

IOWA FINANCE AUTHORITY[265]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code sections 17A.3(1)“b,” 16.5(1)“r” and 16.40, the Iowa Finance Authority hereby adopts new Chapter 42, “Emergency Shelter Grants Program,” Iowa Administrative Code.

The purpose of these rules is to facilitate the administration of a fund to provide financial assistance for the rehabilitation, expansion, or costs of operations of group home shelters for the homeless and domestic violence shelters.

The Authority does not intend to grant waivers under the provisions of any of these rules, other than as may be allowed under the Authority’s general rules concerning waivers.

Pursuant to Iowa Code section 17A.4(3), the Authority finds that notice and public participation are impracticable and contrary to the public interest in that assistance to homeless shelters is needed immediately, and the normal notice and public participation process would delay implementation of the program, which is a continuation of a program formerly administered by the Iowa Department of Economic Development. The Authority is also concurrently publishing these rules under Notice of Intended Action as **ARC 9167B** to allow for public comment.

The Authority finds that these rules confer a benefit on homeless persons, in that the rules provide assistance and ease and speed the administration of an important program benefiting shelters that benefit those persons. These rules should be implemented as soon as feasible in order to avoid a disruption in the provision of assistance under the program; therefore, these rules are filed pursuant to Iowa Code section 17A.5(2)“b”(2), and the normal effective date of these rules is waived.

The Authority adopted these rules on September 27, 2010.

These rules are intended to implement Iowa Code section 16.5(1)“m” and 42 U.S.C. Sections 11371 through 11378.

These rules became effective on October 1, 2010.

The following amendment is adopted.

Adopt the following **new** 265—Chapter 42:

CHAPTER 42
EMERGENCY SHELTER GRANTS PROGRAM

265—42.1(16) Purpose. The emergency shelter grants program is designed to improve the quality of services to the homeless and to prevent individuals and families from becoming homeless. The program will make available needed services and help meet the costs of providing essential social services so that homeless individuals and families have access not only to safe and sanitary shelter but also to the supportive services and other types of assistance the individuals and families need to improve their situations.

265—42.2(16) Definitions. When used in this chapter, unless the context otherwise requires:

“*Applicant*” means an eligible provider of eligible homeless services which is applying for funds through the ESG program.

“*Domestic violence shelter*” means a homeless shelter primarily or exclusively serving clients who are homeless due to domestic violence.

“*Emergency shelter*” means a homeless shelter with overnight sleeping accommodations, the primary purpose of which is to provide temporary shelter for homeless persons.

“*ESG program*” or “*ESGP*” means the Emergency Shelter Grants Program created pursuant to Title 42 of the U.S. Code (42 U.S.C. Section 11375) as well as parts of Title 24 of the Code of Federal Regulations (24 CFR Part 576).

“*HMIS*” means the Homeless Management Information System, which is a client-level data collection and management system implemented at the community level that allows for better coordination among agencies providing services to clients.

“*Homeless*” or “*homeless individual*” shall have the meaning set forth in 42 U.S.C. Section 11302.

“*Homeless prevention*” means activities or programs designed to prevent the incidence of homelessness.

“*Homeless shelter*” means a facility providing temporary housing and services for homeless persons.

“*HUD*” means the U.S. Department of Housing and Urban Development.

“*HUD ESG Desk Guide*” means the document published by HUD which supplements the federal regulations pertaining to the Emergency Shelter Grants Program.

“*IFA*” means the Iowa finance authority.

“*Major rehabilitation*” means rehabilitation that involves costs in excess of 75 percent of the value of the building before rehabilitation.

“*Obligated*” means that IFA has placed orders, awarded contracts, received services, or entered into similar transactions that require payment from the grant amount. Funds awarded by IFA by a written agreement or letter of award requiring payment from the grant amount are obligated.

“*Private, nonprofit organization*” means a secular or religious organization described in Section 501(c) of the Internal Revenue Code which:

1. Is exempt from taxation under Subtitle A of the Internal Revenue Code,
2. Has an accounting system and a voluntary board,
3. Practices nondiscrimination in the provision of services to clients, and
4. Has registered with the state of Iowa as a nonprofit corporation.

“*Recipient*” means any private, nonprofit organization or city or county government to which IFA distributes ESG program funds.

“*Rehabilitation*” means repair directed toward an accumulation of deferred maintenance; replacement of principal fixtures and components of existing buildings; installation of security devices; and improvement through alterations or additions to, or enhancements of, existing buildings, including improvements to increase the efficient use of energy in buildings. Costs of rehabilitation may include labor, materials, tools, and other costs of improving buildings.

“*Renovation*” means rehabilitation that involves costs of 75 percent or less of the value of the building before rehabilitation.

“*SAF*” means the shelter assistance fund, as set forth in 265—Chapter 41.

“*Subrecipient*” means any private, nonprofit organization or city or county government to which the recipient distributes ESG program funds.

“*Transitional housing*” means a project that is designed to provide housing and appropriate support services to homeless persons to facilitate movement to independent living within a specified time frame.

“*Value of the building*” means the monetary value assigned to a building by an independent real estate appraiser or as otherwise reasonably established by the recipient or the subrecipient.

265—42.3(16) Eligible applicants. City governments, county governments, and private, nonprofit organizations are eligible applicants under the ESG program. City or county governments may apply on behalf of a nonprofit service provider within their jurisdictions when the nonprofit service provider serves homeless and near-homeless clients by providing overnight shelter, meals, clothing, transportation, counseling, child care, legal services, medical services, transitional housing services, and other services eligible under the ESG program as determined by HUD.

265—42.4(16) Eligible activities. Eligible activities are based on guidelines established by the Stewart B. McKinney Homeless Assistance Act of 1987 and are further defined in 24 CFR Part 576 and the HUD Desk Guide. Activities assisted by this program may include only the following:

42.4(1) Construction. Rehabilitation, renovation, or conversion of buildings for use in the provision of services for the homeless.

42.4(2) Essential services—new or increased level of services. Provision of essential services if the service is a new service or quantifiable increase in the level of service. ESG program funds may not be used to replace existing funding sources for services; however, once a new or increased level of service meets the standards, ESG program funds may be used to continue funding the service in subsequent years. No more than 30 percent of the IFA annual grant amount may be used for this purpose.

42.4(3) Operating costs. Payment of emergency shelter and transitional housing operating costs including shelter maintenance, operations, rent, repairs, security, fuel, equipment, insurance, utilities, food and furnishings. Staff salaries, including fringe benefits, paid under the operating cost category are limited to 10 percent of the grant amount. Maintenance and security costs are not subject to the 10 percent standard.

42.4(4) Prevention of homelessness. Payment for eligible activities that assist in the prevention of homelessness. Grants may be made for homeless prevention as long as the total amount of such grants does not exceed 30 percent of the total emergency shelter grants program allocation. Examples of eligible activities include, but are not limited to, short-term subsidies to help defray rent and utility arrearages for families faced with eviction or termination of utility services; security deposits or first month's rent to enable a family to acquire its own rental unit; programs to provide mediation services for landlord-tenant disputes; or programs to provide legal representation to indigent tenants in eviction proceedings. Other possible types of homeless prevention efforts include making needed payments to prevent a home from falling into foreclosure.

42.4(5) Administrative costs. A recipient may use a portion of a grant received for administrative purposes as determined by IFA. The maximum allowed for these administrative costs shall be 5 percent of the state ESGP allocation. IFA reserves the authority for distribution of administrative funds.

265—42.5(16) Ineligible activities. The general rule is that any activity that is not authorized under the provisions of P.L. 100-628 is ineligible to be carried out with ESG program funds. The following are items specifically listed as ineligible in 24 CFR Part 576.

1. Acquisition or new construction of an emergency shelter for the homeless;
2. Rehabilitation administration, such as preparation of work specification, loan processing, or inspections;
3. Renovation, rehabilitation, or conversion of buildings owned by primarily religious organizations or entities unless the activity complies with all requirements as outlined in 24 CFR Part 576.23(a) and (b).

265—42.6(16) Application procedures. IFA will issue requests for proposals from eligible applicants as often as the state expects funding from HUD. Requests for proposals will combine the ESG program with the SAF program. The proposals must be submitted on forms prescribed by IFA and must, at a minimum, include the amount of funds requested, a description of the need for the funds, documentation of other available funding sources, the source of required local match, and the estimated number of persons to be served by the applicant. Maximum and minimum grant awards will be established by IFA for each competition.

265—42.7(16) Application review process. The following procedures will be used in the review of applications.

42.7(1) Review; threshold criteria; eligible activities.

a. Review of applications. Applications will be reviewed by a panel appointed by IFA. Applications will be reviewed based on priorities established during each competition round, in accordance with the state of Iowa consolidated plan for housing and community development. Applicant experience and capacity, as well as past performance, are top priorities. Other review criteria include, but are not limited to, program design, community need, program accessibility, program partnerships, the number of persons or households served, and how well the program leverages other resources.

b. Threshold criteria. IFA will identify threshold criteria that all programs must meet in order to be eligible.

c. Activities eligible during funding cycle. Each competition round will also specify which of the total eligible program activities will be supported during that competition round.

42.7(2) If an application contains an activity determined to be ineligible, at IFA's discretion, the ineligible activity may be deleted from the application or referred to another funding source or the application may be disqualified.

42.7(3) IFA reserves the right to negotiate directly with the applicant to determine the priority of funding requested within the application.

42.7(4) IFA staff may review applications with other state agencies or other groups with expertise in the area of serving homeless persons before making final funding recommendations. Consultation with other agencies is intended to avoid duplication and promote maximum utilization of funding sources.

42.7(5) Based on the review process, IFA may revise the overall funding request by activity or funding level and recommend a final funding figure to the IFA board of directors for approval.

42.7(6) IFA reserves the right to negotiate all aspects of a funding request prior to final approval.

42.7(7) IFA shall establish the term of each funding award.

265—42.8(16) Matching requirement. Each subrecipient of ESG program funds must match the grant amount with an equal amount. In calculating the amount of matching funds, the following may be included: the value of any donated material or building used in the project, the value of any lease on a building used in the project, any salary paid to staff of the subrecipient or to any state subrecipient in carrying out the ESG program, and the time and services contributed by volunteers at the rate of \$5 per hour. For purposes of this rule, IFA will determine the value of any donated material or building, or any lease, using any method reasonably calculated to establish fair market value. IFA may allow an exemption of matching funds up to a maximum of \$100,000 of the state allocation received from HUD for the subrecipients least capable of providing such matching amounts. The subrecipient must document its need to participate in this exemption from matching requirements and must receive prior approval from IFA before the exemption will be effective.

265—42.9(16) Funding awards.

42.9(1) Awards on behalf of multiple applicants. A city or county government or nonprofit organization may be designated, at the discretion of IFA, to administer a contract for multiple applicants within a prescribed geographic area.

42.9(2) Right to negotiate. IFA reserves the right to negotiate the amount of the funding award, the scale of the project, and alternative methods for completing the project.

42.9(3) Special purpose awards. IFA may, at its discretion, award any remaining funds as it sees fit within the ESG program regulations.

265—42.10(16) Restrictions placed on recipients and subrecipients.

42.10(1) Use as provider of homeless services. Any building for which ESG program funds are used must be maintained as a provider of homeless services for not less than a three-year period or for not less than a ten-year period if the funding amounts are used for major rehabilitation or conversion of the building. If program funds are used for operating and maintenance costs, the recipient must continue to provide homeless services for at least one year. In calculating the applicable time period, the beginning dates of the three- and ten-year periods are determined as follows:

a. In the case of a building that was not operated as a provider of services for the homeless before receipt of ESG program funds, on the date of initial occupancy as a provider of services to the homeless.

b. In the case of a building that was operated as a provider of services to the homeless before the receipt of ESG program funds, on the date that those funds are first obligated to the homeless service provider.

42.10(2) Building standards. Any building for which ESG program funds are used for renovation, conversion, rehabilitation, or major rehabilitation must comply with all state and local building codes and ordinances and any other applicable legal requirements.

42.10(3) Participation by homeless individuals and families.

a. A recipient or subrecipient of ESG program funds must certify that it involves, through employment, volunteer services, or otherwise, homeless individuals and families in constructing, renovating, maintaining, and operating assisted facilities and in providing services.

b. Local government recipients or subrecipients or qualified recipients or subrecipients must have the participation of at least one homeless person or formerly homeless person on their board of directors or equivalent policymaking entity. The Secretary of HUD may issue a waiver to the recipient or subrecipient if the recipient or subrecipient agrees to otherwise consult with homeless or formerly homeless individuals when making policy decisions.

42.10(4) Termination of assistance and grievance procedure. Recipients and subrecipients must establish and implement a formal process to terminate assistance to individuals or families who violate program requirements. This process must include a hearing that provides individuals a full opportunity to address issues of noncompliance.

42.10(5) Data reporting system. Recipients and subrecipients shall participate in the HUD-approved Homeless Management Information System (HMIS) adopted by IFA as required in the executed contract.

42.10(6) Ensuring confidentiality. Recipients and subrecipients must develop and implement procedures to guarantee the confidentiality of records pertaining to any individual to whom family violence prevention or treatment services are provided. In addition, the address or location of any family violence shelter shall not be disclosed to any person except with written authorization of the shelter director.

265—42.11(16) Compliance with applicable federal and state laws and regulations. All recipients and subrecipients shall comply with the Iowa Code governing activities performed under this program and with all applicable provisions of the Stewart B. McKinney Homeless Assistance Act of 1987 and its implementing regulations. Use of ESG program funds must comply with the following additional requirements.

42.11(1) Nondiscrimination and equal opportunity. All recipients and subrecipients must comply with the following:

a. The requirements of Title VIII of the Civil Rights Act of 1968, 42 U.S.C. Sections 3601-19 and implementing regulations; Executive Order 11063 and implementing regulations at 24 CFR Part 107 (June 1, 1999); and Title VI of the Civil Rights Act of 1964 (42 U.S.C. Section 2002d) and implementing regulations at 24 CFR Part 1 (June 1, 1999).

b. Affirmative action requirements as implemented with Executive Orders 11625, 12432, and 12138 which require that every effort be made to solicit the participation of minority and women business enterprises (MBE/WBE) in governmental projects.

c. The prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. Sections 6101-07).

d. The prohibitions against discrimination against disabled individuals under Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act.

42.11(2) Auditing. Auditing requirements are as outlined in the Single Audit Act of 1996 and the implementing regulations found in OMB Circular A-133.

265—42.12(16) Administration.

42.12(1) Contracts. Upon selection of an application for funding, IFA will either initiate a contract or authorize another entity to initiate a contract on IFA's behalf. If a local city or county government or a nonprofit organization is designated as the recipient, the subrecipients covered through the contract shall remain responsible for adherence to the requirements of the ESG program, including the federal ESG program rules and the state program rules as set forth herein. These rules and applicable federal and state laws and regulations become part of the contract. Certain activities may require that permits or clearances be obtained from other state or federal agencies before the start of the project. Funding awards may be conditioned upon the timely completion of these requirements.

42.12(2) Record keeping and retention. Financial records, supporting documents, statistical records, and all other records pertinent to the funded program shall be retained by the recipient and the subrecipient. Private, nonprofit recipients and subrecipients covered through an ESG program contract from a local city or county government or nonprofit organization are responsible for ensuring that pertinent records of their ESG program funds be made available to the administering city or county or nonprofit organization and to IFA upon request. Proper record retention must be in accordance with the following:

a. Records for any assisted activity shall be retained for three years after the end of the grant period and, if applicable, until audit procedures are completed and accepted by IFA.

b. Representatives of the Secretary of the U.S. Department of Housing and Urban Development, the Inspector General, the General Accounting Office, the state auditor's office, and IFA shall have access to all books, accounts, documents, records, and other property belonging to or in use by a recipient or subrecipient pertaining to the receipt of assistance under these rules.

42.12(3) Reporting requirements. Recipients and subrecipients shall submit reports to IFA as prescribed in the contract. Reports include:

a. HMIS data reports. All recipients and subrecipients of ESG program funds are required to submit regular reports on clients served using the current HMIS reporting process as prescribed by IFA; provided, however, that a recipient or subrecipient that qualifies as a domestic violence shelter shall not be required to report personally identifiable information about its homeless domestic violence clients. "Personally identifiable information" shall include any information that the reporting domestic violence shelter reasonably determines could be used to identify a particular client.

b. Requests for funds. Recipients and subrecipients must submit requests for funds during the contract year at intervals and using forms as prescribed by IFA. IFA may perform any review or field inspections it deems necessary to ensure program compliance, including review of recipient and subrecipient records and reports. When problems of compliance are noted, IFA may require remedial actions to be taken. Failure to respond to notifications of need for remedial action may result in the implementation of 42.12(5).

42.12(4) Amendments to contracts. Contracts may be amended on an individual basis in emergency situations. Any request to amend a contract must be submitted in writing to IFA. IFA will determine if the request to amend is justified based on the material presented in the letter of request. No amendment is valid until approved in writing by IFA.

42.12(5) Remedies for noncompliance. At any time, IFA may, for cause, find that a recipient or subrecipient is not in compliance with the requirements under this program. Reasons for a finding of noncompliance include, but are not limited to, the recipient's or subrecipient's use of program funds for activities not described in its application, the recipient's or subrecipient's failure to complete approved activities in a timely manner, the recipient's or subrecipient's failure to comply with any applicable state or federal rules or regulations, or the recipient's or subrecipient's lack of continuing capacity to carry out the approved program in a timely manner. At IFA's discretion, remedies for noncompliance may include the following:

a. Issue a warning letter that further failure to comply with program requirements within a stated period of time will result in a more serious action.

b. Condition a future award.

c. Direct the recipient or subrecipient to stop incurring costs with grant funds.

d. Require that some or all of the awarded funds be remitted to the state.

e. Reduce the level of funds the recipient or subrecipient would otherwise be entitled to receive.

f. Elect not to provide future award funds to the recipient or subrecipient until appropriate actions are taken to ensure compliance.

These rules are intended to implement Iowa Code section 16.5(1)“m” and 42 U.S.C. Sections 11371 through 11378.

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