts; social service providers; mental health agencies; hospitals; universities; affordable housing developers; law enforcement; organizations that serve homeless and formerly homeless veterans, and homeless and formerly homeless persons that are organized to plan for and provide, as necessary, a system of outreach, engagement, and assessment; emergency shelter; rapid re-housing; transitional housing; permanent housing; and prevention strategies to address the various needs of homeless persons and persons at risk of homelessness for a specific geographic area.
- (h) "Continuum of Care Service Area" means the entire geographic area within the boundaries of an Eligible Continuum of Care.
- (i) "Contract" means the contract entered into by the Department and the ESG Subrecipient (also known as Contractor) setting forth the basic terms and conditions governing the awards of ESG funds.
- (j) "Contractor" means a Subrecipient that enters into a Standard Agreement (STD 213) with the Department for ESG funds and becomes a federally defined Contractor under 24 CFR 576.2 Definitions, see 2 CFR 200.1, but not a federally defined Contractor under 2 CFR 200.331. Subrecipient is often used synonymously with Contractor.
- (k) "Department" means the California Department of Housing and Community Development.
- (l) "Eligible Activities" means those activities upon which ESG funds may be expended as defined under 24 CFR 576 Subpart B.
- (m) "Eligible Continuum of Care" means a Continuum of Care in the State that has within its Service Area at least one Nonentitlement Area.

- (n) “Eligible Organization” means a Private Nonprofit Organization or a Unit of General Purpose Local Government that provides, or contracts with, Private Nonprofit Organizations to provide Eligible Activities.
- (o) “ESG” is the acronym for the Emergency Solutions Grants program.
- (p) “ESG Entitlement” means a Unit of General Purpose Local Government that meets one of the following:
- (1) is a Metropolitan City or Urban County as defined under 42 U.S.C. 5302 that receives an allocation of ESG funds directly from HUD;
  - (2) is in a Nonentitlement Area that has entered into an agreement with an Urban County to participate in that locality’s ESG program; or
  - (3) is a Metropolitan City or Urban County that have entered into a joint agreement with one another to receive and administer a combined direct allocation of ESG funds from HUD.
- (q) “ESG Entitlement Area” or “Entitlement Area” means the geography within an ESG Entitlement’s boundaries.
- (r) “ESG Nonentitlement” means a Unit of General Purpose Local Government that does not receive ESG funding directly from HUD and is not participating as an ESG Entitlement Area.
- (s) “ESG Nonentitlement Area” means the geography within an ESG Nonentitlement’s boundaries.
- (t) “Expenditure Milestone(s)” means the percentage of the award, that is identified in the Standard Agreement, that must be expended by a specified time period.
- (u) “Governing Board” means Board of Supervisors for a County Applicant and means City Council for a City Applicant.
- (v) “HUD” means the U.S. Department of Housing and Urban Development.
- (w) “Notice of Funding Availability” (NOFA) refers to a process that informs the public that funding is available for a specific purpose and can be requested through an application process.
- (x) “Nonentitlement Area” means an area which is not a metropolitan city or part of an urban county and does not include Indian tribes. 42 USC 5302(7).
- (y) “Request for Funds (RFF)” means a request for reimbursement by a Subrecipient for Eligible Expenses on forms provided by the Department.

- (z) “Service Area” has the same meaning as the term “Continuum of Care Service Area.”
- (aa) “Service Providers” refers to the “Continuum of Care” definition found at 24 CFR 576.2.
- (bb) “Site” means one or more facilities where the program(s) is being carried out.
- (cc) “Site Control” means the legal right to occupy and use the Site, as evidenced by such things as:
- (1) A deed demonstrating ownership in fee title;
  - (2) a lease demonstrating a leasehold interest in the Site and its improvements for at least the term of the ESG grant;
  - (3) an enforceable option to purchase or lease a site provided that such option will be for at least the term of the ESG grant; or
  - (4) for rotating shelter programs, Site Control may include other evidence provided by the applicant granting permission to use the site(s). Such evidence must be approved by the Department in writing before the deadline for submission of the ESG applications stated in the applicable NOFA.
- (dd) “Standard Agreement” means the contract entered into by the Department and the Contractor (also known as Subrecipient) setting forth the basic terms and conditions governing the awards of ESG funds.
- (ee) “Subrecipient” means an entity that enters into a Standard Agreement with the Department for a General Purpose Local Government or Private Nonprofit Organization to which a recipient makes available ESG funds as defined in 24 CFR 576.2. Throughout these Guidelines, Subrecipient is also referred to as Contractor.
- (ff) “Subcontractor” means an entity that is performing work as shown under 24 CFR 576.100(A) and as described in Exhibit A of the Standard Agreement, ESG funds for a Contractor or Service Provider.
- (gg) “Written Standards” are defined in 24 CFR 576.400(e).

NOTE: Authority cited: Health and Safety Code 50899.1 through 50899.8



### **§ 103. Program and Administrative Requirements**

- (a) All Department program administrators, Applicants, and Contractors must adhere to all federal program statutes, federal regulations, Federal Register notices, HUD guidance notices and policy memoranda, Office of Management and Budget (OMB) Uniform Administrative Requirements, Cost Principles, Audit Requirements for federal awards, the Federal Uniform Relocation Assistance and Real Property Acquisition Act, California Relocation Assistance Law, and all state and federal nondiscrimination and fair housing requirements. Additionally, Department program administrators, Applicants, and Contractors must adhere to all California State Administrative Manual requirements, regulations, state statutes, award letters, Standard Agreements, and these Guidelines; and all state and federal requirements to affirmatively furthering fair housing, including without limitation, compliance with civil rights and fair housing laws as referenced in 24 CFR 1, 91, 92, and 576.

NOTE: Authority cited: Health and Safety Code 50899.1 through 50899.8

### **§ 104. Nondiscrimination**

- (a) The Department prohibits discrimination on the basis of Age, Ancestry, Arbitrary Characteristics, Caste, Citizenship, Color, Disability, Ethnicity, Familial Status, Gender, Gender Expression, Gender Identity, Genetic Information, Immigration Status (except where explicitly prohibited by federal law), Marital Status, Medical Condition, Military Status, Nationality, Primary Language, Race, Religion, Religious Creed, Sex, Sexual Orientation, Sex Stereotype, Source of Income, Veteran Status, and all other classes of individuals protected from discrimination under federal or state fair housing laws.
- (b) Individuals perceived to be a member of any of the preceding classes must not be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with ESG funds made available pursuant to these Guidelines.
- (c) All Contractors and Subcontractors shall comply with the requirements contained in 24 CFR 5.105(a); as well as the Americans with Disabilities Act, the Fair Housing Amendments Act, the California Fair Employment and Housing Act, the Unruh Act, G.C. 11135, 504 of the Rehabilitation Act, and regulations disseminated pursuant to those statutes, including 24 CFR 100, 24 CFR 8, and 28 CFR 35, in all of the Contractor's activities.

NOTE: Authority cited: Health and Safety Code 50899.1 through 50899.8

## Article 2. Method of Distribution

### § 200. Allocations

- (a) The Department shall distribute the ESG annual funding based on a formula allocation and/or performance outcomes by accessing Homeless Management Information System (HMIS) data via the State Homeless Data Integration System (HDIS), including, but not limited to, 'exits to permanent housing.' The Department shall update the distribution method in the AAP.
- (b) The amount of funds available for the Continuum of Care Service Area will be based on the amount of ESG funds made available to the Department through a grant agreement from HUD in any given year using the following formula factors adjusted biennially using the most recent data available reflecting the total population of the ESG Nonentitlement Areas within each Continuum of Care Service Area as published by the Census Bureau;
  - (1) The number of extremely low-income renter households within the ESG Nonentitlement Areas of each Continuum of Care Service Area that are paying more than 50 percent of their income for rent using HUD's Comprehensive Housing Affordability Strategy data set;
  - (2) The number of persons below the federal poverty line within the ESG Nonentitlement Areas of each Continuum of Care Service Area divided by the total population within the ESG Nonentitlement Areas of each Continuum of Care Service Area. This factor will be double-weighted. Data for these factors will be obtained from the Census Bureau; and
  - (3) Notwithstanding subsections (1) through (2) above, the Department may occasionally adjust the weighting of these factors and sources of information to reflect changes in the availability of data sources and to use the best information available. Any changes to the factors or weighting of the formula will be proposed in the AAP pursuant to 24 CFR 91.
- (c) The amount of funds available to a Service Area under the formula may be capped in order to achieve a greater geographic balance of the funds among all eligible Continuums of Care of the State. Any cap on amounts available under the formula will be proposed in the AAP.
- (d) The Department will accept and use an amount of the State's annual allocation of ESG funds for Administrative Activities not to exceed the amount permitted under 24 CFR 576.100 (c). Pursuant to 24 CFR 576.108 (b), a portion of this

amount will be shared with ESG Contractors that are Units of General Purpose Local Government. The amounts available for Administrative Activities will be announced in the AAP and annual NOFA.

(e) Penalty for not expending 100 percent of a prior grant:

- (1) Contractors that do not expend their entire grant award by the expenditure deadline identified in Standard Agreement will not be allowed to apply for future funding for the next two Annual Funding Cycles. If the penalty is upheld, the CoC may select another Applicant. Refer to Section 202 (b) of these Guidelines. This penalty may be reconsidered in the event of an emergency or declared disaster as outlined in Section 204 of these Guidelines.
- (2) If the Department, the State Attorney General, HUD, or Federal Office of Inspector General determines that fraud has been committed by a Contractor and/or its organization, they will not be allowed to apply for future funding for at least the next three Annual Funding Cycles. If the penalty is upheld, the CoC may select another Applicant. Refer to Section 202(b) of these Guidelines.

NOTE: Authority cited: Health and Safety Code 50899.1 through 50899.8

## **§ 201. Eligible Components and Activities**

- (a) ESG funds may be used for five program components: Street Outreach, Emergency Shelter, Homelessness Prevention, Rapid Rehousing, and Homeless Management Information System (HMIS), as well as Administrative Activities. The five program components and the Eligible Activities that may be funded under each are set forth in 24 CFR 576.101 through 24 CFR 576.107. Eligible Administrative Activities are set forth in 24 CFR 576.108.
- (b) A percentage of all Contractor's budgets must include the Rapid Rehousing component. The Department may adjust these percentages from time to time. Any adjustment will be announced in the AAP and/or NOFA.
- (c) Homelessness Prevention will be limited to no more than 10 percent of any awarded contract/budget and will not be awarded as a standalone activity. The Department may adjust these percentages from time to time. Any adjustment will be announced in the AAP and/or NOFA.
- (d) State ESG funds shall not be used for Renovation, Conversion, or Major Rehabilitation activities pursuant to 576.102. Minor repairs to an ESG-funded Emergency Shelter that do not qualify as Renovation, Conversion, or Major Rehabilitation are an eligible use of State ESG funds. HUD defines "renovation

and conversion" as an activity that does materially add to the value of the building, appreciably prolong its useful life, or adapt it to new uses.

- (e) ESG Shelter Operations funds may be used for maintenance activities that do not materially add to the value of the building/property; do not appreciably prolong the useful life of the building/property; and do not adapt the building/property to new uses. Examples of maintenance activities could include activities such as: replacing a few shingles on a leaky roof; patching leaking pipes or plumbing; replacing a broken window; fixing a crack in a sidewalk; filling potholes in a parking lot; and repairing portions of a fence.
- (f) The requirements of the Build America, Buy America Act (BABA) may apply to minor repairs. Additional information regarding the implementation of BABA will be provided in the annual NOFA.
- (g) Contractors and Subcontractors must comply with the shelter and housing standards cited in 24 CFR 576.403 and other HUD habitability and housing standard requirements.

NOTE: Authority cited: Health and Safety Code 50899.1 through 50899.8

## **§ 202. Eligible Applicants/Organizations**

- (a) An Eligible Applicant/organization means a Private Nonprofit Organization or a Unit of General Purpose Local Government that provides or contracts with Private Nonprofit Organizations to provide Eligible Activities, 24 CFR 576.2.

The Applicant shall meet the following requirements when its application is submitted:

- (1) The Applicant must show to the satisfaction of the Department that it is in compliance with the Single Audit requirements of 2 CFR 200.50;
  - (2) The Applicant must be in good standing with the Department, as defined in the NOFA, and in compliance with all applicable law; and
  - (3) Applicants must provide a Certificate of Good Standing from the California Secretary of State's office and a copy of their most recent filed Internal Revenue Service Form 990.
- (b) Applicant Selection
    - (1) The Continuum of Care may select up to two Eligible Applicants to apply for funding in any given year. The selection process used by the Continuum of Care must include, at a minimum, the following:

- a. In making this selection, the Continuum of Care shall use a process which is fair, equitable, and open and avoids conflicts of interest in project selection, implementation, and administration of funds;
  - b. Incorporate reasonable performance standards as set forth in the AAP based on HUD requirements and guidance. If the Applicant has not implemented the proposed activity or similar activity within the past three years, the Continuum of Care shall work with the funded Applicant to ensure it meets reasonable performance standards specified in the AAP in the contract year;
  - c. The Applicant and/or Service Provider must develop complete policies and procedures that meet HUD's, the Department's, and the CoC's requirements. The CoC must review and approve the policies and procedures before the Contractors and/or Service Provider can begin administering any ESG Eligible Activity.
  - d. Comply with federal regulations and these Guidelines.
- (c) The Department reserves the right to approve Applicants the Continuum of Care has recommended. If the Department does not approve an Applicant, the Department must communicate to the Continuum of Care the reason for the denial in writing within 15 business days from the closing date of the application period.

(1) Criteria for denial of an Applicant:

- a. Applicant is not in good standing with the Department;
- b. Applicant has unresolved findings with the Department, HUD or a Single Audit;
- c. Applicant has not met Expenditure Milestones in the prior two Annual Funding Cycles; or
- d. Applicant has an outstanding financial obligation to the Department and is not meeting repayment terms, if applicable.

NOTE: Authority cited: Health and Safety Code 50899.1 through 50899.8

## § 203. Notice of Funding Availability

- (a) A NOFA will be issued every third Annual Funding Cycle. This means that each NOFA and subsequent awards will be encumbered and evidenced by a multiple year Standard Agreement, where Applicants may apply for more funds on the third year.
- (b) Funding will be based on the actual amount of ESG funds made available to the Department through a grant agreement from HUD in any given year using the formula allocation set forth in Section 200 of these Guidelines.
- (c) The Department reserves the right to issue one or more NOFAs as needed, and to subsequently amend, supplement, or rescind any such NOFA in its discretion.
- (d) The Department will notify all eligible Applicants of the anticipated level of funding for the program in the AAP and will provide them with a schedule of filing applications as indicated in the NOFA.
- (e) The NOFA will specify, among other things, the amount of funds available, eligible components and activities, the time frame for submittal of applications, the application requirements pursuant to Section 203 of these Guidelines, formula allocation and/or performance outcomes pursuant to the AAP, the matching contribution requirements pursuant to Section 209 of these Guidelines, any prohibitions of use of funds, the availability of administrative funds, and the general terms and conditions of funding allocations.
- (f) Applications must be received by the closing date and time identified in the NOFA. In order to comply with any set-aside or special allocation established by HUD or the Department, the Department may do one or more of the following:
  - (1) Issue a special NOFA.
  - (2) Specify in each NOFA the reservation of a portion of the funds for various set-asides or special allocations.
  - (3) Specify in each NOFA any waivers to requirements granted by HUD or the Department in connection with the funds.
  - (4) Deadline for filing of applications to be reviewed and approved by the Department, timeframes for review and funding of all applications.
  - (5) General terms and conditions of funding allocations set forth in 24 CFR 91.320.

(g) For funding years when a NOFA is not issued, a new application will not be required. The Department will notify the Contractor with active contracts in good standing:

- (1) Their annual funding allocation amount;
- (2) Request a Budget Revision;
- (3) Request a signed certification from the Authorized Signor identified in the Resolution of any changes;
- (4) Issue an award letter;
- (5) Amend the Standard Agreement to reflect the adjusted funding.

NOTE: Authority cited: Health and Safety Code 50899.1 through 50899.8

#### **§ 204. Special Disaster or Emergency Supplemental Assistance NOFAs**

(a) Notwithstanding any provision in these Guidelines to the contrary, in the event of a special appropriation of emergency supplemental assistance or a presidential declaration of disaster, or the Governor proclaims either a “state of war,” “state of emergency” or a “local emergency,” as those terms are defined in Government Code 8558(a-c), the Department Director, with the prior consent of the Governor pursuant to Gov. Code 8571, may suspend part of the ESG program Guidelines (pursuant to Government Code 8571 - Suspension of statutes, orders, rules and regulations: “During a state of war emergency or a state of emergency the Governor may suspend...any rules, or regulations of any state agency...where the Governor determines and declares that strict compliance with any statute, order, rule, or regulation would in any way prevent, hinder, or delay the mitigation of the effects of the emergency”) in order to expedite the emergency federal funding. The special NOFA will make ESG program funds available to Eligible State Applicants located in the areas covered by the federal or state disaster or emergency proclamation pursuant to the following special conditions:

- (1) The project or activity shall be designed to alleviate or mitigate existing conditions that pose a serious actual, or impending, threat to the health or welfare of the community;
- (2) The Department will review eligibility documentation for each proposed activity to ensure there is no duplication of eligible costs.

- (b) The proposed project or activity shall be otherwise eligible for funding under these Guidelines or be eligible pursuant to other HUD eligibility criteria. In order to address the most serious emergent health, safety, and general welfare needs, the Director may direct funding awards to a designated project(s) or activity type(s) or area(s). These measures may include, but are not limited to:
- (1) Limiting a NOFA to a designated type of project, activity, or geographic area related to the federal or state disaster or emergency proclamation;
  - (2) Awarding bonus points within a NOFA to a designated type of project, activity, or geographic area;
  - (3) Reserving a portion of funds in a NOFA for a designated type of project, activity, or geographic area;
  - (4) Establishing maximum award amounts per Applicant, type of project, or type of activity; and
  - (5) Making funds available through an Over-The-Counter (OTC) process, meaning the Department continuously accepts and evaluates applications until funds are exhausted.
- (c) To the extent necessary to address serious emergent health, safety, and general welfare needs, and to expedite the process of making awards, the Department Director, with the prior consent of the Governor, may alter or suspend state-required criteria set forth in the NOFA in accordance with Gov. Code 8571. Federal requirements cannot be waived without express written authority from HUD.

NOTE: Authority cited: Health and Safety Code 50899.1 through 50899.8. Government Code 8558(a-c) and 8571

## **§ 205. Contents of the Application**

- (a) Applications must be submitted on the current state online application portal and must be the prescribed forms and consist of the items identified in the NOFA, and any other information deemed necessary by the Department, to evaluate the application. This information provides the basis for the assessment identified in the NOFA and includes the assurances and agreements necessary for compliance with these Guidelines, 24 CFR 576, and 2 CFR 200.
- (b) Threshold Requirements



(1) Authorizing Board of Supervisors Resolution

- a. The application must include an Authorizing Resolution (“AR”) completed utilizing the Department’s resolution template and approved by the Applicant’s governing board. The AR must designate a person or persons responsible for, and authorized to execute, all documents related to the application of ESG funds, ESG award, and submittal of funds requests.
- b. Failure to use the required AR template provided by the Department will result in automatic disqualification. If a governing body must prepare a separate resolution concurrently that conforms to its local standard, it may do so in addition to preparing the AR form provided by the Department. In the event the Applicant’s AR is not submitted by the application due date, then the entire application will be deemed untimely and thus automatically rejected in its entirety.

(2) Authorized Signatory for Contracts involving City Contractors

- a. General: Pursuant to Government Code 40601 and 40602, the Mayor or Mayor pro tempore must sign all written contracts and conveyances made or entered into by the city, unless the city has an ordinance in effect that specifically allows contracts to be signed by an officer other than the mayor or mayor pro tempore.
- b. No Ordinance: Accordingly, if the city does not have a city ordinance described above, then the Department requires that the mayor or mayor pro tempore sign any contract and or conveyances made or entered into by the city as the authorized signer for the city with the Department. The City Contractor will be required to provide to the Department a resolution from the City Council authorizing the mayor to sign Standard Agreements or any other required documents.
- c. Delegation: The mayor or mayor pro tempore may not delegate to a third party his or her authority to sign documents under this provision unless there is an ordinance in effect that expressly authorizes such delegation and a duly authorized resolution reflecting such delegation is provided to the Department.
- d. With Ordinance: If the city does have an ordinance as described above, the Department requires the city to provide a copy of such ordinance and meet all other requirements of Section 205 (b)(2) of these Guidelines.

### (3) Financial Management

- a. All Applicants must show to the satisfaction of the Department that the following financial management requirements of 2 CFR 200 have been met:
- b. The Applicant must provide the Department with its most recent Single Audit (as submitted to the State Controller's Office), if applicable.

If the Applicant has any open Single Audit findings and does not have a plan or an agreement to remediate those findings, the Applicant will be deemed ineligible for funding through the State ESG program until the findings are resolved or a remediation plan or agreement is established.

- c. The most recent year's filed Internal Revenue Service Form 990.

(4) Applicants must have identified dollar-for-dollar match for the federal ESG funding with funds from other public or private sources as set forth in 24 CFR 576.201.

(5) Nonprofit Organization applications must contain the organization's current bylaws and articles of incorporation.

(6) Applicants must have adequate and documented Site Control for any application proposing an Emergency Shelter Activity as set forth 24 CFR 576.408.

(7) Private Nonprofit Organizations proposing Emergency Shelter activities applications must include a Certification of Local Approval completed and signed by the city or county where the activity is located as set forth in 24 CFR 576.202 (a)(2).

(8) Environmental Review – Pursuant to 24 CFR 58 Units of General Purpose Local Government must complete the appropriate level of environmental review and submit the review signed by the Certifying Officer of the jurisdiction along with all supporting documentation. Nonprofit Applicants must provide information to the Department necessary for the Department to complete the environmental review. The NOFA will contain more information on what the Department will need.

NOTE: Authority cited: Health and Safety Code 50899.1 through 50899.8

## **§ 206. Evaluation Criteria**

- (a) For those eligible applications received during the NOFA process, individual activity types will be evaluated according to criteria identified in the AAP and these Guidelines.
- (b) Applications will be evaluated based on criteria set forth in the ESG federal regulations, AAP, and these Guidelines.
- (c) For those eligible applications received in an OTC NOFA process, individual projects will be evaluated for funding on a first-come, first-served basis as set out in the AAP and NOFA.
- (d) Tiebreaker criteria and methodology will be specified in the AAP and NOFA.

NOTE: Authority cited: Health and Safety Code 50899.1 through 50899.8

## **§ 207. Award of Funds**

- (a) ESG funds shall be disbursed pursuant to the terms of the Standard Agreement.
- (b) The Department will require the first RFF be submitted within 120 days from the date of Standard Agreement execution. Subsequent RFFs must be submitted no less than quarterly. Funds not drawn in a timely manner may be recaptured and reallocated as described in the Standard Agreement. All expenditures claimed in a request for disbursement must be eligible, reasonable, and be accompanied by detailed supporting documentation.
- (c) If a Contractor uses ESG funds for the costs of ineligible activities, the Contractor shall be required to reimburse these funds to the Department and shall be prohibited from receiving and/or applying to the Department for subsequent ESG funds until the Department is fully repaid.
- (d) A Contractor may begin incurring eligible costs beginning with the date of their award letter. The Department will only reimburse the Contractor for eligible costs incurred and after all environmental review requirements have been met, and the Standard Agreement has been executed by both the Contractor and the Department. Environmental review compliance shall include compliance with 24 CFR 50 and 58 and all applicable federal and state laws and requirements.
- (e) Contractors that do not expend their entire grant award by the expenditure date identified in Standard Agreement will not be allowed to apply for future funding

for the next two Annual Funding Cycles. If the penalty is upheld, the CoC may select another Applicant. Refer to Section 202(c) of these Guidelines. This penalty may be reconsidered by the Department, in its sole discretion, in the event of an emergency or declared disaster as outlined in Section 204 of these Guidelines.

- (f) Before reimbursement, Contractor must provide evidence that clients served have been entered into HMIS in accordance with HUD regulations.

NOTE: Authority cited: Health and Safety Code 50899.1 through 50899.8

### **§ 208. Indirect Costs**

- (a) Contractor's and Subcontractors must follow 24 CFR 576.109 when utilizing indirect costs in their awarded budgets.
- (b) ESG grant funds may be used to pay indirect costs in accordance with 2 CFR 200 (E).
- (c) Indirect costs may be allocated to each Eligible Activity under 24 CFR 576.101 through 24 CFR 576.108, so long as that allocation is consistent with 2 CFR 200 (E).
- (d) The indirect costs charged to an activity subject to an expenditure limit under 24 CFR 576.100 must be added to the direct costs charged for that activity when determining the total costs subject to the expenditure limit.

NOTE: Authority cited: Health and Safety Code 50899.1 through 50899.8

### **§ 209. Match**

- (a) Each ESG Contractor is required to provide matching funds equal to 100 percent of the ESG funds that the Department awards to them. Documentation of satisfactory match must be maintained pursuant to the requirements of 24 CFR 576.201.
- (b) Costs paid by Program Income shall count toward meeting the Contractor's matching requirements, provided the costs are eligible and reasonable ESG costs that supplement the Contractor's ESG program.

(c) Eligible Sources of Match

Funds and contributions from any source other than the ESG program are eligible for use as match, including but not limited to other federal funds, local/state government funds, and private donations of cash, property, and labor, provided that they meet the following criteria:

- a. They meet the requirements under 2 CFR 200.306, excluding the expenditure limits in 24 CFR 576.100;
  - b. The match source is not prohibited from matching the ESG program, HUD programs, or federal funds in general;
  - c. The contribution would have been an allowable cost under the ESG program if paid for using ESG funds.
- (d) Contractors are required to provide match commitments as part of the grant execution process. Commitments must be made in writing and signed by an authorized signatory on agency letterhead. Commitments may not be conditioned on anything except the availability of ESG funds.
- (e) Contractors are required to document match internally as it is spent.

NOTE: Authority cited: Health and Safety Code 50899.1 through 50899.8

### **§ 210. Match Exemption Competition**

Pursuant to 24 CFR 576.201, under each fiscal year's (FY) annual ESG allocation, the Department is not required to match the first \$100,000 allocated. The Department may pass this benefit to the Contractor or Contractors who are least able to provide match. The Department may conduct a match exemption competition to determine this match need. Each funding year's match exemption competition will be identified in the AAP and/or NOFA.

NOTE: Authority cited: Health and Safety Code 50899.1 through 50899.8

### **§ 211. Administrative Cost Limitation**

If awarded, Contractors may expend a portion of their grant amount as identified in the Standard Agreement and AAP on "Administrative Activities" as defined at 24 CFR 576.108.

NOTE: Authority cited: Health and Safety Code 50899.1 through 50899.8

## **§ 212. Advanced Payments**

- (a) A Contractor may request an operating advance of \$5,000.00 or 30-days working capital, whichever is greater. A request for an operating advance must be received by the Department within 60 days of the effective date of a Standard Agreement or as allowed by California legislation. To receive payment for the work performed, or to receive an operating advance, the Contractor must submit, on forms provided by the Department, a duly executed ESG RFF. All items eligible for reimbursement must be reasonable and of the type specified in Section 300(g) of these Guidelines.
- (b) The Department may authorize advance payments on ESG grants awarded in accordance with Health and Safety Code 50899.8 and Government Code 11019.1. This advance payment pilot program shall remain in effect until July 1, 2025.

NOTE: Authority cited: Health and Safety Code 50899. References Cited: 50899.1-7 and 50899.8. Government Code 50899.8 and 11019.1.

## **Article 3. Grant Administration**

### **§ 300. Standard Agreements**

- (a) The Department shall enter into a written contract, known as the Standard Agreement, directly with the Contractor.
- (b) The Standard Agreement will generally be for a multiple year term.
- (c) The Standard Agreement will include a multiple year estimated amount of funding. This estimated amount of funding will be calculated using the committed amount the Department receives each Annual Funding Cycle through a grant agreement from HUD.
- (d) The Department will amend all active multiple year Standard Agreements using the formula allocation set forth in Section 200 of these Guidelines. The estimated amount of funding within each active Standard Agreement will be updated each Annual Funding Cycle year when the Department receives its HUD grant agreement.
- (e) For funding years when a NOFA is not issued and for all multiple year Standard Agreements, the Department will notify the Contractor with active contracts:

- (1) Their annual funding allocation amount;
  - (2) Request a Budget Revision;
  - (3) Request a signed certification from the Authorized Signor identified in the Resolution of any changes;
  - (4) Issue an award letter;
  - (5) Amend the Standard Agreement to reflect the adjusted funding. Upon request, Contractors will have to provide the current Authorizing Resolution to the Department with the proposed amendment.
- (f) The Standard Agreement will require the Contractor to comply with the requirements and provisions of 24 CFR 576, Health and Safety Code 50899.1-50899.8, these regulations, and generally applicable State contracting rules and requirements.
- (g) The Standard Agreement will include, among other things, the items specified in this section:
- (1) The identification of the Contractor under contract with the Department;
  - (2) The grant amount including budget details required for the Department to enter into HUD's financial management system ("IDIS");
  - (3) An itemized list of eligible expenses as set forth in 24 CFR 576.101-108, and the basis upon which payment is to be made submitted in compliance with the process through which the Contractor must request payment;
  - (4) A statement of the activities and services the Contractor will perform and provide for; and
  - (5) Timeframes for the performance of approved Eligible Activities as required pursuant to 24 CFR 576.203.
- (h) The Department may approve changes to the Standard Agreement as described below:
- (1) Contractor shall notify the Department of any line-item changes to the budget.
  - (2) Line-item changes representing more than 25 percent of the overall budget will require Department approval and a Standard Agreement amendment.

- (i) The following performance requirements must appear in each Standard Agreement and include more provisions specific to each Contractor:
  - (1) Reporting requirements pursuant to 24 CFR 576.500.
  - (2) Requirements for fiscal management in accordance with generally accepted accounting standards and federal fiscal requirements identified in 24 CFR 200.

NOTE: Authority cited: Health and Safety Code 50899.1 through 50899.8

### **§ 301. Procurement of Equipment, Goods and Services**

- (a) When acquiring equipment, the Department and ESG Subrecipients are subject to all applicable federal requirements and state requirements, most importantly:
  - (1) 24 CFR 576.407(c), which makes explicit that the ESG program is governed by the uniform requirements in 2 CFR 200;
  - (2) 24 CFR 576.407(f), which requires compliance with 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, which includes a requirement that, when purchasing an item or set of items whose costs exceed \$10,000 in a year, those items must be designated in the Guidelines of the Environmental Protection Agency at 40 CFR 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition;
  - (3) 2 CFR 200.317-326, which outline general procurement standards, including standards applicability (applicable?) for states and state entities (e.g., the Department).
  - (4) Before the drawdown of ESG funds for the Contractor's purchase of equipment, goods, or services, the Contractor must provide the Department with evidence of compliance with these requirements, as applicable.
- (b) Equipment purchased using ESG funds must continue to be used by the purchasing entity to support the activities for which it was originally purchased, regardless of whether those activities continue to receive ESG or any other



federal funding. The purchasing entity cannot encumber the equipment before the approval of the Department and HUD.

NOTE: Authority cited: Health and Safety Code 50899.1 through 50899.8

### **§ 302. Program Income**

- (a) Program Income has the same meaning provided in 24 CFR 200.307. Under 24 CFR 576.2, Program Income includes any amount of a security or utility deposit returned to the Department or Contractor.
- (b) The Department recommends that Subrecipients develop policies and procedures that, to the maximum extent possible, prevent the generation of Program Income. For example: The Department encourages Contractors to adopt ESG-HP and ESG-RRH as defined in 24 CFR 576.103 and 104, policies and procedures that require security deposits paid for by grant funds to be disbursed directly to the participant by the landlord when the participant exits their project subsidized unit to enable the participant to obtain another unit.
- (c) Expenditure of Program Income that is generated must:
  - (1) Be approved by the Department prior to the expenditure by the Contractor; and,
  - (2) Be expended within the contract year during which it was generated.
- (d) Costs paid by Program Income shall count toward meeting the Contractor's matching requirements, provided the costs are eligible ESG costs that supplement the Contractor's ESG program.
- (e) Contractors are required to maintain records of their receipt and use of Program Income. These records must be kept in accordance with the financial records requirements in 24 CFR 576.500(u).
- (f) Program Income must be tracked separately from grant funds to ensure Contractors can show that Program Income was spent in accordance with this policy.

NOTE: Authority cited: Health and Safety Code 50899.1 through 50899.8

### **§ 303. Financial and Performance Reporting Requirements**

- (a) Contractors must follow the recordkeeping and reporting requirements found in 24 CFR 576.500. The Contractor must have policies and procedures and a financial management system that complies with the requirements of this part, including those required by 2 CFR 200.
- (b) Private Nonprofit Organizations must submit audits to the Department for review and approval. These audits must comply with all applicable federal laws, including, 24 CFR 576.500 and 2 CFR 200.501. and 2 CFR 200.
- (c) Units of General Purpose Local Government must submit audits to the Department for review and approval. These audits must comply with all applicable federal and other laws.
- (d) The Department may also periodically request that a Contractor or its Service Provider be audited at the expense of the Contractor. Failure to provide the audit within 90 days of the request may result in ineligibility for future funding.
- (e) The Department will require evidence that a Single Audit has been performed for all Applicants applying for ESG funds, if applicable, pursuant to 2 CFR 200.501 and that there are no unresolved findings contained therein.
- (f) Contractor's that do not submit their Annual Performance Reports (APRs) by the due date will not receive funding for the next two Annual Funding Cycles.

NOTE: Authority cited: Health and Safety Code 50899.1 through 50899.8

### **§ 304. Monitoring of Program Performance**

- (a) Contractors shall monitor the activities selected and awarded by them to Service Providers to ensure compliance with federal and State ESG requirements. An onsite monitoring visit of selected Service Providers shall occur whenever determined necessary by the Contractor, but at least once during the grant period pursuant to 24 CFR 576.500, 2 CFR 200.501 and 2 CFR 200.329. The Department reserves the right to conduct their own monitoring and inspection of both the Contractor and their Service Providers as set forth in 24 CFR 576.500.
- (b) The Department will monitor the performance of the Contractor based on a risk assessment.
- (c) In the event that project-level or system-wide performance consistently remains in the lowest quartile compared to all those participating in the allocation (CoC Service Area), the Department may work collaboratively with the Contractor to

develop performance improvement plans which will be incorporated into an amended Standard Agreement.

- (d) If it is determined that a Contractor falsified any certification, application information, financial, or contract report, the Contractor shall be required to reimburse the full amount of the ESG award to the Department and may be prohibited from any further participation in the ESG program. The Department may also impose any other actions permitted under 24 CFR 576.501 (c) and state law.
- (e) As requested by the Department, the Contractor shall submit to the Department all ESG monitoring documentation necessary to ensure that the Contractor and its Service Providers are in continued compliance with all ESG requirements. Such documentation requirements and the submission deadline(s) shall be provided by the Department when the information is requested from the Contractor.
- (f) Contractor and its Service Providers shall timely cooperate with the Department and shall make available to the Department all information, documents, and records reasonably requested. Copies of these items will also be made available to the Department upon their request. Service Providers shall provide the Department the reasonable right of access to the Site during normal business hours for the purpose of assuring compliance with this Agreement and evaluating the Service Provider's performance.

NOTE: Authority cited: Health and Safety Code 50899.1 through 50899.8

### **§ 305. Grant Payment Requirements**

- (a) The first RFF must be submitted within 120 days from the effective date of the Agreement. Contractors are encouraged to submit an RFF monthly and must submit an RFF quarterly until all funds have been expended or returned to the Department. If this expenditure requirement is not met, the Department reserves the right to mandate a remediation plan to ensure future timely expenditure of ESG funds as set forth in 24 CFR 576.203.
- (b) Contractor agrees to provide documentation satisfactory to the Department evidencing the obligation of ESG funds within 120 days from the date the Department made grant funds available to the Contractor as set forth in 24 CFR 576.203. If the Contractor fails to provide such documentation, the Department may disencumber any portion of the amount authorized by the Standard Agreement.
- (c) Expenditure Milestones are the percentage of the award that must be expended by a specified time period and identified in each Standard Agreement.

- (1) Failure to meet the Expenditure Milestone(s) identified in the Standard Agreement will result in the Department disencumbering the amount identified in the Standard Agreement; and
- (2) Contractors that do not meet the Expenditure Milestones identified in the Standard Agreement will be disqualified from future funding for two Annual Funding Cycles.

NOTE: Authority cited: Health and Safety Code 50899.1 through 50899.8

### **§ 306. Revision Procedures**

- (a) The Department, in its discretion, may approve changes to the Standard Agreement as described below.
  - (1) A Contractor must notify the Department regarding their intent to change the funded Service Provider. The Contractor will need to provide the Department with the signed Subcontractor agreement as well as evidence that the new Subcontractor is not debarred. The Contractor must verify that the Subcontractor has policies and procedures in place that meet all CoC and Department requirements. A Contractor shall notify the Department of any line-item changes to the budget needed for the Department to update IDIS.
  - (2) A Contractor may request budget line-item changes to their approved budgets. Line-item changes must be less than 25 percent of the awarded budget. Activities not awarded to the Contractor may not be added before Department approval. All changes must meet the requirements of these Guidelines.
  - (3) A Contractor must request Department approval for all budget line-item changes representing more than 25 percent of the overall budget. If approved, a Standard Agreement amendment will be required.

NOTE: Authority cited: Health and Safety Code 50899.1 through 50899.8

### **§ 307. Closeout Procedures**

- (a) The grant closeout procedures include the following:
- (1) Contractor shall submit a final RFF, Detailed Expense Report (DER) and a Certification of Completion, in a manner and format approved by the Department within thirty (30) days after the expenditure deadline stated in the Standard Agreement.
  - (2) Contractor shall refund to the Department any balance of unobligated cash advanced to the Contractor that is not authorized to be retained by the Contractor.
  - (3) Within 60 days after the expenditure deadline identified in the Standard Agreement, the Contractor shall provide the Department with all financial, performance, and other reports required as a condition of the grant.
  - (4) The Contractor shall account for any property acquired in whole or in part with grant funds in accordance with the provisions of Sections 309 and 310 of these Guidelines, pertaining to property management, and Section 302 of these Guidelines, pertaining to Program Income.
  - (5) In the event a final audit or monitoring has not been performed before the closeout of the grant, the Department shall retain the right to recover the amount of disallowed costs after fully considering the recommendations of the final audit or monitoring.

NOTE: Authority cited: Health and Safety Code 50899.1 through 50899.8

### **§ 308. Retention and Custodial Requirements for Records**

- (a) Contractor must follow all federal ESG regulations set forth in 24 CFR 576.500. Contractor shall maintain all fiscal and program records pertaining to the ESG Grant for a period of five (5) years after the Department closes its HUD grant or any other period specified in 24 CFR.500 (y).
- (b) Contractor agrees to maintain accounting books and records in accordance with Generally Accepted Accounting Principles, per 2 CFR 200. Contractor agrees that the Department, the Department of General Services, the Bureau of State Audits, HUD, or their designated representatives, shall have the right to review and copy any records and supporting documentation pertaining to the performance of this Agreement. Contractor agrees to maintain such records for

five (5) years after the Department closes its HUD grant or any other period specified in 24 CFR 576.500 (y).

NOTE: Authority cited: Health and Safety Code 50899.1 through 50899.8

### **§ 309. Insurance Coverage**

The Contractor must obtain and retain insurance coverage pursuant to the requirements of 2 CFR 200.310 on real and personal property with federal funds or essential to the fulfillment of the grant.

NOTE: Authority cited: Health and Safety Code 50899.1 through 50899.8

### **§ 310. Requirements for Real and Personal Property Acquired with Grant Funds**

- (a) The Contractor must provide information to the Department annually on all real and personal property acquired under the Standard Agreement.
- (b) The Contractor cannot dispose of real and personal property without the written approval of the Department and HUD. The Contractor must contact the Department to obtain disposition instructions pursuant to the requirements of 2 CFR 200.311 through 200.316 and 2 CFR 200.330.

NOTE: Authority cited: Health and Safety Code 50899.1 through 50899.8

### **§ 311. Debarment and Suspension**

- (a) The Department will not award any ESG funds to Applicants that are debarred, suspended, proposed for debarment, or declared ineligible or voluntarily excluded from participation from programs.
- (b) Verification of Debarment and Suspension
  - (1) The Contractor must comply with the regulations on government-wide suspension and debarment in 2 CFR 180 and must require its Service Providers to comply with these provisions. These provisions restrict federal awards, subawards, and contracts with parties that are debarred,

suspended, or otherwise excluded from or ineligible for participation in federal programs or activities.

- (c) The Contractor must provide evidence to the Department at time of application, award, and any Subcontractor changes that all parties are not debarred by doing the following:
- (1) Obtain a Unique Entity Identifier (UEI) and maintain an active federal System for Awards Management (SAM) registration with current information pursuant to the regulations at 2 CFR 25.
  - (2) At the time of application, the entity must submit a SAM printout displaying their UEI, an active SAM registration, and the date of verification.
  - (3) Before entering into any ESG-funded agreement, the entity must verify that all participating parties (including Contractors, Subcontractors, Subrecipients, service providers, consultants, etc.) have a UEI, are actively registered in SAM, and are not suspended, debarred, or otherwise prohibited from participating in Federally funded programs and activities.
  - (4) In the event that an entity is debarred or suspended, the Department will inform the Applicant that their application will not be considered for review.
  - (5) Before issuing Standard Agreements, the Department will ensure that no ESG funds are awarded to entities that are suspended, debarred, proposed for debarment, voluntarily excluded from, or otherwise ineligible for participation in federally assisted programs or activities.

NOTE: Authority cited: Health and Safety Code 50899.1 through 50899.8

### **§ 312. Audit Requirements**

- (a) Contractors must arrange for independent audits on all ESG grants consistent with 2 CFR 200.500 to 200.512.
- (b) Contractor agrees to maintain accounting books and records in accordance with Generally Accepted Accounting Principles, per 2 CFR 200.49. Contractor agrees that the Department, the Department of General Services, the Office of State Audits and Evaluations, HUD and/or their designated representatives (such as Office of Inspector General, "OIG"), shall have the right to review and copy any records and supporting documentation pertaining to the performance of this Agreement. Contractor agrees to maintain such records for possible audit for five

(5) years after the Department closes its HUD grant or any other period specified in 24 CFR 576.500 (y). Federal ESG funds must be used for their intended purpose, and ESG awardees must account for costs and justify expenditures. OIG is responsible for investigating allegations of fraud, waste, and abuse.

NOTE: Authority cited: Health and Safety Code 50899.1 through 50899.8

### **§ 313. Conflicts of Interest**

Contractors must enforce standards for conflicts of interest which govern the performance of their officers, employees, or agents engaged in the award and administration of state ESG funds. The standards for conflicts of interest shall prohibit any conflict of interest as defined in 24 CFR 576.404, which is hereby incorporated by reference. The Department will use the criteria and standards set forth in 24 CFR 576.404 and any applicable California conflicts of interest rules in evaluating questions concerning potential conflicts of interest.

NOTE: Authority cited: Health and Safety Code 50899.1 through 50899.8

### **§ 314. Sanctions**

- a) The Department may impose sanctions, as well as any other remedies available to it under law or these Guidelines, on a Contractor for failure to abide by any State and federal laws, regulations, and Guidelines applicable to the ESG program. As the Department deems appropriate or necessary, sanctions include but not limited to, without limitation, any or all of the following:
  - (1) Conditioning a future ESG grant on compliance with specific laws, regulations, or Guidelines;
  - (2) Directing a Contractor to stop incurring costs under the current grant;
  - (3) Requiring that some or all of the grant amount be remitted to the Department;
  - (4) Reducing the amount of grant funds a Contractor would otherwise be entitled to receive;
  - (5) Barring a Contractor and or its organization from applying for future funding for at least the next three Annual Funding Cycles. If the penalty is upheld, the CoC may select another Applicant. Refer to Section 202 (b) of these Guidelines.



- (6) In addition, the Department may prohibit a Contractor from awarding to a particular Service Provider of the Contractor until appropriate actions are taken to ensure compliance with ESG requirements; and/or
- (7) Taking any other actions permitted pursuant to 24 CFR 576.501.

NOTE: Authority cited: Health and Safety Code 50899.1 through 50899.8

**§ 315. False, Fictitious or Fraudulent Claims:**

- (a) This information is current as of the date of these Guidelines. This information is subject to change over time. Please verify with HUD for updates.
- (b) Warning: Any person who knowingly makes a false claim or statement to HUD or the Department may be subject to civil or criminal penalties under 18 USC 287, 1001 and 31 USC 3729.
- (c) Detecting, Preventing, and Reporting FRAUD
  - (1) Fraud is a white-collar crime that has a devastating effect on the ESG program because the ESG program beneficiaries are victims of this crime when the ESG program is abused.
  - (2) The Department wants to stop any criminal assault on the ESG program it administers, and in doing so all ESG funds go to people it was designed to help and improve their living conditions.
- (d) Combatting Fraud
  - (1) The U.S. Department of Housing and Urban Development (HUD) Office of Inspector General (OIG) is committed to protecting HUD's programs, operations, and beneficiaries from dishonest individuals and organizations.
  - (2) HUD cannot combat fraud alone.
  - (3) HUD relies on the Department and ESG NOFA Applicants to combat ESG program fraud. HUD also relies on Applicants for, and people receiving, HUD benefits, such as tenants receiving rental assistance,

borrowers with HUD insured loans, or citizens having their communities restored using HUD grants.

- (4) The HUD OIG Hotline number is 1-800-347-3735. This is the primary means to submit allegations of fraud, waste, abuse, mismanagement, or Whistleblower related matters for the ESG program to the Office of Inspector General.
- (5) HUD OIG accepts reports of fraud, waste, abuse, or mismanagement in the ESG program from HUD employees, anyone administering the ESG program, anyone working in the ESG program, Contractors, and the public.
- (6) You can report mismanagement or violations of law, rules, or regulations by HUD employees or program participants.
- (7) Fraud, Waste and Abuse in the ESG program and its operation may be reported in one of the following four (4) ways:

Email to: [hotline@hudoig.gov](mailto:hotline@hudoig.gov)

By Phone: Call toll free: 1-800-347-3735

By Fax: 202-708-4829

By Mail: U.S. Department of Housing & Urban Development

**HUD OIG, Office of Investigation, Room 1200**

**Field Office**

One Sansome Street

San Francisco, CA 94104

[\(213\) 534-2518](tel:(213)534-2518)

NOTE: Authority cited: Health and Safety Code 50899.1 through 50899.8

### **§ 316. Cancellations and Defaults**

- (a) In the event of a breach by the Contractor of any of the provisions of the Standard Agreement, the Department may give written notice to the Contractor to cure the breach or violation within a period of not less than 14 days. If the Contractor does not cure the breach to the satisfaction of the Department within the specified time, the Department, at its option, may declare a default under the Standard Agreement and may seek legal remedies

for the default, including without limitation, the following:

- (1) Terminate the Standard Agreement;
  - (2) The Department may seek, in a court of competent jurisdiction, an order for specific performance of the defaulted obligation; or
  - (3) Any other remedy available under law.
- (b) The Department may require the Contractor to amend the Standard Agreement if the Department decides that it is necessary for the Contractor to comply with these Guidelines or applicable state and federal law.
- (c) The Department may cancel or reduce an award under any of the following conditions:
- (1) The Contractor is not in compliance or will not comply with these Guidelines or any applicable state and federal law;
  - (2) The Department terminates the Standard Agreement with the Contractor;
  - (3) Implementation of the Eligible Activity does not, or will not, comply with the deadlines, time frames, and goals stated in the HUD Grant Agreement, AAP, Contractor's application, these Guidelines, or NOFA;
  - (4) The Contractor requests to have its award cancelled;
  - (5) There has been a material change, not approved by the Department, in the Eligible Activity;
  - (6) If the Contractor made any misrepresentation of any material fact to the Department in connection with its application or concealed any material fact to the Department; or
  - (7) HUD reduces or eliminates the Department's ESG funds and there are not enough funds available for the Eligible Activity.
- (d) At least 15 days before the effective date of the Department's cancellation or reduction of an award, the Department must provide written notice to the Contractor of the Department's intent to cancel or reduce the award. The Contractor may appeal the Department's decision to cancel or reduce an award to the Department's Deputy Director of the Division of Federal Financial Assistance or his/her designee.
- (e) Upon the Department's written notification to the Contractor that the Contractor's ESG funding has been terminated, reduced, or cancelled, the Contractor must:

- (1) Complete all work affected by the Department's termination, reduction, or cancellation that is in progress; and
- (2) Terminate any other activities that were to be paid for with ESG funds affected by the Department's termination, reduction, or cancellation of the Contractor's ESG funds.

NOTE: Authority cited: Health and Safety Code 50899.1 through 50899.8

### **§ 317. Housing First Practices**

- (a) 'Housing First' means the evidence-based model that uses housing as a tool rather than a reward for recovery and that centers on providing or connecting homeless people to permanent housing as quickly as possible. Housing First providers offer services as needed and requested on a voluntary basis and that do not make housing contingent on participation in services.
- b) All ESG-assisted projects shall operate in a manner consistent with Housing First practices as reflected in the Housing First Core components, CoC written standards, progressive engagement, and assistance practices as set forth in Welfare and Institution Code (WIC) 8255-8256 and 24 CFR 576.400, including but not limited to the following:
  - (1) Ensuring low-barrier, easily accessible assistance to all people, including, but not limited to, people with no income or low-income history, and people with active substance abuse or mental health issues;
  - (2) Helping participants quickly identify and resolve barriers to obtaining and maintaining housing;
  - (3) Quickly resolving a participant's housing crisis before focusing on other non-housing related services;
  - (4) Allowing participants to choose the services and housing that meets their needs, within practical and funding limitations; and
  - (5) Connecting participants to appropriate support services available in the community that fosters long-term housing stability.

### **§ 318. Other Federal and State Requirements**

Contractors and Service Providers of the Contractor shall abide by all applicable local, state, and federal laws pertaining to the ESG program, including, but not limited to, all

other applicable federal laws cited in 42 U.S.C. 11371-11378, 24 CFR 576, and HSC 50899.1-50899.8.

Knowingly spending state or federal funds in violation of a statute or guideline is a felony and punishable by up to six years in prison and disbarment from public service. See Penal Code (PC) 424 & 425.

## **Whistleblower Protection Acts**

### **Federal Whistleblower Protection Act (5 U.S.C 2302(b)(8))**

The Federal Whistleblower Protection Act (WPA) protects employees from retaliation for making protected disclosures. The WPA also provides penalties for supervisors who retaliate against Whistleblowers.

(a) A disclosure is protected under the WPA if the employee discloses information the employee reasonably believes to be evidence of:

- (1) a violation of any law, rule, or regulation,
- (2) gross mismanagement,
- (3) a gross waste of funds,
- (4) an abuse of authority, or
- (5) a substantial and specific danger to public health or safety.

(b) In general, an employee or Applicant may make a protected disclosure to anyone, including non-governmental audiences, unless the information is classified or specifically prohibited by law from release. Options for making a protected disclosure include:

- (1) Informing a supervisor or someone higher up in management,
- (2) Submitting a complaint to the OIG by emailing the OIG at [oig@ftc.gov](mailto:oig@ftc.gov),
- (3) Filing a complaint with the [Office of Special Counsel](http://www.osc.gov/) (OSC) <http://www.osc.gov/>

**The California Whistleblower Protection Act (Title 2, Division 1, Chapter 6.5, Article 3.5, Gov. Code §§ 8548-8548.5)**

(c)The California Whistleblower Protection Act authorizes the California State Auditor to receive complaints from state employees and members of the public who wish to report an improper governmental activity. **An "improper governmental activity" is any action by a state agency or any action by a state employee directly related to state government that:**

- (1) Violates any state or federal law or regulation,
- (2) Violates an Executive Order of the Governor, a California Rule of Court, or any policy or procedure required by the State Administrative Manual or State Contracting Manual, or
- (3) Is economically wasteful or involves gross misconduct, incompetency, or inefficiency. Complaints received by the State Auditor are confidential, and the identity of the complainant may not be revealed without the complainant's permission, aside from to an appropriate law enforcement agency conducting a criminal investigation.

NOTE: Authority cited: Health and Safety Code 50899.1 through 50899.8

**Article 4. Appeals Process**

**§ 400. DFFA Competitive NOFAs Only Appeals**

The Department will provide opportunity to appeal any disagreed points assessment, pursuant to the appeals process as set forth in the NOFA. Disqualifying threshold determinations shall also follow a similar process, which shall be set forth in greater detail in the NOFA. For reference, all such appeals must be received by the Department no later than five (5) or ten (10) business days from the date of the Department's threshold review, and/ or initial score letter, as applicable, representing the Department's decision made in response to the application.

NOTE: Authority cited: Health and Safety Code 50899.1 through 50899.8

#### **§ 401. All DFFA Programs Any Request To Appeal**

Any request to appeal the Department's decision regarding an application shall be reviewed for compliance with these Guidelines and the NOFA. All decisions rendered shall be final, binding, and conclusive, and shall constitute the final action of the Department.

NOTE: Authority cited: Health and Safety Code 50899.1 through 50899.8