

SNAPS-Shots

Bite-Size Information on the Emergency Solutions Grants and Continuum of Care Programs

September 25, 2013

Requirements for Rental Assistance Agreements and Leases Under the Emergency Solutions Grants (ESG) Program

Did You Know?

When providing rental assistance under both the homelessness prevention and rapid re-housing components of the Emergency Solutions Grants (ESG) program:

- Assistance may only be provided in cases where a rental assistance agreement is in place between the recipient/subrecipient and owner, **and** a lease agreement is in place between the program participant and owner.
- The recipient/subrecipient must make payments directly to the housing owner (or their agent, such as a property manager).

Rental Assistance Agreements

The rental assistance agreement required between the recipient/subrecipient and property owner **must** set forth the terms under which the rental assistance is being provided. It *must at least* include the following:

- A provision requiring the owner to give the recipient/subrecipient a copy of any notice to the program participant to vacate the housing unit, or any complaint used under state or local law to commence an eviction action against the program participant, as indicated in §576.106(e)).
- The same payment due date, grace period, and late payment penalty requirements as the program participant's lease, as indicated in §576.106(f)).
- For **project-based rental assistance**, the initial term of the rental assistance agreement must be 1 year. For **tenant-based rental assistance**, recipients/subrecipients should establish the term of the rental assistance agreement for the period of time they anticipate providing assistance.

The rental assistance agreement should also include provisions addressing the following:

- **The type of rental assistance being provided** (tenant-based or project-based).
- **Late Payments:** If a recipient/subrecipient incurs late payment penalties, it is the sole responsibility of the recipient/subrecipient to pay those penalties using non-ESG funds, as indicated in §576.106(f).
- **Program Participant Sharing in Rent:** The recipient/subrecipient may require the program participant to pay a portion of the monthly rental cost. In such cases, the recipient (or subrecipient, if applicable) must have written policies and procedures for determining the program participant's portion, and the rental assistance agreement should specify the amount of rent to be paid by the recipient/subrecipient and the amount to be paid by the program participant, as indicated in §576.106(b).
- **Termination:** When providing **tenant-based rental assistance**, the rental assistance agreement with the owner must terminate and no further rental assistance payments may be made under that agreement if: the program participant moves out of the housing unit; the lease terminates and is not renewed; or the program participant becomes ineligible to receive ESG rental assistance §576.106(h).

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Note on Project-Based Rental Assistance: When providing project-based rental assistance, additional conditions and requirements apply for both leases and rental assistance agreements. See section 576.106(i) of the ESG interim rule for specific requirements.

Lease Agreements

Each program participant receiving rental assistance must have a legally binding, written lease for the rental unit, unless the rental assistance is provided solely for rental arrears (in which case, an oral agreement may be accepted—see below). The lease must be between the program participant and the owner (or their agent, such as a property manager).

Documentation

Per section 576.500(h) of the ESG interim rule, the rental assistance provider's (recipient/subrecipient) records must include copies of all leases and rental assistance agreements, documentation of payments made to owners for the provision of rental assistance, and supporting documentation for these payments, including dates of occupancy by program participants.

Special Considerations for Rental Arrears

Rental assistance agreements: Even when the assistance is solely for arrears, a rental assistance agreement is required, because rental arrears are considered rental assistance. For payments of rental arrears, the agreement should provide the amount paid by the recipient/subrecipient, include the number of months of arrears paid, and any other terms and conditions of the payment. The agreement should reflect the evidence/documentation used to justify that the arrears are an eligible payment.

Leases: When the assistance is solely for arrears, an oral lease agreement may be accepted in place of a written lease, if the agreement gives the program participant an enforceable leasehold interest under state law and the agreement and rent owed are sufficiently documented by the owner's financial records, rent ledgers, or canceled checks.

Question: Are rental assistance agreements required to have the same term as the lease?

Answer:

- For **project-based rental assistance**, the initial terms of the lease and the rental assistance agreement must each be 1 year.
- For **tenant-based rental assistance**, there is no requirement that the time period of the rental assistance agreement coincide with the term of the lease between the program participant and the landlord.

Please note: This SNAPS-Shot is provided as a resource to help recipients and subrecipients understand the ESG Program Interim Rule. Always refer to the program regulations to ensure compliance with program requirements.

Related Resources

For more information on this issue, see the [ESG Program Interim Rule](#) at §576.106 (short-term and medium-term rental assistance).

Ask A Question

If you have questions or suggestions for SNAPS-Shots topics, please submit them to HUD via [OneCPD Ask A Question](#) help desk.