

ESG Minimum Habitability Standards for Permanent Housing

Introduction

The Emergency Solutions Grants (ESG) Program interim rule, at 24 CFR 576.403, establishes minimum habitability standards for permanent housing funded under the Rapid Re-housing and Homelessness Prevention components of ESG or ESG-CV grants. This document explains when the minimum standards apply.

Note: This document does not describe how to conduct an inspection, nor does it address the lead-based paint requirements, which can be found at 24 CFR part 35.

Minimum Standards for Permanent Housing

The recipient or subrecipient cannot use ESG-CV funds to help a program participant **remain in** or **move into** housing that does not meet the minimum habitability standards under §576.403(c) (also listed in Appendix A).

This restriction applies to all activities under the Homelessness Prevention and Rapid Re-housing components, including rental assistance and housing relocation and stabilization services. In addition:

- If an eligible household needs homelessness prevention assistance to remain in its existing unit, the assistance can only be provided if that unit meets the minimum standards.
- If an eligible household needs homelessness prevention or rapid re-housing assistance to move to a new unit, the assistance can only be provided if the new unit meets the minimum standards. The unit the household is leaving does not need to be inspected.
- The housing must also comply with any other standards established by the recipient that exceed or add to these minimum standards.

Note: The same standards apply regardless of the amount of ESG-CV funds involved. For example, the recipient or subrecipient must inspect the unit and confirm that it meets the ESG minimum habitability standards, even if the only ESG-CV assistance being provided is for a security deposit or moving assistance.

The recipient or subrecipient must be sure to document compliance with the ESG habitability standards for Permanent Housing activities in the program participant's file.

Homelessness Prevention

When ESG-CV Rental Assistance and/or Housing Relocation and Stabilization Services are provided under the Homelessness Prevention component to help a program participant **remain in** or **move into** permanent housing, the ESG minimum habitability standards apply to either the

current unit (if the program participant is staying in place) or to a new unit (if the program participant is moving).

Even if only a minimal amount of Housing Relocation and Stabilization Services assistance—such utility arrears/payments (Financial Assistance) or housing stability case management (Services)—is provided under the Homelessness Prevention component to assist a program participant to stay in their unit, the habitability standards apply to the unit and must be documented in the program participant’s file.

Example: Jonathan has a part-time job and a large amount of debt; he has not been paying his entire rent for the past few months. He has received an eviction notice, and he has no family or friends in the area that can help him. After he goes through the ESG-CV intake assessment and is determined to be eligible, the case manager determines that he could benefit from credit counseling and a financial literacy course.

Scenario A: The credit counseling and financial literacy course is all the ESG-CV assistance Jonathan needed to help him re-prioritize rent payments and get back on track. Even though he has received services only, because it is homelessness prevention and the assistance is directly related to helping him remain in his unit, a habitability inspection is required.

Scenario B: First, the case manager attempts mediation with the landlord, but the landlord refuses to work with them and goes to court. Jonathan needs legal services to prevent the eviction and help him stay in the unit, along with payments of several months of rental arrears. Again, a habitability inspection must be completed because the ESG-CV services and assistance are directly related to assisting him to stay in his unit.

Rapid Re-housing

When ESG-CV Rental Assistance and/or Housing Relocation and Stabilization Services are provided under the Rapid Re-housing component to help a program participant move into a new permanent housing unit, the habitability standards apply to the unit into which they are moving and must be documented in the program participant’s file. If Rapid Re-housing services are being provided before a unit has been identified, no habitability inspection is required until there is a unit to inspect. If assistance with arrears for a prior unit is needed as part of the rapid rehousing assistance, no habitability inspection is required for the old unit on which the arrears are owed, so long as the program participant will be rapidly re-housed in a different unit.

Example: Sarah and her 1 year-old daughter are staying in an emergency shelter, and an ESG-CV subrecipient is assisting her to prepare for permanent housing, funded under the Rapid Rehousing component.

Scenario A: After developing a housing plan with her case manager, she receives housing stability case management to identify and address some of the issues preventing her from obtaining and remaining in housing, and housing search and placement assistance to assess housing barriers, to develop an action plan

for locating housing, and to start the housing search process. The case manager also helps Sarah access other mainstream resources, including child care and food stamps, to help increase their stability when Sarah is able to find and rent an apartment on her own. In this scenario, there is not yet a unit to inspect, so no habitability inspection is required.

Scenario B: In addition to housing stability case management and housing search and placement assistance, the case manager is able to obtain funds from a local charity that will cover Sarah’s security deposit and the first 2 months of rent in her own apartment. The case manager also spends time helping Sarah make moving arrangements. In this scenario, the unit she moves into must meet the habitability standards—even though no ESG-CV financial assistance or rental assistance was provided—because the ESG-CV -funded services were directly related to a helping the program participant move into a particular unit.

When and how often must inspections be conducted for Rapid Re-housing and Homelessness Prevention assistance?

The timing and frequency of inspections depends on the type of activity, as described below.

If the program participants need Homelessness Prevention assistance to stay in their current housing, the housing must be inspected and found to meet the minimum habitability standards before the recipient/subrecipient incurs ESG costs for any of the following:

- Providing any service to the program participant;
- Entering into a rental assistance agreement with the owner; or
- Making any payment on behalf of the program participant (e.g., rental or utility arrears, rental or utility payments, etc.).

Note: The interim rule states that ESG funds may not be used to help someone move into or remain in a unit that does not meet the habitability standards. However, in some situations (e.g. when providing legal services), homelessness prevention assistance to stay in a unit must be provided quickly—even before the habitability inspection can be completed.

In these cases, a recipient/subrecipient could use *non-ESG funds* to pay for an eligible program participant’s rental arrears, rental assistance, or financial assistance, or provide services to keep an individual or family in their unit, **before an inspection is performed**, so long as the unit is inspected and determined to meet the habitability standards **before** any costs are charged to the ESG grant or matching funds.

If the unit does not meet the habitability standards at the time of the inspection, recipients are prohibited from using ESG funds to pay for assistance provided before the unit meets the standards. In addition, funds spent before a unit meets the habitability standards may not be counted as match.

If the program participant needs Homelessness Prevention or Rapid Re-housing assistance to obtain housing, the unit into which the program participant is moving must be inspected before the program participant signs the lease and before the recipient/subrecipient provides any

ESG-CV rental assistance or housing relocation and stabilization services specific to the unit into which the program participant will be moving.¹

In all cases, if ESG-CV funds are used for **ongoing** assistance (such as rental assistance, utility payments, etc.), the recipient/subrecipient must take reasonable measures to ensure the unit meets the minimum habitability standards for permanent housing for the duration of the assistance. If HUD monitors and discovers that a unit does not meet the minimum standards, then HUD may determine that the recipient is out of compliance with the ESG requirements.

For one-time assistance (such as rental arrears, a security deposit, etc.), the unit for which assistance is being provided—either for households that remain in place or for households that are moving to a unit—must meet the minimum standards for permanent housing at the time the assistance is provided (e.g., when the rental arrears payment is made).

About the Standards

Can we use different standards?

Recipients may establish standards more stringent than the ESG program's minimum standards for permanent housing, or may allow the subrecipient to establish such standards, as long as all HUD-required standards are also met. For recipients that intend to apply more stringent standards, these standards should be described in a written policy to ensure that all individuals responsible for implementing the policy have access to consistent guidance.

It is important to note that the Housing Quality Standards (HQS) used for other HUD programs are different than the minimum standards for permanent housing assisted with ESG funds. While in most respects HQS is more stringent and detailed than the ESG minimum standards for permanent housing, the ESG standards for fire safety are more specific.

Recipients/subrecipients who choose to use HQS instead of the ESG habitability standards should amend their checklists and notify inspectors that they must complete the more stringent inspection for fire safety. Appendix A illustrates the standards for permanent housing and compares those standards with HQS.

Does a certified inspector need to conduct inspections?

Unlike HQS inspections, which must be conducted by a certified inspector, inspections to determine that permanent housing meet the ESG minimum standards do not need to be evaluated by a certified inspector. ESG inspections may be conducted by:

- ESG program staff (recipient/subrecipient staff); or
- Staff from or hired by an agency of the recipient/subrecipient, such as a city department that is designated to conduct inspections, or a contractor hired for that task; or
- Staff from another subsidy program that is providing assistance and also requires an inspection (e.g., Section 8, Public Housing).

¹ One exception to this is the rental application fee. If a program participant applies for several units, only the unit into which they ultimately decide to move must be inspected.

However, the inspection must determine whether all aspects of the ESG minimum habitability standards have been met for the particular unit assisted with ESG funds; **simply conducting an HQS inspection, a city housing code inspection, a sampling of units in a particular development, or another type of housing quality assessment is insufficient.**

How should compliance with minimum standards for permanent housing be documented?

Recipients/subrecipients must document compliance with the ESG-CV permanent housing and this documentation must include inspection reports, as required under §576.500(j). Recipients (or subrecipients, if applicable) have discretion to establish their own approaches to documenting initial and ongoing compliance with the standards. Procedures for ensuring such compliance must be included in the recipient's/ subrecipient's written policies and procedures, as required under §576.500(a).

Documenting compliance with the appropriate minimum standards includes ensuring that inspection reports from the initial and any follow-up inspections are retained. In developing these policies and procedures, recipients should consider issues such as what action will be taken if conditions change or if a recipient/subrecipient has reason to believe the housing unit might not pass another inspection.

Recipients/subrecipients may accept documentation of inspections conducted by staff affiliated with another subsidy program. However, as described above, since other programs' standards may be different (e.g., HQS standards differ slightly, as illustrated in Appendix A), in these cases, recipients/subrecipients must ensure that the other program's inspection protocol is adapted to adequately document compliance with all applicable ESG standards.

For permanent housing units, the completed checklist (or equivalent documentation) should be placed in the program participant's file. In either case, the documentation must be available during monitoring by HUD or the recipient.

Note: These records are subject to record retention requirement at 24 CFR 576.500(y) and the access to records requirements at 24 CFR 576.500(z).

Can ESG funds be used to pay for inspections?

Recipients/subrecipients may charge expenses associated with conducting permanent housing inspections to the ESG grant. Inspection costs may be charged in different ways depending on the situation.

Charge to the Rapid Re-housing or Homelessness Prevention component:

- As a housing search and placement cost if a recipient/subrecipient is helping a program participant remain in or move into a particular housing unit and inspects that housing unit to comply with the minimum standards for permanent housing.

What happens if HUD determines that the permanent housing minimum standards have not been followed?

If HUD monitors and discovers that the recipient or subrecipient is out of compliance with the permanent housing standards, HUD may require any of the remedial actions or sanctions set forth in §576.501(b).

Appendix A
Comparison of ESG Minimum Standards for Permanent Housing and HQS
(Bold text highlights areas of the minimum standards different from HQS)

Minimum habitability standards for permanent housing §576.403(c) ⁱⁱ	Housing quality standards (HQS) §982.401
<p>(1) Structure and materials. The structures must be structurally sound to protect residents from the elements and not pose any threat to the health and safety of the residents.</p>	<p>(g) Structure and materials —</p> <p>(1) Performance requirement. The dwelling unit must be structurally sound. The structure must not present any threat to the health and safety of the occupants and must protect the occupants from the environment.</p> <p>(2) Acceptability criteria.</p> <p style="padding-left: 20px;">(i) Ceilings, walls, and floors must not have any serious defects such as severe bulging or leaning, large holes, loose surface materials, severe buckling, missing parts, or other serious damage.</p> <p style="padding-left: 20px;">(ii) The roof must be structurally sound and weathertight.</p> <p style="padding-left: 20px;">(iii) The exterior wall structure and surface must not have any serious defects such as serious leaning, buckling, sagging, large holes, or defects that may result in air infiltration or vermin infestation.</p> <p style="padding-left: 20px;">(iv) The condition and equipment of interior and exterior stairs, halls, porches, walkways, etc., must not present a danger of tripping and falling. For example, broken or missing steps or loose boards are unacceptable.</p> <p style="padding-left: 20px;">(v) Elevators must be working and safe.</p>
Minimum habitability standards for permanent housing §576.403(c) ⁱⁱ	Housing quality standards (HQS) §982.401
<p>(2) Space and security. Each resident must be provided adequate space and security for themselves and their belongings. Each resident must be provided an acceptable place to sleep.</p>	<p>Space and security —</p> <p>(1) Performance requirement. The dwelling unit must provide adequate space and security for the family.</p> <p>(2) Acceptability criteria.</p> <p style="padding-left: 20px;">(i) At a minimum, the dwelling unit must have a living room, a kitchen area, and a bathroom.</p> <p style="padding-left: 20px;">(ii) The dwelling unit must have at least one bedroom or living/sleeping room for each two persons. Children of opposite sex, other than very young children, may not be required to occupy the same bedroom or living/sleeping room.</p> <p style="padding-left: 20px;">(iii) Dwelling unit windows that are accessible from the outside, such as basement, first floor, and fire escape windows, must be lockable (such as window units with sash pins or sash locks, and combination windows with latches). Windows that are nailed shut are acceptable only if these windows are not needed for ventilation or as an alternate exit in case of fire.</p> <p style="padding-left: 20px;">(iv) The exterior doors of the dwelling unit must be lockable. Exterior doors are doors by which someone can enter or exit the dwelling unit.</p>

Minimum habitability standards for permanent housing §576.403(c)ⁱⁱ	Housing quality standards (HQS) §982.401
<p>(3) Interior air quality. Each room or space must have a natural or mechanical means of ventilation. The interior air must be free of pollutants at a level that might threaten or harm the health of residents.</p>	<p>(h) Interior air quality —</p> <p>(1) Performance requirement. The dwelling unit must be free of pollutants in the air at levels that threaten the health of the occupants.</p> <p>(2) Acceptability criteria.</p> <p>(i) The dwelling unit must be free from dangerous levels of air pollution from carbon monoxide, sewer gas, fuel gas, dust, and other harmful pollutants.</p> <p>(ii) There must be adequate air circulation in the dwelling unit.</p> <p>(iii) Bathroom areas must have one openable window or other adequate exhaust ventilation.</p> <p>(iv) Any room used for sleeping must have at least one window. If the window is designed to be openable, the window must work.</p>
Minimum habitability standards for permanent housing §576.403(c)ⁱⁱ	Housing quality standards (HQS) §982.401
<p>(4) Water supply. The water supply must be free from contamination.</p>	<p>(i) Water supply —</p> <p>(1) Performance requirement. The water supply must be free from contamination.</p> <p>(2) Acceptability criteria. The dwelling unit must be served by an approvable public or private water supply that is sanitary and free from contamination.</p>
<p>(5) Sanitary facilities. Residents must have access to sufficient sanitary facilities that are in proper operating condition, are private, and are adequate for personal cleanliness and the disposal of human waste.</p>	<p>(b) Sanitary facilities —</p> <p>(1) Performance requirements. The dwelling unit must include sanitary facilities located in the unit. The sanitary facilities must be in proper operating condition, and adequate for personal cleanliness and the disposal of human waste. The sanitary facilities must be usable in privacy.</p> <p>(2) Acceptability criteria.</p> <p>(i) The bathroom must be located in a separate private room and have a flush toilet in proper operating condition.</p> <p>(ii) The dwelling unit must have a fixed basin in proper operating condition, with a sink trap and hot and cold running water.</p> <p>(iii) The dwelling unit must have a shower or a tub in proper operating condition with hot and cold running water.</p> <p>(iv) The facilities must utilize an approvable public or private disposal system (including a locally approvable septic system).</p>

Minimum habitability standards for permanent housing §576.403(c) ⁱⁱ	Housing quality standards (HQS) §982.401
<p>(6) Thermal environment. The housing must have any necessary heating/cooling facilities in proper operating condition.</p>	<p>(e) Thermal environment —</p> <p>(1) Performance requirement. The dwelling unit must have and be capable of maintaining a thermal environment healthy for the human body.</p> <p>(2) Acceptability criteria.</p> <p>(i) There must be a safe system for heating the dwelling unit (and a safe cooling system, where present). The system must be in proper operating condition. The system must be able to provide adequate heat (and cooling, if applicable), either directly or indirectly, to each room, in order to assure a healthy living environment appropriate to the climate.</p> <p>(ii) The dwelling unit must not contain unvented room heaters that burn gas, oil, or kerosene. Electric heaters are acceptable.</p>

Minimum habitability standards for permanent housing §576.403(c) ⁱⁱ	Housing quality standards (HQS) §982.401
<p>(7) Illumination and electricity. The structure must have adequate natural or artificial illumination to permit normal indoor activities and support health and safety. There must be sufficient electrical sources to permit the safe use of electrical appliances in the structure.</p>	<p>(f) Illumination and electricity —</p> <p>(1) Performance requirement. Each room must have adequate natural or artificial illumination to permit normal indoor activities and to support the health and safety of occupants. The dwelling unit must have sufficient electrical sources so occupants can use essential electrical appliances. The electrical fixtures and wiring must ensure safety from fire.</p> <p>(2) Acceptability criteria.</p> <p>(i) There must be at least one window in the living room and in each sleeping room.</p> <p>(ii) The kitchen area and the bathroom must have a permanent ceiling or wall light fixture in proper operating condition. The kitchen area must also have at least one electrical outlet in proper operating condition.</p> <p>(iii) The living room and each bedroom must have at least two electrical outlets in proper operating condition. Permanent overhead or wall-mounted light fixtures may count as one of the required electrical outlets.</p>

Minimum habitability standards for permanent housing §576.403(c)ⁱⁱ	Housing quality standards (HQS) §982.401
<p>(8) Food preparation. All food preparation areas must contain suitable space and equipment to store, prepare, and serve food in a safe and sanitary manner.</p>	<p>(c) Food preparation and refuse disposal —</p> <p>(1) Performance requirement.</p> <p>(i) The dwelling unit must have suitable space and equipment to store, prepare, and serve foods in a sanitary manner.</p> <p>(ii) There must be adequate facilities and services for the sanitary disposal of food wastes and refuse, including facilities for temporary storage where necessary (e.g., garbage cans).</p> <p>(2) Acceptability criteria.</p> <p>(i) The dwelling unit must have an oven, and a stove or range, and a refrigerator of appropriate size for the family. All of the equipment must be in proper operating condition. The equipment may be supplied by either the owner or the family. A microwave oven may be substituted for a tenantsupplied oven and stove or range. A microwave oven may be substituted for an owner-supplied oven and stove or range if the tenant agrees and microwave ovens are furnished instead of an oven and stove or range to both subsidized and unsubsidized tenants in the building or premises.</p> <p>(ii) The dwelling unit must have a kitchen sink in proper operating condition, with a sink trap and hot and cold running water. The sink must drain into an approvable public or private system.</p> <p>(iii) The dwelling unit must have space for the storage, preparation, and serving of food.</p> <p>(iv) There must be facilities and services for the sanitary disposal of food waste and refuse, including temporary storage facilities where necessary (e.g., garbage cans).</p>
<p>(9) Sanitary conditions. The housing must be maintained in a sanitary condition.</p>	<p>(m) Sanitary condition —</p> <p>(1) Performance requirement. The dwelling unit and its equipment must be in sanitary condition.</p> <p>(2) Acceptability criteria. The dwelling unit and its equipment must be free of vermin and rodent infestation.</p>

Minimum habitability standards for permanent housing §576.403(c)ⁱⁱ	Housing quality standards (HQS) §982.401
<p>(10) Fire safety. (i) There must be a second means of exiting the building in the event of fire or other emergency.</p> <p>(ii) Each unit must include at least one battery-operated or hard-wired smoke detector, in proper working condition, on each occupied level of the unit. Smoke detectors must be located, to the extent practicable, in a hallway adjacent to a bedroom. If the unit is occupied by hearing impaired persons, smoke detectors must have an alarm system designed for hearing-impaired persons in each bedroom occupied by a hearingimpaired person.</p> <p>(iii) The public areas of all housing must be equipped with a sufficient number, but not less than one for each area, of battery-operated or hard-wired smoke detectors. Public areas include, but are not limited to, laundry rooms, community rooms, day care centers, hallways, stairwells, and other common areas.</p>	<p>(n) Smoke detectors performance requirement —</p> <p>(1) Except as provided in paragraph (n)(2) of this section, each dwelling unit must have at least one battery-operated or hard-wired smoke detector, in proper operating condition, on each level of the dwelling unit, including basements but excepting crawl spaces and unfinished attics. Smoke detectors must be installed in accordance with and meet the requirements of the National Fire Protection Association Standard (NFPA) 74 (or its successor standards). If the dwelling unit is occupied by any hearing-impaired person, - smoke detectors must have an alarm system, designed for hearing-impaired persons as specified in NFPA 74 (or successor standards).</p> <p>(2) For units assisted prior to April 24, 1993, owners who installed battery-operated or hard-wired smoke detectors prior to April 24, 1993 in compliance with HUD's smoke detector requirements, including the regulations published on July 30, 1992, (57 FR 33846), will not be required subsequently to comply with any additional requirements mandated by NFPA 74 (i.e., the owner would not be required to install a smoke detector in a basement not used for living purposes, nor would the owner be required to change the location of the smoke detectors that have already been installed on the other floors of the unit).</p>
<p>See endnote ⁱⁱⁱ.</p>	<p>(j) Lead-based paint performance requirement. The Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821-4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851-4856), and implementing regulations at part 35, subparts A, B, M, and R of this title apply to units assisted under this part.</p>
	<p>(k) Access performance requirement. The dwelling unit must be able to be used and maintained without unauthorized use of other private properties. The building must provide an alternate means of exit in case of fire (such as fire stairs or egress through windows).</p>

Minimum habitability standards for permanent housing §576.403(c) ⁱⁱ	Housing quality standards (HQS) §982.401
	<p>(1) Site and Neighborhood —</p> <p>(1) Performance requirement. The site and neighborhood must be reasonably free from disturbing noises and reverberations and other dangers to the health, safety, and general welfare of the occupants.</p> <p>(2) Acceptability criteria. The site and neighborhood may not be subject to serious adverse environmental conditions, natural or manmade, such as dangerous walks or steps; instability; flooding, poor drainage, septic tank backups or sewage hazards; mudslides; abnormal air pollution, smoke or dust; excessive noise, vibration or vehicular traffic; excessive accumulations of trash; vermin or rodent infestation; or fire hazards.</p>

ⁱ ESG funds cannot be used to help a program participant remain or move into housing that does not meet these minimum habitability standards. The recipient may also establish standards that exceed or add to these minimum standards.

ⁱⁱ Although the minimum standards for emergency shelter and permanent housing do not cover lead-based paint requirements, the recipient or subrecipient must follow the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821-4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851-4856), and implementing regulations in 24 CFR part 35, subparts A, B, H, J, K, M, and R, with respect to shelters assisted under ESG and housing occupied by program participants.