

Department of Housing and Community Development

Emergency Solutions Grants Program

State Regulations

**California Code of Regulations Title 25, Division 1, Chapter 7,
Subchapter 20**

§ 8400. Purpose and Scope..... 2

§ 8401. Definitions..... 2

§ 8402. Allocation of Funds..... 6

§ 8403. Continuum of Care Allocation..... 8

§ 8404. Balance of State Allocation..... 13

§ 8405. Notice of Funding Availability 15

§ 8406. NOFA Application Process..... 16

§ 8407. Selection Criteria for NOFA Applicants..... 18

§ 8408. Eligible Activities..... 20

§ 8409. Core Practices 21

§ 8410. Match Requirements..... 22

§ 8411. Standard Agreement..... 23

§ 8412. Disbursement Procedures..... 24

§ 8413. Recordkeeping and Reporting..... 25

§ 8414. Monitoring Grant Activities..... 26

§ 8415. Audit Requirements..... 26

§ 8416. Sanctions..... 27

§ 8417. Other Federal Requirements..... 27

§ 8400. Purpose and Scope.

(a) These regulations 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. sections 11371-11378) as amended by S.896 The Homeless Emergency Assistance and Rapid Transition to Housing (HEARTH) Act of 2009 (sections 103-105 and 401-418) (the “Act”).

(b) The Act, and any amendments thereto, provide for State administration of the ESG program. These regulations 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 regulations, ESG program participants will comply with the regulations applicable to the ESG program as indicated below and as set forth in 24 C.F.R. Part 58, and 24 C.F.R. Part 576. Additionally, nonprofit organizations funded by the ESG program shall comply with the requirements of 24 C.F.R. Part 84 as though they were subrecipients pursuant to 24 C.F.R. Part 84. Also, Units of general local government funded by the ESG program shall comply with the requirements of 24 C.F.R. Part 85. In the event that any federal or state laws or regulations, including without limitation regulations by the 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 shall comply with such requirements, as amended.

(c) References to section numbers in the 8400 series in the following sections are references to these Emergency Solutions Grants Program Regulations beginning at 24 Cal Code Regulations, title 25, section 8400 et seq.

(d) In the event of a conflict between the State ESG Regulations and 24 C.F.R. Part 58, 24 C.F.R. Part 84, 24 C.F.R. Part 85, or the ESG regulations at 24 C.F.R. Part 576, the federal regulations shall prevail.

Authority cited: Section 50406(n), Health and Safety Code. Reference: 42 U.S.C. Sections 11371-11378 (sections 103-105 and 401-418); 24 C.F.R. Part 58; 24 C.F.R. Part 84; 24 C.F.R. Part 85; and 24 C.F.R. Part 576.

§ 8401. Definitions.

In addition to the definitions found in 42 U.S.C. section 11371 (section 411), and 24 C.F.R. section 576.3, the following definitions shall apply to this subchapter

“Action Plan” means the annual plan required by HUD pursuant to 24 CFR Part 91 governing the distribution and use of ESG funds allocated by HUD to states and local governments.

“Administrative activities” is defined at 24 CFR 576.108.

“Administrative Entity” means a Unit of general purpose local government approved by the Department pursuant to section 8403 to administer State ESG funds.

“Balance of State Allocation” means funds allocated pursuant to the requirements of sections 8404 through 8407.

“City” is defined at 42 U.S.C. section 5302(a)(5).

“Continuum of Care” is defined at 24 CFR 576.2.

“Continuum of Care Allocation” means the ESG funds pursuant to the requirements of section 8403.

“Continuum of Care Service Area” means the entire geographic area within the boundaries of an Eligible Continuum of Care.

“Coordinated Entry” means the system of program access, needs assessment and prioritization developed by a Continuum of Care pursuant to 24 CFR 576.400 (d), and associated HUD requirements and guidance. This term is also known as “Coordinated Entry System”, “Coordinated Assessment” or “Centralized Assessment”.

“Core Practices” means the practices and protocols of delivering ESG Eligible activities as specified in section 8409.

“Department” means the California Department of Housing and Community Development.

“ESG” is the acronym for the Emergency Solutions Grants program.

“Eligible activities” mean those activities upon which ESG funds may be expended as described in section 8408.

“Eligible Continuum of Care” means a Continuum of Care in the State that has within its Service Area at least one Nonentitlement area. These entities must also meet the requirements of sections 8403 (d) or 8404 (a).

“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.

“Emergency shelter” is defined under 24 CFR 576.2.

“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 USC 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.

“ESG Entitlement Area” or “Entitlement Area” means the geography within an ESG Entitlement's boundaries.

“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.

“ESG Nonentitlement Area” means the geography within an ESG Nonentitlement's boundaries.

“Governing Board” - for nonprofit applicants this term includes board of directors; for county local government applicants this term includes county board of supervisors; for City local government applicants this term includes City council.

“HMIS” means Homeless Management Information System as defined under 24 CFR 576.2. Use of the term “HMIS” within these regulations shall also include use of a comparable database, as permitted by HUD under 24 CFR Part 576.

“Homeless” is defined at 24 CFR 576.2.

“Homelessness prevention activities” means activities or programs described in 24 CFR 576.103.

“HUD” means the United States Department of Housing and Urban Development.

“NOFA” is the acronym for a “Notice of Funding Availability” described in section 8405.

“Nonentitlement area” is defined at 42 U.S.C. 5302.

“Operations” means the category of FESG activities that includes shelter maintenance, operation, rent, repairs, security, fuel, equipment, insurance, utilities, food and furnishings.

“Private nonprofit organization” is defined at 24 CFR 576.2.

“Rapid Re-housing” means the activities set forth in 24 CFR 576.104.

“Rank” means the order of eligible applications for funding based only on the rating established pursuant to the applicable grant selection criteria.

“Rating” means the process by which eligible applications are evaluated and given an overall numerical or relative value based on the numerical or relative value(s) assigned to each of the identified selection criteria described in the NOFA to which the applicant is responding.

“Service Area” has the same meaning as the term “Continuum of Care Service Area”.

“Site” means one or more facilities where the program(s) is being carried out.

“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 prior to the deadline for submission of the ESG application stated in the applicable NOFA.

“Standard Agreement” means the contract entered into by the Department and the ESG Subrecipient setting forth the basic terms and conditions governing the award of ESG funds.

“Subrecipient” means an entity that enters into a Standard Agreement with the Department for ESG funds.

“Subrecipient of the Administrative Entity” means an entity that enters into a written agreement with the Administrative Entity to implement Eligible activities with ESG funds.

“Unit of general purpose local government” is defined at 24 CFR section 576.2.

“Written Standards” means the standards, policies, and procedures adopted by a Continuum of Care for providing ESG-eligible activities pursuant to the requirements of 24 CFR 576.400 (e).

Authority cited: Section 50406(n), Health and Safety Code. Reference: 42 U.S.C. 5302, 42 U.S.C. 11302, 42 U.S.C. 11371, 42 U.S.C. 11373, 24 C.F.R. 576.3 and 24 C.F.R. 576.400.

§ 8402. Allocation of Funds

(a) 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 Subrecipients that are Units of general purpose local government. The amounts available for Administrative activities will be announced in the Action Plan and annual NOFA.

(b) After deducting for State Administrative activities, the remaining ESG funds will be made available for Eligible activities through two allocations according to the formula set forth in subsection (c):

(1) the Continuum of Care Allocation to be administered in accordance with section 8403; and

(2) the Balance of State Allocation to be administered in accordance with sections 8404 through 8407.

(c) The amount of funds available to Service Areas within the Continuum of Care Allocation and the Balance of State Allocation will be based on the amount of ESG funds available in any given year using the following formula factors adjusted biannually using the most recent data available.

(1) The point-in-time count published by HUD which includes both sheltered and unsheltered homeless persons prorated to reflect the total population of the ESG Nonentitlement Areas within each Continuum of Care Service Area as published by the Census Bureau;

(2) 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 dataset;

(3) 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.

(4) Notwithstanding subsections (1) through (3) 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 Action Plan.

(d) 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 Action Plan.

(e) In any year where the Department is issuing a NOFA, by January 31st, the Department will notify Eligible Continuums of Care and ESG Entitlement Areas within an Eligible Continuum of Care of the following:

(1) Service Areas and preliminary funding amounts within the Continuum of Care Allocation and the Balance of State Allocation

(2) In determining the Continuum of Care Allocation, the Department will issue the following:

(A) A solicitation of interest for Administrative Entities, pursuant to the requirements of section 8403, which includes timeframes for applications and approval and a solicitation of interest to administer funds for geographically contiguous Continuums of Care that are eligible to receive funds under the Balance of State Allocation; and

(B) Where there is no intent to apply to be an Administrative Entity, a solicitation of interest to apply for Rapid Re-housing activities pursuant to 8403(a) (2).

(3) In determining the Balance of State Allocation, the Department will issue the following:

(A) A solicitation of interest from Continuums of Care to participate in Balance of State Allocation regional competition pursuant to section 8404(a(4)), and

(B) A solicitation of interest in applying for Rapid Rehousing activities pursuant to 8404(a) (2).

Authority cited: Section 50406(n), Health and Safety Code.

Reference: 24 C.F.R. Section 576.100 and 24 C.F.R. 576.108.

§ 8403. Continuum of Care Allocation

(a) Funding for a Service Area in the Continuum of Care Allocation shall be administered by an approved Administrative Entity in the Service Area in which it is located pursuant to the requirements of this subdivision.

(1) Notwithstanding the location requirement in subdivision (a) above, an approved Administrative Entity shall also be eligible to administer funds for geographically contiguous Continuums of Care that are eligible to receive funds under the Balance of State Allocation and that agree to administration of their allocation by the Administrative Entity. One hundred percent of both allocations shall be used for Rapid Rehousing activities pursuant to the requirements of sections 8408 and 8409.

(2) In the absence of an approved Administrative Entity for a Service Area otherwise eligible under the Continuum of Care Allocation, a Continuum of Care may recommend a provider to apply for Rapid Rehousing activities

(A) In making this recommendation, the Continuum of Care shall use a process which is

1. Fair and open and avoids conflicts of interest in project selection, implementation, and the administration of funds;
2. Considers selection criteria reasonably consistent with the criteria used by the Department in section 8407;
3. Complies with the requirements of sections 8408 and 8409;
4. Incorporates reasonable performance standards as set forth in the Action Plan 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 Action Plan in the contract year.
5. Complies with federal ESG requirements
6. Considers any other practices promoted or required by HUD.

(B) If recommending a Private nonprofit organization for these funds, the nonprofit organization must submit a Certification of Local Government Approval to undertake ESG-funded activities from each Unit of Local Government where the activity is carried out pursuant to section 414 [42 U.S.C. section 11373(c)];

(C) Documentation of matching contributions must be maintained pursuant to the requirements of 24 CFR 576.201.

(D) The Department may request information from the Continuum of Care or Subrecipient which demonstrates compliance with the above requirements, and the Continuum of Care or Subrecipient shall provide such information.

(E) The provider shall enter into a Standard Agreement with the Department for Rapid Re-housing funds awarded pursuant to Subdivision (a) (2) above;

(F) The Action Plan will propose minimum and maximum percentages of a Service Area allocation that shall be designated for a Rapid Rehousing application.

(b) The Department will use the formula in section 8402 to reallocate any remaining funds that have not been conditionally reserved or allocated pursuant to the requirements of subdivision (a) to participating Service Areas in the Continuum of Care and Balance of State Allocations.

(c) The Department will evaluate applications from Units of general purpose local government in ESG Entitlement Areas recommended by Continuums of Care to determine eligibility and approve the designation of qualified Administrative Entities on a bi-annual basis.

(1) The application must demonstrate eligibility of the Continuum of Care and Administrative Entity pursuant to the requirements of this section and describe the collaboration among the two entities and the process for allocating funds to activities, and selecting providers.

(A) If proposing to also administer funds in a geographically contiguous Continuum of Care Service Area pursuant to subdivision (a) (1) above, the application shall also include evidence of agreement between geographically contiguous Continuums of Care to administer Rapid Re-Housing with 100 percent of both allocations.

(B) Applications from a continuing Administrative Entity shall include HMIS project-level and system-level performance data for the prior two years. After the initial award period, this data will be set forth in the State's Action Plan for the prior fiscal year. If performance remains in the lowest quartile compared to all participating Service Areas in the Continuum of Care allocation, the Department will work collaboratively with the Administrative Entity to develop performance improvement plans which will be incorporated into the written agreements required under subdivisions (f) and (j).

(d) To be eligible to participate in the Continuum of Care Allocation, the Service Area shall have an Eligible Continuum of Care that meets all of the following criteria:

- (1) It has received Continuum of Care funding from HUD in at least one of the past two federal competitions or has registered with HUD to apply for funding in the next competition;
- (2) It has conflict of interest policies in place that meet HUD requirements;
- (3) It has adopted Written Standards for all Eligible activities proposed to be carried out with ESG funds; and
- (4) It operates, or causes to be operated, an HMIS system that meets HUD requirements.

(e) To be eligible to participate in the Continuum of Care Allocation, the Continuum of Care shall recommend an Administrative Entity that meets the following criteria set forth in subsections (1) through (3) below. Where there is more than one eligible ESG Entitlement in a Continuum of Care Service Area willing to perform the functions of an Administrative Entity the Continuum of Care shall recommend a single Administrative Entity for approval by the Department.

- (1) Is a Unit of general purpose local government that has administered ESG funds for an Entitlement Area during at least one of the past five years. Where a city is the only unit of general purpose local government that has administered ESG funds for the Entitlement Area within the Continuum of Care Service Area, the Administrative Entity may be a county agency with experience administering another federal homelessness, housing, community development, or human services program in at least one of the past five years;
- (2) Has no unresolved ESG monitoring findings with HUD or the Department that the Department determines poses a substantial risk to the Department if the Administrative Entity is approved; and
- (3) Demonstrates the ability and willingness to perform the functions of an Administrative Entity pursuant to federal and State ESG requirements.

(f) The Continuum of Care and the Administrative Entity shall enter into a written agreement that specifies the roles and responsibilities of each entity to ensure compliance with federal and State ESG requirements. The Continuum of Care and the Administrative Entity shall collaborate in determining Eligible activities, selecting providers, and administering the ESG funds.

(g) The Administrative Entity shall select providers qualified to deliver Eligible activities in the Service Area through a process that is consistent with (1) through (8) below, and

inform the Department of selected providers and activities. The Administrative Entity shall:

- (1) Conduct fair and open competitions which avoid conflict of interest;
- (2) Follow procurement requirements of 24 CFR Part 84;
- (3) Evaluate provider capacity and experience, including the ability to deliver services in Nonentitlement areas;
- (4) Evaluate eligibility and quality of services, including adherence to Core Practices pursuant to section 8409;
- (5) Utilize data and consider community input to identify unmet needs;
- (6) Prioritize activities that address the highest unmet need, considering other available funding and system-wide performance measures;
- (7) Consider project-level performance measures when evaluating proposals; and
- (8) Collaborate with the Continuum of Care pursuant to subdivision (f) above.

(h) The Action Plan will set forth proposed limits on any or all of the following: the number or type of contracts, subcontracts, or activities per contract between the Administrative Entity and the Subrecipient of the Administrative Entity.

(i) The Administrative Entity shall ensure that:

(1) Not including the funding administered for a geographically contiguous Continuum of Care Service Area pursuant to subdivision (a)(1) above, not less than 40 percent of the funds awarded on an annual basis shall be used for Rapid Re-Housing activities; and

(2) Through the use of Coordinated Entry and other means, all funded activities are available to Nonentitlement areas of the Service Area consistent with section 414 [42 U.S.C. section 11373(c)].

(A) The Administrative Entity shall facilitate outreach and access to reach populations in the Nonentitlement areas and shall evaluate participation from these areas at least annually. The Department may condition future funding to ensure access to funded activities by Nonentitlement areas.

(B) Funded activities may also serve households located in ESG Entitlement Areas.

(j) In accordance with section 8411, the Administrative Entity shall enter into a Standard Agreement with the Department to do the following:

- (1) Receive and administer up to two allocations of annual federal ESG funding per application cycle, conditioned on availability of federal funds;
- (2) Carry out identified Eligible activities through selected providers;
- (3) Provide for matching funds as required by 24 CFR 576.201;
- (4) Enter into a written agreement with providers of funded activities governing the implementation of activities, including but not limited to eligible use of funds, funds disbursement, activity reporting, performance evaluation, monitoring, and termination;
- (5) Monitor the performance of all contractors, including selected providers, and those they subcontract with to carry out ESG-eligible activities, to ensure compliance with federal and State ESG requirements;
- (6) Provide timely reports to the Department; and
- (7) In all other ways administer ESG funding to ensure compliance with federal and State ESG requirements, and the Standard Agreement.

(k) The Department may deny or revoke the designation of an approved Administrative Entity under any of the following circumstances:

- (1) The Administrative Entity or one or more of the Subrecipients of the Administrative Entity has engaged in, or is responsible for violations of federal or State ESG requirements;
- (2) The Administrative Entity fails to utilize project-level or system-wide performance data in its project selection, renewal, or monitoring process; or
- (3) The Administrative Entity or the Service Areas for which it has been approved does not meet the requirements of this section.

(l) The Department may request information from the Administrative Entity or the Continuum of Care, which demonstrates compliance with any or all of the above requirements. The Administrative Entity or Continuum of Care shall provide such information when requested.

Authority cited: Section 50406(n), Health and Safety Code. Reference: 24 C.F.R. Section 91.320 and 24 C.F.R. 576.400.

§ 8404. Balance of State Allocation.Error! Bookmark not defined.

(a) The Department will administer the Balance of State Allocation for a Service Area without an ESG Entitlement consistent with the requirements of this section as follows:

(1) To be eligible to participate in the Balance of State Allocation, a Service Area shall have a Continuum of Care that meets all of the following requirements:

(A) It has not opted to have funds for the Service Area administered under the Continuum of Care Allocation pursuant to 8403 (a) (1).

(B) It has received Continuum of Care funding from HUD in at least one of the past two federal competitions or has registered with HUD to apply for funding in the next competition;

(C) It has conflict of interest policies in place that meet HUD requirements;

(D) It has adopted Written Standards that meet HUD requirements for all Eligible activities proposed to be carried out with ESG funds;

(E) It operates, or causes to be operated, an HMIS system that meets HUD requirements

(2) An Eligible Continuum of Care may recommend a provider for Rapid Re-housing activities.

(A) In making this recommendation, the Continuum of Care shall use a process which is

1. Fair and open and avoids conflicts of interest in project selection, implementation, and the administration of funds;
2. Considers selection criteria reasonably consistent with the criteria used by the Department in section 8407;
3. Complies with the requirements of sections 8408 and 8409;
4. Incorporates reasonable performance standards as set forth in the Action Plan 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 Action Plan in the contract year;
5. Complies with federal ESG requirements;

6. Considers any other practices promoted or required by HUD.

(B) If recommending a Private nonprofit organization for these funds, the nonprofit organization must submit a Certification of Local Government Approval to undertake ESG-funded activities from each Unit of Local Government where the activity is carried out pursuant to section 414 [42 U.S.C. section 11373(c)];

(C) Documentation of satisfactory match must be maintained pursuant to the requirements of 24 CFR 576.201.

(D) The Department may request information from the Continuum of Care or Subrecipient which demonstrates compliance with the above requirements. Such information shall be provided upon request.

(E) The Action Plan will propose minimum and maximum percentages of the Service Area allocation that shall be designated for these activities

(3) Funds remaining after allocating for Rapid Re-housing activities pursuant to section 8404 (a) (2) will be made available within three regional allocations as follows.

(A) Northern Region comprised of the Service Areas for the Continuums of Care covering the counties of Amador, Butte, Calaveras, Colusa, Del Norte, Glenn, Humboldt, Lake, Lassen, Mendocino, Modoc, Plumas, Shasta, Sierra, Siskiyou, Sutter, Tehama, Trinity, Tuolumne, Yuba;

(B) Bay Area Region comprised of the Service Areas for the Continuums of Care covering the counties of Marin, Napa, Santa Cruz, and Solano;

(C) Central and Imperial Valley Region comprised of the Service Areas for the Continuums of Care covering the counties of Alpine, El Dorado Imperial, Inyo, Kings, Mariposa, Merced, Mono, Nevada Placer, Tulare, Yolo,

(D) The configuration of Service Areas within each region may change subject to individual Continuum of Care or ESG Entitlement Area designations made by HUD. The counties belonging to each region will be announced in the NOFA.

(4) As requested in the NOFA, each Continuum of Care shall recommend to the Department an Eligible organization or organizations proposing Eligible activities within the Continuum of Care Service Area for funds available under the applicable regional allocation. In making recommendations, the Continuum of Care shall use a process which meets the following requirements:

(A) Is Fair and open, and avoids conflicts of interest in project selection, implementation, and the administration of funds

(B) considers State application eligibility and rating criteria in sections 8406 and 8407

(C) complies with the requirements of sections 8408 and 8409

(5) All applications for funds available under the regional allocations will be evaluated by the Department pursuant to the requirements of sections 8406, 8408, and 8409. Depending on whether the regional allocations are oversubscribed, applications submitted for funds within a regional allocation may be rated and ranked pursuant to the requirements of 8407.

(b) The Action Plan will set forth proposed limits on any or all of the following: the number of applications submitted within a Continuum of Care Service Area, and any limits on the number or type of activities, contracts, or subcontracts within an application.

Authority cited: Section 50406(n), Health and Safety Code. Reference: 24 C.F.R. Section 91.320.

§ 8405. Notice of Funding Availability.

(a) The Department will issue a NOFA soliciting applications for Eligible activities within the regional allocations pursuant to 8404(a) (4) and 8404 (a) (5).

(b) The NOFA will notify all interested persons of the following:

(1) That the Department has been allocated ESG funds or expects to be allocated such funds;

(2) Identification of Continuum of Care Service Areas and allocation amounts under the Balance of State and Continuum of Care Allocations;

(3) Regional allocation amounts and identification of Continuum of Care Service Areas eligible to submit applications under the regional allocations pursuant to 8404 (a) (4) and 8404 (a) (5);

(4) Range of Eligible activities as adopted in the Action Plan, and any prohibitions on uses of funds;

- (5) As adopted in the Action Plan, the maximum number of applications from a Continuum of Care Service Area, and the maximum number and type of Eligible activities, contracts, and subcontracts within an application;
- (6) Role of Continuum of Care in the application process;
- (7) Application or other documentation requirements pursuant to activities to be funded under the regional allocations pursuant to 8404 (a) (4) and 8404 (a) (5);
- (8) Deadline for filing of applications to be reviewed and approved by the Department, timeframes for review and funding of all applications; and
- (9) General terms and conditions of funding allocations.

Authority cited: Section 50406(n), Health and Safety Code. Reference: 24 C.F.R. Section 91.320.

§ 8406. NOFA Application Process.

(a) Applications submitted pursuant to the NOFA for the regional competition pursuant to 8404(a) (4) and 8404 (a) (5) shall meet the following requirements.

- (1) The applicant is an Eligible organization and is recommended by the Continuum of Care as described in the NOFA pursuant to section 8404(a)(4);
- (2) The Continuum of Care meets the requirements of section 8404 (a) (1)
- (3) The application proposes an Eligible activity in the Continuum of Care Service Area consistent with section 8408;
- (4) The application is received by the deadline stated in the NOFA;
- (5) Except as provided in subdivision (b), the application is complete and includes the following:
 - (A) Authorizing resolution by the applicant's Governing Board;
 - (B) For applications requesting funds for Emergency shelter, evidence of site control;
 - (C) For Private nonprofit organizations, a Certification of Local Government Approval to undertake ESG-funded activities from each Unit of Local Government where the activity is carried out pursuant to section 414 [42 U.S.C. section 11373(c)];

(D) Response to all of the application selection criteria as set forth in section 8407;

(E) Written Standards for the proposed program activity from the Continuum of Care that is recommending this application for funding which meet the requirements of section 8409, as well as federal requirements;

(F) Documentation of satisfactory match pursuant to the requirements of section 8410;

(G) Completed application accompanied by all applicable attachments, certifications, and any additional information requested in the applicable NOFA;

(H) Certification by the applicant that all information within the application is true, complete, and accurate; and

(I) Any other information the Department or HUD requires to determine compliance with the requirements of these regulations and all other regulations, statutes, and laws applicable to ESG, and scored based on the criteria in section 8407.

(b) Applications that meet the requirements in subdivision (a) will be evaluated according to the criteria in section 8407. Notwithstanding the above, in the event that information, other than the requirements enumerated in this section, is missing from an application, the application may be scored as submitted.

(c) Notwithstanding subsection (b), if the Department determines that 1) an initial applicant scores sufficiently high pursuant to section 8407 to be awarded funds, 2) the application is deficient with regard to one or more items in (5)(A) through (5)(I) of this section 8406, and 3) all of the deficient items are correctible, the Department may allow the applicant to correct all of the deficiencies on or before 15 calendar days following written notification to the applicant that the applicant will be provided such opportunity. In this written notification, prospective awards will be conditioned upon applicants correcting all deficiencies to the satisfaction of the Department. If all corrections are not made within 15 days following this written notification to the applicant, that funding award is automatically terminated and the attendant funds will be awarded to the next highest scoring applicant, which has submitted a complete application that complies in all respects with the requirements set forth in (5)(A) through (5)(I) of this section.

(d) The Department reserves the right to request clarification of unclear or ambiguous statements made in the application and other supporting documents where doing so will not impact the competitive scoring of the application.

(e) The Department may request that an applicant revise application documents as necessary to establish compliance as long as such revisions do not impact the competitive scoring of the application.

Note: Authority cited: Section 50406(n), Health and Safety Code. Reference: 42 U.S.C. Section 11373.

§ 8407. Selection Criteria for NOFA Applicants.

(a) All applications made pursuant to section 8404 (a) (5) will be evaluated using the criteria below and ranked according to subdivision (b) below. Where applications requesting funds for more than one program are permitted in the NOFA, each program will receive a separate score for each rating factor, and the point scores will be averaged to calculate a final point score for each rating factor.

(1) Applicant Experience - 20 points

(A) Length of experience implementing the proposed Eligible activity or activity similar to the proposed activity.

(B) For applicants who have received funding in the State's ESG program in the past three years, a maximum of 20 points will be deducted for the following:

1. Whether the Department has terminated or disencumbered ESG grant funding;
2. Whether the applicant has any unresolved monitoring findings in ESG that pose a substantial risk to the Department;
3. Whether the applicant has submitted annual reports in a timely manner for ESG grants.

(2) Need for Funds - 10 points

Need for funds based on whether the application activity and subpopulation targeting, if any, meets a high need for the community as identified by the Continuum of Care, in a manner that is consistent with the requirements of section 8409. The Continuum of Care shall provide data and analysis to support the need, including but not limited to HMIS data and data from the most recent point-in-time count published by HUD.

(3) Program Design - 20 points

Quality of the proposed program in delivering Eligible activities to participants consistent with the Written Standards of the Continuum of Care, and Core Practices as set forth under section 8409. In making determinations under this rating factor, the Department may examine such things as Continuum of Care Written Standards for the activity; provider guidelines governing activity operations; program rules for clients; and the reasonableness of program staffing patterns and the activity budget relative to program design, target population, and local conditions.

(4) Impact and Effectiveness - 30 points

Using HMIS data from the most recent ESG contract year, applications will be evaluated based on an evaluation of project and system-wide impact and effectiveness utilizing project level and system-wide performance outcomes for ESG Eligible activities or similar activities implemented within the past three years, based on data which is reasonably available. Performance measures for each ESG activity and for each Continuum of Care Service Area will be identified in the Action Plan and based on the metrics used by HUD in programs such as ESG and the Continuum of Care. The Department may require documentation to verify the accuracy of the data provided by the applicant. Such documentation shall be provided upon the request of the Department.

(5) Cost Efficiency - 10 points

Using HMIS data from the most recent ESG contract year, applications will be evaluated based on the average cost per exit to permanent housing based on the total ESG project budget and the number of exits to permanent housing. The Department may require documentation to verify the accuracy of the information provided by the applicant. Such documentation shall be provided upon the request of the Department.

(6) State Objectives - 10 Points

The Department may award each application up to 10 points for addressing one or more State Objectives as identified in the Action Plan and NOFA. The Department's selection of State Objectives will be based on one or more of the following:

(A) Federal funding priorities, as publicly announced by HUD;

(B) State funding priorities as publicly announced by the Governor or Department Director; and

(C) Housing and community development needs or objectives as identified in the Action Plan.

(b) Applications evaluated under subdivision (a) will be ranked as follows:

(1) Within each regional allocation, applications will be ranked in descending order and awarded the amount requested in the application or a revised amount if necessary to conform to funding limits in the NOFA. In the event of a tie between applicants within a regional allocation, funds will be awarded to the applicant who scored the most points in the Impact and Effectiveness rating factor.

(2) ESG funds remaining in a regional allocation may be made available for the highest ranked unfunded applications in the other regional set-asides, according to their total application score. Remaining funds may also be set-aside for distribution in the next NOFA.

(3) When there are insufficient funds to fully fund the next highest ranked unfunded application, this application may be partially funded if the funded activities can be adequately performed with the remaining ESG allocation.

Authority cited: Section 50406(n), Health and Safety Code. Reference: 24 C.F.R. 576.202.

§ 8408. Eligible Activities.

(a) State ESG funds awarded by an Administrative Entity or by the Department shall be used for Eligible activities as permitted by HUD pursuant to 24 CFR Part 576 in accordance with this section.

(b) Pursuant to 24 CFR 91.320 (d), to address the State's priority needs and objectives pursuant to the Action Plan, the Department may limit the types of activities that may be funded in a particular NOFA.

(c) A maximum of ten percent of an individual formula allocation under section 8402 may be used for HMIS activities.

(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.

(e) For Rapid Rehousing and Homelessness prevention activities, no subpopulation targeting will be permitted except if documentation of all of the following is provided to the Department prior to the award of funds for these activities: (1) that there is an unmet need for these activities for the subpopulation proposed for targeting, and (2) that there is existing funding in the Continuum of Care Service Area for programs that address the needs of the excluded populations for these activities.

Authority cited: Section 50406(n), Health and Safety Code. Reference: 24 C.F.R. 92.320 and 24 C.F.R. Part 576.

§ 8409. Core Practices

(a) Unless exempted by federal rules, all ESG-funded activities shall utilize a Coordinated Entry system established by and consistent with the protocols of the Continuum of Care for the Service Area in which that program operates. Participation in Coordinated Entry shall occur in a manner that promotes the following, as reflected in the Continuum of Care Written Standards:

(1) Comprehensive and coordinated access to assistance regardless of where an individual or family is located in the Continuum of Care Service Area. Local systems should be easy to navigate and have protocols in place to ensure immediate access to assistance for people who are homeless or most at-risk;

(2) Prioritized access to assistance for people with the most urgent and severe needs, including, but not limited to, survivors of domestic violence. ESG-funded activities shall seek to prioritize people who:

(A) Are unsheltered and living in places not designed for human habitation, such as cars, parks, bus stations, and abandoned buildings;

(B) Have experienced the longest amount of time homeless;

(C) Have multiple and severe service needs that inhibit their ability to quickly identify and secure housing on their own; and

(D) For Homelessness prevention activities, people who are at greatest risk of becoming literally homeless without an intervention and are at greatest risk of experiencing a longer time in shelter or on the street should they become homeless.

(b) All ESG-assisted projects shall operate in a manner consistent with housing first practices as reflected in the Continuum of Care Written Standards, (consistent with subsections (1) through (5) below), and progressive engagement and assistance practices, including the following:

(1) Ensuring low-barrier, easily accessible assistance to all people, including, but not limited to, people with no income or 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) Seeking to quickly resolve the 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;

(5) Connecting participants to appropriate support and services available in the community that foster long-term housing stability;

(6) Offering financial assistance and supportive services in a manner which offers a minimum amount of assistance initially, adding more assistance over time if needed to quickly resolve the housing crisis by either ending homelessness, or avoiding an immediate return to literal homelessness or the imminent risk of literal homelessness. The type, duration, and amount of assistance offered shall be based on an individual assessment of the household, and the availability of other resources or support systems to resolve their housing crisis and stabilize them in housing; and

(7) Notwithstanding subdivision (6) above:

(A) Rapid Rehousing activities funded within the same Continuum of Care Service Area shall follow the same program requirements for type, duration, and amount of assistance provided, unless sufficient written justification for any differences is provided by the Continuum of Care and approved by the Department; and

(B) Homeless prevention activities funded within the same Continuum of Care Service Area shall follow the same program requirements for type, duration, and amount of assistance provided, unless sufficient written justification for any differences is provided by the Continuum of Care and approved by the Department.

(8) Any other practices promoted or required by HUD.

Authority cited: Section 50406(n), Health and Safety Code. Reference: 24 C.F.R. Sections 576.400 and 576.401.

§ 8410. Match Requirements.

(a) Pursuant to 24 CFR 576.201, the Department will provide HUD with annual documentation of the sources and amounts of matching funds required of the Department as a recipient of ESG funds.

(b) Pursuant to subdivision (a), the Department may satisfy HUD's matching requirement, by submitting documentation to HUD of available State funding for programs serving persons experiencing homelessness.

(c) Pursuant to subdivision (a), the Department will set forth in the applicable ESG Action Plan and NOFA any requirement of ESG Subrecipients and Subrecipients of the Administrative Entity to provide documentation of matching funds.

Authority cited: Section 50406(n), Health and Safety Code. Reference: 42 U.S.C. Section 11375; and 24 C.F.R. 576.201.

§ 8411. Standard Agreement.

(a) The Department shall enter into a written contract, known as the "Standard Agreement" directly with the Subrecipient.

(1) For the Administrative Entity, the Standard Agreement will follow receipt of funding recommendations from an Administrative Entity and certification by the Administrative Entity that the proposed activities meet federal and State requirements pursuant to sections 8403, 8408, and 8409. The Department may require documentation to verify the accuracy of the information provided.

(2) For funding recommendations made pursuant to sections 8403(a)(2) and 8404(a)(2), the Standard Agreement will follow after receipt of these recommendations from the Continuum of Care, and verification by the Department that the requirements of these sections have been met.

(3) For applications funded pursuant to the NOFA, the Standard Agreement will follow the funding award by the Department.

(b) The Standard Agreement will require the Subrecipient to comply with the requirements and provisions of the Act, 24 CFR Part 576, these regulations, and generally applicable State contracting rules and requirements.

(c) The Standard Agreement will include the items specified in this section:

(1) A clear and accurate identification of the Subrecipient under contract with the Department;

(2) The geographic area in which the activity or activities are to be provided.

(3) The amount of the Grant, including budget detail sufficient for the Department to enter into HUD's financial management system ("IDIS"), and to ensure eligibility of expenses; the basis upon which payment is to be made; and the process by which the Subrecipient must request payment;

(4) A clear and complete statement of the activities and services the Subrecipient will perform and provide or, for an Administrative Entity, cause to be performed and provided. For an Administrative Entity, the information on activity, services, and budget will be reflected for each of its selected providers;

(5) Timeframes for the performance of approved Eligible activities as required pursuant to 24 CFR 576.203.

(d) The Department may approve modifications to the Standard Agreement as described below.

(1) The Administrative Entity may propose to change the funded provider or Eligible activity consistent with section 8403 if necessary to meet the requirements of this Chapter or to expend its funding allocation. Any change must still comply with the requirements in sections 8408 and 8409.

(2) A Subrecipient shall notify the Department of any line item changes to the budget needed for the Department to update IDIS. For line item changes representing more than 25 percent of the overall budget, a contract amendment is required. Changes must still comply with the requirements in sections 8408 and 8409.

(e) The following performance requirements shall appear in each Standard Agreement and shall include additional provisions specific to each Subrecipient:

(1) Reporting requirements pursuant to section 8413; and

(2) Requirements for fiscal management in accordance with generally accepted accounting standards and federal fiscal requirements.

Note: Authority cited: Section 50406(n), Health and Safety Code. Reference: 24 C.F.R. 576.203.

§ 8412. Disbursement Procedures.

(a) ESG funds shall be disbursed pursuant to the terms of the Standard Agreement.

(b) The Department may rely on the Subrecipient's certification that expenditures claimed in a request for disbursement are eligible and necessary, provided that the Subrecipient also certifies that detailed supporting documentation verifying each expenditure is available and shall be retained by the Subrecipient for six years after the execution of the Standard Agreement.

(c) Subrecipients may request an advance of 30 days working capital or \$5,000, whichever is greater, after the Standard Agreement is fully executed.

(d) The Department shall establish minimum disbursement amounts or other related procedures necessary for the efficient administration of the ESG program. Requests for disbursement must be made at least quarterly.

(e) If a Subrecipient uses ESG funds for the costs of ineligible activities, the Subrecipient shall be required to reimburse these funds to the Department, and shall be prohibited from applying to the Department for subsequent ESG funds until the Department is fully repaid.

(f) Notwithstanding section subdivision (c), above only costs incurred after full execution of the Standard Agreement, and after all environmental review requirements have been met, will be paid by the Department. Environmental review compliance shall include compliance with 24 C.F.R. Part 50.

Authority cited: Section 50406(n), Health and Safety Code. Reference: 24 C.F.R. Part 50.

§ 8413. Recordkeeping and Reporting.

(a) In addition to the recordkeeping requirements of 24 C.F.R. Parts 84 and 85, 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.

(b) The Subrecipient shall submit the following reports.

(1) Annual performance reports during the period of the grant;

(2) A written completion report must be submitted within 60 days after expiration of the Standard Agreement;

(3) Additional reports may be requested by the Department to meet other applicable federal reporting requirements.

Authority cited: Section 50406(n), Health and Safety Code. Reference: 24 C.F.R. Parts 84 and 85.

§ 8414. Monitoring Grant Activities.

(a) Administrative Entities shall monitor the activities selected and awarded by them to ensure compliance with federal and State ESG requirements. An onsite monitoring visit of selected providers shall occur whenever determined necessary by the Administrative Entity, but at least once during the grant period.

(b) The Department will monitor the performance of the Subrecipient based on a risk assessment and according to the terms of the Standard Agreement. The Department may also monitor the Subrecipient of the Administrative Entity as the Department deems appropriate based on a risk assessment.

(c) The Department will monitor the performance of Administrative Entity and funded projects based on the performance measures used by HUD in ESG or the Continuum of Care program. In the event that project-level or system-wide performance consistently remains in the lowest quartile compared to all participating Service Areas in the Continuum of Care allocation, the Department will work collaboratively with the Administrative Entity to develop performance improvement plans which will be incorporated into the Standard Agreement and other agreements required under section 8403.

(d) If it is determined that a Subrecipient falsified any certification, application information, financial, or contract report, the Subrecipient 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).

Authority cited: Section 50406(n), Health and Safety Code. Reference: 24 C.F.R. 576.50.

§ 8415. Audit Requirements.

(a) Private nonprofit organizations must submit audits to the Department for review and approval. These audits must comply with all applicable federal laws, including without limitation applicable OMB Circulars. See 24 C.F.R. 576.407 (c).

(b) Units of general local government must submit audits to the Department for review and approval. These audits must comply with all applicable federal and other laws.

(c) The Department may also periodically request that a Subrecipient be audited at the expense of the Subrecipient and the Subrecipient shall comply.

Authority cited: Section 50406(n), Health and Safety Code. Reference: 24 C.F.R. 576.407.

§ 8416. Sanctions.

The Department may impose sanctions, as well as any other remedies available to it under law, on a Subrecipient for failure to abide by any State and federal laws and regulations applicable to the ESG program. As the Department deems appropriate or necessary, sanctions include, without limitation, any or all of the following:

- (a) Conditioning a future ESG grant on compliance with specific laws or regulations;
- (b) Directing a Subrecipient to stop incurring costs under the current grant;
- (c) Requiring that some or all of the grant amount be remitted to the Department;
- (d) Reducing the amount of grant funds a Subrecipient would otherwise be entitled to receive;
- (e) Electing not to award future grant funds to a Subrecipient and prohibiting an Administrative Entity from awarding to a particular Subrecipient of the Administrative Entity until appropriate actions are taken to ensure compliance with ESG requirements; and/or;
- (f) Taking any other actions permitted pursuant to 24 CFR 576.501.

Authority cited: Section 50406(n), Health and Safety Code. Reference: 24 C.F.R. 576.50(c).

§ 8417. Other Federal Requirements.

Subrecipients and Subrecipients of the Administrative Entity 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. sections 11371-11378 and 24 C.F.R. Part 576.

Note: Authority cited: Section 50406(n), Health and Safety Code. Reference: 42 U.S.C. Sections 11371-11378; and 24 C.F.R. 576.