
From: aaq@hudexchange.info <aaq@hudexchange.info>

Sent: Monday, December 7, 2020 9:36 AM

To: [REDACTED]

Subject: Question Response for ESG Question ID 166433 - HUD Exchange Ask A Question

EXTERNAL: Use EXTREME caution

Question Status: Answered

Thank you for submitting a question via the HUD Exchange. The response to your question is listed below.

Requestor Name: [REDACTED]

Requestor Email: [REDACTED]

Question Related To: Emergency Solutions Grants

Question ID: 166433

Question Subject:

ESG-CV: Using Money for Prevention During Eviction Moratorium

Question Text:

Hello,

I am writing from [REDACTED], the Collaborative Applicant for several CoCs in upstate NY. There is confusion amongst prevention providers in our communities regarding whether or not they can utilize ESG-CV funding to prevent evictions currently.

Based on the 9/18 SNAPS Office Hours webinar, we have been reporting the following. Can you please confirm this is accurate?

Q: Am I allowed to utilize prevention funding during the eviction moratorium?

A: It depends:

- If someone would be at risk of eviction, but covered by the moratorium, then they are not at risk of homelessness and not eligible for ESG-CV prevention assistance.
- If someone is at risk of eviction even though covered by moratorium (i.e. a landlord is trying to evict the tenant even though there's a moratorium), prevention funding can be utilized to provide legal assistance. Agencies should document the circumstances that make the client at-risk of becoming homeless and eligible for prevention assistance funding.
- If someone is not covered by the moratorium/still at-risk of homelessness (i.e. evicted for reasons other than non-rent, not on lease, doubled-up, moved more than twice in the last 60 days, or any of the other scenarios in at-risk of homelessness definition), then they are eligible for eviction prevention assistance.

In addition, some community providers have stated there is not an eviction moratorium currently. Our understanding is the CDC issued an eviction moratorium for any evictions due to nonpayment of rent through the end of 2020. Can you please confirm? If landlords are still carrying out evictions due to nonpayment, what steps could we as a community take to mitigate?

Finally, we have heard from community providers that, while evictions are on hold until end of 2020, the evictions are being processed in court. As such, come January 1st, many households will be evicted without further action being needed. In this scenario, is it possible to pay back rent to prevent the eviction on January 1?

Thank you!

[REDACTED]

Response:

We apologize for the delay in responding to your question.

Eviction Moratorium and Homelessness Prevention

Individuals who are covered by the Centers for Disease Control and Prevention (CDC) Moratorium are not currently eligible for ESG-funded homelessness prevention assistance when qualifying under Category 2 of the Homeless definition or Category 1C of the At Risk of Homelessness definition for an eviction action initiated by a landlord or property owner for nonpayment of rent. (For a definition of a "covered person" see the [CDC's federal register notice 85 FR 55292](#).) However, as explained below, within 14/21 days of the end of the eviction moratorium, individuals or families may meet the eligibility criteria under Category 2 of the Homeless definition or Category 1C of the At Risk of Homelessness definition. Additionally, an individual or family could still qualify for Homelessness Prevention when meeting other eligibility criteria that are not impacted by the moratorium.

According to the [CDC FAQs](#), the CDC Moratorium is not intended to terminate or suspend the operations of any state or local court. Nor is it intended to prevent landlords from starting eviction proceedings, provided that the actual eviction of a covered person for non-payment of rent does NOT take place during the period of the moratorium.

The following two sections explain the specific eligibility criteria for ESG Homelessness Prevention assistance that are impacted by the CDC Eviction Moratorium. The full eligibility requirements are explained in more detail further below:

Category 2 - Homeless Definition

Due to the CDC Eviction Moratorium, the earliest time that a "covered person" could qualify for Homelessness Prevention under Category 2 of the Homeless Definition due to an eviction action initiated by a landlord or property owner for nonpayment of rent is 14 days prior to 12/31/2020 if the landlord started the eviction action and the tenant will lose their housing on 1/1/2021. Otherwise, the covered person's primary nighttime residence will not be lost within 14 days of the date of application for homeless assistance during the period the CDC Eviction Moratorium is in effect.

Category 1C - At Risk of Homelessness

Due to the CDC Eviction Moratorium, the earliest time that a "covered person" could qualify for Homelessness Prevention under Category 1:Risk Factor (C) of the At-Risk of Homelessness definition due to an eviction action initiated by a landlord or property owner for nonpayment of rent is 21 days prior to 12/31/2020 if the landlord prepared an eviction notice, the documentation does not provide a way for the tenant to remedy the situation and avoid eviction, and the tenant's right to occupy their housing will be terminated on 1/1/2021. Otherwise, the covered person's right to occupy their primary

nighttime residence will not be lost within 21 days of the date of application for homeless assistance during the period the CDC Eviction Moratorium is in effect.

If an owner/manager is proceeding with an eviction in violation of the eviction moratorium, or if a court orders an eviction that may appear to be in violation of an eviction moratorium, the household may qualify for ESG homelessness prevention assistance. In such situations, providers are encouraged to pursue other options first, such as explaining the terms of the applicable eviction moratorium to the owner/manager and enlisting legal services prior to providing financial or rental assistance. HUD also encourages recipients to reach out to their HUD Field Office for guidance if a landlord(s) is proceeding with evictions in violation of the moratorium.

Finally, given the limited resources available and the overwhelming need, HUD strongly encourages each jurisdiction to focus as much of its ESG funding as possible on prioritizing those with the greatest need of assistance, which could mean targeting Homelessness Prevention assistance on those households that are more likely to be evicted without ESG assistance.

Other Steps for ESG Providers to Take

In cases where a household is ineligible for ESG homelessness prevention assistance during an eviction moratorium, there are steps that providers may take to help an individual or family regain housing stability:

- During the intake assessment, use problem-solving techniques and start collecting documentation to prepare for the end of the moratorium in case the household later becomes eligible.
- Identify other funding that can provide assistance. Review [Five Things to Consider When Investing ESG in Homelessness Prevention](#) for tips to help communities develop and implement a prevention strategy that effectively and efficiently uses resources for prevention.

Additionally, in preparation for meeting your clients' needs once the moratorium ends, consider having a member of your staff dedicated to building relationships with landlords, developing a housing database, and establishing a point of contact with landlords in case there were problems. Establishing a specialized staff position for this function could be a best practice for improving the speed of helping homeless persons maintain and obtain housing, meeting landlord needs and mitigating concerns, and possibly further contributing to housing stability.

The remainder of our response provides guidance on ESG homelessness prevention eligibility requirements. As a reminder, in order to provide **any** type of ESG assistance, the household must meet the ESG eligibility criteria and this must be documented in accordance with the standards set forth in section 576.500 of the ESG Interim Rule. For ESG-CV and annual ESG funds used to prevent, prepare for, respond to, and mitigate the impacts of coronavirus, the [ESG Program Interim Rule](#) at 24 CFR Part 576 applies except for the waivers and additional eligible activities established in the CARES Act and [Notice CPD-20-08](#). The costs of rental and utility

arrears assistance are only eligible to the extent that the assistance is necessary to help the program participant regain stability in their housing current permanent housing or move into other permanent housing and achieve stability in that housing.

Eligibility for Homelessness Prevention Assistance

Homelessness Prevention assistance may be provided to households who meet the criteria under the At Risk of Homelessness definition, or who meet the criteria in paragraph (2), (3), or (4) of the homeless definition, lack the resources to obtain other permanent housing, and have an annual income that does not exceed **50% of AMI** when using ESG-CV and annual ESG funds to prevent, prepare for, respond to, and mitigate the impacts of coronavirus. When using annual ESG funds for homelessness prevention purposes NOT related to preventing, preparing for, responding to, and mitigating the impacts of coronavirus, individual and family income must be below **30% of AMI** at intake and at or below 30% of AMI at re-evaluation.

If a client needs assistance with rental arrears, please note that using ESG funds to pay this household's arrears is only an allowable cost and such a household would only be determined eligible if the household would **actually be evicted** for non-payment of their portion of the rent. The costs of homelessness prevention are only eligible to the extent that the assistance is necessary to help the program participant regain stability in the program participant's current permanent housing or move into other permanent housing and achieve stability in that housing.

Please also note that an eviction action initiated by the owner is not the only way for a household to qualify for homelessness prevention assistance. When determining eligibility for homelessness prevention assistance, be sure to assess the household's situation and consider whether they meet any of the conditions under the at risk of homelessness definition, which include situations such as: frequent moves, living in the home of another due to economic hardship, living in overcrowded situations, and exiting a publicly funded institution.

HUD strongly encourages each jurisdiction to focus as much of its ESG funding as possible on prioritizing those with the greatest need of assistance, which could mean targeting Homelessness Prevention assistance on those households that are more likely to be evicted without ESG assistance. When assessing a program participant's needs during the initial evaluation, it is important to determine which households will be able to avoid homelessness with limited assistance and which will need deeper levels of support. Keep in mind that the goal of housing stability case management is to help stabilize people once housed, by connecting them to services and supports if needed. It should focus on helping people navigate barriers that may stand in the way of securing and maintaining housing and should also strive to build a support system by connecting them with people and programs in the community.

In addition to complying with the requirements of the ESG interim rule, ESG subrecipients must also comply with its recipient's written standards. The ESG written standards include, among other things, policies and procedures for determining and prioritizing which eligible families and individuals will receive homelessness prevention assistance. (24 CFR 576.400(e)(3)(vi)).

Documentation Requirements

Documentation for Category 2 of the Homeless definition

Evidence that a household will imminently lose their housing must include a court order resulting from an eviction action that requires the individual or family to leave their residence within 14 days after the date of their application for homeless assistance; or the equivalent notice under applicable state law, a Notice to Quit, or a Notice to Terminate under state law. Acceptable documentation must substantiate that the criteria of Category 2 of the Homeless definition has been met; that is, the household will lose their residence within 14 days. A Notice to Quit or a Notice to Terminate issued under state law does not need to be equivalent to a court-ordered eviction action. However, if there is no reasonable expectation that a household will lose their residence within 14 days as a result of the issuance of a Notice to Quit, Notice to Terminate, or demand notice, then the criteria of Category 2 have not been met.

Documentation for Category 1: Risk Factor (C) of the At-Risk of Homelessness definition

Eligibility documentation for Category 1: Risk Factor (C) of the At-Risk of Homelessness definition does not need to be equivalent to a court-ordered eviction action. **Acceptable documentation must substantiate that a household's right to occupy housing will be terminated within 21 days, not necessarily that the household will be required to leave the unit within 21 days.** In order to sufficiently document that the criteria for Category 1C have been met, other documentation, such as an eviction notice prepared by the landlord or a demand notice, must effectively terminate a household's right to occupy the unit within 21 days. If the documentation provides a way for the tenant to remedy the situation and avoid eviction, e.g., paying the balance, the applicant must lack the ability to meet the terms of avoiding eviction in order to be eligible for assistance.

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Please click on the [View Question] button below to perform the following actions:

- **View your question**, answer, and any applicable attachments
- **Ask a new, unrelated question** using the same requestor information

- **Reopen this question** if you need more assistance with the same question
-

From: aaq@hudexchange.info <aaq@hudexchange.info>

Sent: Sunday, December 6, 2020 1:15 PM

To: [REDACTED]

Subject: Question Response for ESG Question ID 166694 - HUD Exchange Ask A Question

EXTERNAL: Use EXTREME caution

Question Status: Answered

Thank you for submitting a question via the HUD Exchange. The response to your question is listed below.

Requestor Name: [REDACTED]

Requestor Email: [REDACTED]

Question Related To: Emergency Solutions Grants

Question ID: 166694

Question Subject:

ESG-CV: Using Money for Prevention During Eviction Moratorium

Question Text:

Hello,

This is a follow-up/clarification to an AAQ we submitted on 10/20 regarding the ability to make rental arrears payments utilizing ESG-CV funds while the CDC and NYS eviction moratoria are in place. Specifically:

1. Are prevention providers able to pay financial assistance (and specifically, rental arrears) utilizing ESG-CV funds if a client falls into category 1c of the definition of at-risk of homelessness (if they are served a 21-day notice)? A local provider argues that [this](#) document supports this as an eligible expense.
2. NYS Courts are being instructed by the Chief Administrative Judge of the Courts to process evictions, and are doing so actively in many local courts. At any point in the eviction process (as outlined below) can a prevention provider utilize rental arrears to prevent the eviction from being processed or moving forward? To be clear, households locally have been evicted due to non-payment of rent even though there are eviction moratoria.
 - Notice served to pay, lease termination, or to vacate.
 - Court petitioned for eviction proceedings.
 - Tenant gets served with paperwork with court date.

- Court decision is rendered:
 - Dismissal of the petition
 - Warrant of eviction issued (either immediate or stayed pending payment or other stipulations)
 - A judgement for payment issued (attached or not attached to warrant)
 - Trial
 - Landlord submits warrant to Sheriff or marshals department to issuance the household.
 - Sheriff/marshals department provide 14 days' notice of the execution of the warrant.
 - Tenant has 14 days to move out.
3. Local prevention providers have grave concerns about clients signing the CDC or NYS moratorium declarations, and thus are discouraging clients from signing them. Specifically, these moratorium declarations are vague, and they fear clients could be prosecuted for perjury if they sign (especially in certain challenging/stringent courts/judges they work with locally). Given clients are discouraged from signing these declarations, there in essence is not an eviction moratorium in place (or at least one that doesn't put the client at risk of perjury). As such, can prevention providers utilize ESG-CV funds for financial assistance, even though an eviction moratorium is technically in place?

Proposed documentation to support the need for paying rental arrears even during the eviction moratoria include: copies of notices; analysis of no projected change in circumstances before the moratoria end January 1st; analysis of reasons for not signing the moratorium declarations.

Whatever assistance you can provide is greatly appreciated.

Thank you.

Response:

We apologize for the delay in responding to your question.

No, providers advising their clients not to sign the Declaration does not change the fact that the CDC moratorium is considered a resource or support network for those who meet the definition of a "covered person" and that a "covered person" is not eligible for ESG homelessness prevention assistance based on a landlord initiated eviction action for nonpayment of rent.

Eviction Moratorium and Homelessness Prevention

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(CDC) Moratorium are not currently eligible for ESG-funded homelessness prevention assistance when qualifying under Category 2 of the Homeless definition or Category 1C of the At Risk of Homelessness definition for an eviction action initiated by a landlord or property owner for nonpayment of rent. (For a definition of a "covered person" see the [CDC's federal register notice 85 FR 55292](#).) However, as explained below, within 14/21 days of the end of the eviction moratorium, individuals or families may meet the eligibility criteria under Category 2 of the Homeless definition or Category 1C of the At Risk of Homelessness definition. Additionally, an individual or family could still qualify for Homelessness Prevention when meeting other eligibility criteria that are not impacted by the moratorium.

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