

# COVID-19

## Homeless System Response: ESG Homelessness Prevention Eligibility During Eviction Moratoria

**This document reviews the eligibility criteria for COVID-19 Emergency Solutions Grants Program (ESG-CV) Homelessness Prevention (HP) assistance provided to households facing an eviction action.** When a leaseholder faces eviction initiated by a property owner or landlord, that household may qualify for HP assistance under either:

- Category 1, Risk Factor (c) of the definition of "At Risk of Homelessness" (At Risk—Category 1c); or
- Category 2 of the definition of "Homelessness" (Homeless—Category 2).

The Coronavirus Aid, Relief, and Economic Security (CARES) Act moratorium on evictions and other eviction moratoria implemented by states impact a household's ability to qualify for HP assistance under these criteria. In addition to explaining the differences between the documentation requirements for At Risk—Category 1c versus Homeless—Category 2, this document identifies how the Federal CARES Act Eviction Moratorium and other state eviction moratoria affect a household's ability to qualify for ESG HP assistance based on a landlord-initiated eviction action.

### IMPORTANT NOTE

There are other situations, beyond those involving a landlord-initiated eviction action, when a household may qualify for HP assistance under At Risk—Category 1c or Homeless—Category 2.

For example: an individual who is not on the lease is being forced to move out of a unit by the leaseholder within a 14-day or 21-day time period. That individual could qualify for HP assistance despite an eviction moratorium being in effect.

Here are additional resources that explain other ways that households may qualify for ESG HP eligibility on the HUD Exchange:

- [Criteria for Definition of At Risk of Homelessness](#)
- [At Risk Status and Income: Recordkeeping Requirements Webinar for ESG Grantees](#)
- [Homeless Status: Recordkeeping Requirements Webinar](#)
- [Determining Homeless and At-Risk Status, Income and Disability Webinar](#)
- [Understanding Program Participant Eligibility for ESG Rapid Re-Housing and Homelessness Prevention Components](#)

## Summary of ESG Homelessness Prevention (HP) Eligibility Criteria

There are many situations when a household may qualify for ESG HP assistance that are not impacted by an eviction moratorium. This section summarizes all ESG HP eligibility criteria. Both initial and continuing eligibility for ESG HP assistance are based on 1) Housing status; 2) Household income; and 3) Need for assistance.

### **Housing Status:**

To be eligible for Homelessness Prevention assistance, an individual or family must be either:

- "At Risk of Homelessness" as defined at 24 CFR 576.2, or
- "Homeless" as defined in paragraphs (2), (3), or (4) of the definition at 24 CFR 576.2.

**Household Income:**

- Normally, under the ESG program, individuals and families must have an annual household income below 30 percent of the average median family income (AMI) for the area, as calculated by HUD (see "Income Limits Data"). However, under ESG-CV, individuals and families may have an income up to 50 percent AMI for the area.
- To determine the annual income of an individual or family, the recipient or subrecipient must use the standard for calculating annual income under 24 CFR 5.609.

**Need for Assistance:**

The costs of homelessness prevention are only eligible to the extent that the assistance is necessary to help the program participant:

- Regain stability in their current permanent housing; or
- Move into other permanent housing and achieve stability in that housing.

The sections below provide more detail about eligibility criteria under the definitions of "Homeless" and "At Risk of Homelessness."

***"HOMELESS" DEFINITION***

**An individual or family is eligible if the household:**

**HAS AN INCOME NO GREATER THAN 30% AMI (annual ESG) or 50% AMI (ESG-CV)**

For more information on the income limits in your community, please see:  
[https://www.huduser.gov/portal/datasets/il/il2020/select\\_Geography.odn](https://www.huduser.gov/portal/datasets/il/il2020/select_Geography.odn)

**AND**

**MEETS ANY ONE OF THE FOLLOWING CATEGORIES OF THE "HOMELESS" DEFINITION**

| CATEGORY 2  | CATEGORY 3   | CATEGORY 4  |
|---|--|---|
| <p>The household will imminently lose their primary nighttime residence, provided that:</p> <ul style="list-style-type: none"> <li>• The primary nighttime residence will be lost within 14 days of the date of application for homeless assistance; <b>and</b></li> <li>• No subsequent residence has been identified; <b>and</b></li> <li>• The individual or family lacks the resources or support networks (e.g., family, friends, faith-based or other social networks) needed to obtain other permanent housing.</li> </ul> | <p>The household consists of unaccompanied youth under 25 years of age, or families with children and youth, who do not otherwise qualify under this definition, but who:</p> <ul style="list-style-type: none"> <li>• Are defined as homeless under other Federal definitions<sup>1</sup>; <b>and</b></li> <li>• Have not had a lease, ownership interest, or occupancy agreement in permanent housing at any time during the 60 days immediately preceding the date of application for homeless assistance; <b>and</b></li> <li>• Have experienced persistent instability as measured by two moves or more during the 60-day period immediately preceding the date of applying for homeless assistance; <b>and</b></li> <li>• Can be expected to continue in such status for an extended period of time because of chronic disabilities, chronic physical health or mental health conditions, substance addiction, histories of domestic violence or child abuse (including neglect), the presence of a child or youth with a disability, or two or more barriers to employment, which include the lack of a high school degree or General Education Development (GED), illiteracy, low English proficiency, a history of incarceration or detention for criminal activity, and a history of unstable employment.</li> </ul> | <p>The individual or family member is:</p> <ul style="list-style-type: none"> <li>• Fleeting or attempting to flee domestic violence, dating violence, sexual assault, stalking, or other dangerous or life-threatening conditions that relate to violence against the individual or a family member, including a child, that has either taken place within the individual's or family's primary nighttime residence or has made the individual or family afraid to return to their primary nighttime residence; <b>and</b></li> <li>• Has no other residence; <b>and</b></li> <li>• Lacks the resources or support networks (e.g., family, friends, faith-based or other social networks) needed to obtain other permanent housing.</li> </ul> |

<sup>1</sup> Other Federal definitions of "homeless" referenced above for Homeless-Category 3 are: Section 387 of the Runaway and Homeless Youth Act (42 U.S.C. 5732a); Section 637 of the Head Start Act (42 U.S.C. 9832); Section 41403 of the Violence Against Women Act of 1994 (42 U.S.C. 14043e-2); Section 330(h) of the Public Health Service Act (42 U.S.C. 254b(h)); Section 3 of the Food and Nutrition Act of 2008 (7 U.S.C. 2012); Section 17(b) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(b)); or Section 725 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a).

**Category 2** of the “Homeless” definition encompasses households that are at imminent risk of homelessness. In addition to situations where a household could lose its residence due to a landlord-initiated eviction action, individuals and families not on a lease could also meet Category 2 of the “Homeless” definition when asked to leave a residence with no other place to go or resources or support networks available to obtain other permanent housing.

**Category 3** of the “Homeless” definition applies to unaccompanied youth under 25 or families with children and youth who do not otherwise meet HUD’s definition of “homeless” but who meet the “homeless” definition under one of the federal statutes identified above. Additionally, the household must have not had a lease, ownership interest, or occupancy agreement in permanent housing at any time during the last 60 days. They must also have moved two or more times during the last 60 days and can be expected to continue in such status for an extended period of time because of a chronic disability, chronic physical or mental health condition, substance use, history of domestic violence or childhood abuse (including neglect), the presence of a child or youth with a disability, or two or more barriers to employment.

**Category 4** of the “Homeless” definition applies to individuals or families fleeing or attempting to flee domestic violence, dating violence, sexual assault, stalking, or other dangerous or life-threatening conditions related to violence, who have no other place to go or resources or support networks available to obtain other permanent housing.

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### “AT RISK OF HOMELESSNESS” DEFINITION

**An individual or family is eligible if the household:**

**HAS AN INCOME NO GREATER THAN 30% AMI (annual ESG) or 50% AMI (ESG-CV)**

For more information on the income limits in your community, please see:  
[https://www.huduser.gov/portal/datasets/il/il2020/select\\_Geography.odn](https://www.huduser.gov/portal/datasets/il/il2020/select_Geography.odn)

**AND**

**LACKS SUFFICIENT RESOURCES OR SUPPORT NETWORKS**

The household does not have sufficient resources or support networks immediately available to prevent them from moving to an emergency shelter or another place defined in Category 1 of the “Homeless” definition.

**AND**

**MEETS ANY ONE OF THE FOLLOWING RISK FACTORS**

The household:

- Has moved because of economic reasons two or more times during the 60 days immediately preceding the application for assistance;
- Is living in the home of another because of economic hardship;
- Has been notified that their right to occupy their current housing or living situation will be terminated within 21 days after the date of application for assistance;
- Lives in a hotel or motel and the cost is not paid for by charitable organizations or by federal, state or local government programs for low-income individuals;
- Lives in an SRO or efficiency apartment unit in which there reside more than two persons, or lives in a larger housing unit in which there reside more than one-and-a-half persons per room;
- Is exiting a publicly funded institution or system of care; or
- Otherwise lives in housing that has characteristics associated with instability and an increased risk of homelessness, as identified in the recipient’s approved Con Plan.

An individual or family is eligible to receive ESG HP assistance if the household meets all three of the elements above. In addition to meeting the income requirements and not having the resources and support networks needed to prevent them from moving to an emergency shelter or place that is not designed for or ordinarily used as a regular sleeping accommodation for human beings (e.g., cars, parks, abandoned buildings, bus or train stations, airports, or camping grounds), the household must meet **one** of the “At Risk” conditions listed above, which include situations such as: frequent moves, living in the home of another due to economic hardship, living in overcrowded situations, and exiting a publicly funded institution.

The next section will take a closer look at the “At Risk” condition involving a household that has been notified that their right to occupy their current housing or living situation will be terminated with 21 days. While the scope of this document focuses on households on a legally binding lease that have received notice from a landlord that their tenancy rights are being terminated, this “At Risk” condition can also be met by a household not on a legally binding lease that has been notified they will have to leave their current living situation within 21 days.

## Taking a Closer Look: At Risk—Category 1c and Homeless—Category 2

### *At Risk—Category 1c (when a household has a legally binding lease)*

In this situation, a household’s right to occupy housing will be terminated within 21 days, although the household will not necessarily be required to physically vacate the unit within 21 days. To qualify under At Risk—Category 1c, the household must also meet the income requirements and lack the resources and support networks needed to prevent them from becoming literally homeless as outlined below:

| Eligibility Criteria  | Documentation Requirements  |
|---|---|
| Household income no greater than: <ul style="list-style-type: none"> <li>• 50% AMI (ESG-CV)</li> <li>• 30% AMI (ESG)</li> </ul>   | Access the Income Limit data for your community at: <ul style="list-style-type: none"> <li>• HUD’s <a href="#">FY 2020 Income Limits Documentation System</a>; or</li> <li>• HUD’s Income Calculator</li> </ul> Do <u>not</u> include stimulus assistance or Federal Pandemic Unemployment Compensation Program payments in income calculations. See <a href="#">FAQs for Public Housing Agencies</a> (OC6 and OC7).  |
| Household lacks sufficient resources or support networks immediately available to prevent them from moving to an emergency shelter or place not designated or ordinarily used as a regular sleeping accommodation for human beings (e.g., cars, abandoned buildings, train stations, etc.). | <ul style="list-style-type: none"> <li>• Self-certification that:               <ul style="list-style-type: none"> <li>◦ The program participant has insufficient financial resources and support networks immediately available to attain housing stability; and</li> <li>◦ The program participant meets one or more of the conditions under paragraph (1)(iii) of the definition of “At Risk of Homelessness” in 24 CFR 576.2.</li> </ul> </li> <li>• The most reliable evidence available to show that the program participant does not have sufficient resources or support networks immediately available to prevent them from moving to an emergency shelter or place not designated or ordinarily used as a regular sleeping accommodation for human beings.</li> </ul> |
| Household has been notified that their right to occupy their current housing or living situation will be terminated within 21 days after the date of application for assistance.  | See below for information about documenting Risk Factor (c) of At Risk—Category 1c when a household has a legally binding lease.  |

### **Documenting Risk Factor (c) of the “At Risk of Homelessness” Definition When the Household Has a Legally Binding Lease**

To substantiate that the household has been notified that their right to occupy their current housing will be terminated within 21 days, the documentation should include written notification from the landlord, property owner, or other entity with the authority to terminate tenancy that their rights as a tenant will terminate within 21 days. Documentation does not need to be the equivalent of a court-ordered eviction action. If the landlord notification provides a way for the tenant to remedy the situation and avoid eviction (e.g., paying the overdue rent balance), documentation must also substantiate that the applicant cannot meet the terms of avoiding eviction. Where source documents and third-party verification are unobtainable, a written statement by intake

staff describing the efforts taken to obtain the required evidence would be considered acceptable evidence. Intake worker notes should demonstrate that they have exercised due diligence in attempting to obtain a higher level of documentation.

**Homeless—Category 2 (when a household has a legally binding lease)**

In this situation, the household must physically vacate the unit within 14 days as a result of a court-ordered eviction, Notice to Quit, Notice to Terminate under state law, or another notice equivalent to an eviction action under applicable state law. In order to qualify for Homeless—Category 2, the household cannot have a subsequent residence identified, must lack the resources or support networks needed to obtain other permanent housing, and must also meet the income requirements as outlined below:

| Eligibility Criteria  | Documentation Requirements   |
|---|--|
| Household income no greater than: <ul style="list-style-type: none"> <li>• 50% AMI (ESG-CV)</li> <li>• 30% AMI (ESG)</li> </ul> | Access the Income Limit data for your community at: <ul style="list-style-type: none"> <li>• HUD’s <a href="#">FY 2020 Income Limits Documentation System</a>; or</li> <li>• HUD’s <a href="#">Income Calculator</a>*</li> </ul> Do not include stimulus assistance or Federal Pandemic Unemployment Compensation Program payments in income calculations. See <a href="#">FAQs for Public Housing Agencies</a> (OC6 and OC7). |
| Household lacks the resources or support networks needed to obtain other permanent housing.                                     | Document with a self-certification or other written documentation that the household lacks the resources and support networks needed to obtain other permanent housing.  |
| No subsequent residence has been identified.  | Document with a self-certification that no subsequent residence has been identified.   |
| <u>Residence will be lost</u> within 14 days of the date of application for homeless assistance.                                | See below for information about documenting Criterion (i) of Homeless—Category 2 when a household has a legally binding lease.   |

\*HUD’s Income Calculator has been updated to include 50% AMI data as of July 1, 2020.

**Documenting Criterion (i) of Homeless—Category 2 When the Household Has a Legally Binding Lease**

To substantiate that the household’s unit will be lost within 14 days, the documentation must include one of the following:

- A court order resulting from an eviction action that requires the individual or family to leave their residence within 14 days after the date of their application for homeless assistance; **or**
- Notice equivalent to an eviction action under applicable state law; **or**
- Notice to Quit; **or**
- Notice to Terminate under state law.

A Notice to Quit or a Notice to Terminate issued under state law does not need to be equivalent to a court-ordered eviction action. However, if there is no reasonable expectation that a household will lose their residence within 14 days as a result of the issuance of a Notice to Quit, Notice to Terminate, or demand notice, then the criteria of Category 2 are not met. Where source documents and third-party verification are unobtainable, a written statement by intake staff describing the efforts taken to obtain the required evidence would be considered

acceptable evidence. Intake worker notes should demonstrate that they have exercised due diligence in attempting to obtain a higher level of documentation.

## Impact of Eviction Moratoria

### *CARES Act Eviction Moratorium*

The CARES Act Eviction Moratorium protects most people whose housing is paid for through the ESG and Continuum of Care (CoC) Program. Section 4024(b) prohibits recipients and landlords receiving ESG and CoC Program funding from evicting people for nonpayment of rent during the 120-day period from the enactment of the CARES Act.

#### **Accordingly, landlords of covered dwellings are prohibited from each of the following:**

1. Filing new eviction actions between March 27, 2020 and July 24, 2020 for nonpayment of rent or nonpayment of other charges or fees;
2. Requiring a tenant to vacate the dwelling between March 27, 2020 and July 24, 2020 for nonpayment of rent or nonpayment of other charges or fees;
3. Charging fees, penalties, or other charges (including assessing or allowing charges to accrue) between March 27, 2020 and July 24, 2020 based on the tenant's nonpayment of rent; and
4. Issuing a notice to vacate for nonpayment of rent or other charges that provides less than 30 days' advance notice to the tenant or is received by the tenant between March 27, 2020 and July 24, 2020.

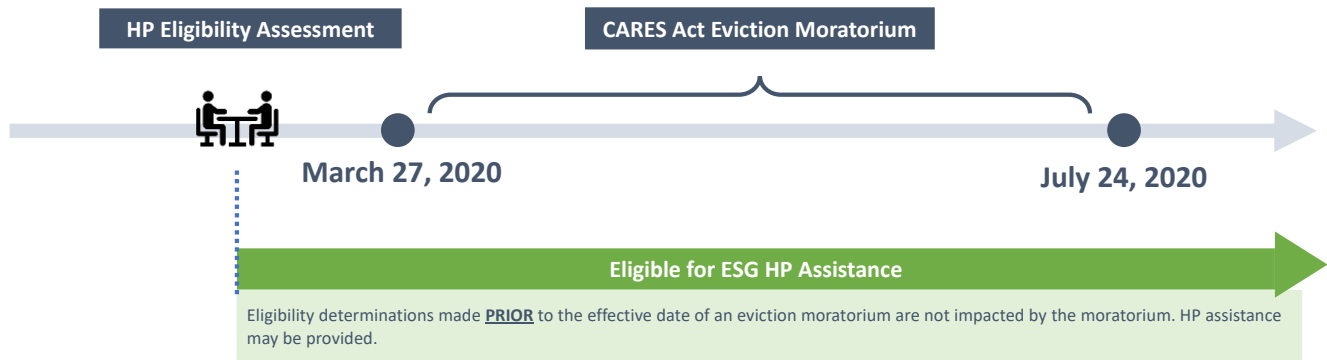
The moratorium does not waive the requirement for tenants to pay their rent. HUD strongly encourages recipients to work with those they serve to avoid evictions for rent owed after the moratorium ends. The Eviction Moratorium found in Section 4024(b) of the CARES Act only applies with respect to nonpayment of rent or nonpayment of other charges. The moratorium does not prevent lessors from filing for evictions for other violations of the lease or occupancy agreement or for nonpayment of rent prior to March 27, 2020. Therefore, recipients and landlords may still undertake an eviction action against a tenant based on the terms of the leases, as long as the eviction is unrelated to nonpayment of rent. However, please be sure to review the requirements related to termination of assistance in [24 CFR 578.91](#) of the CoC Program regulations and [24 CFR 576.402](#) of the ESG Program regulations. All recipients of CoC and ESG Program funding should do all they can to keep the people they serve from being evicted.

ESG or CoC Program participants who receive an eviction notice for nonpayment of rent should reach out to their case manager as soon as possible. The recipient or program participant can inform the landlord that the eviction is against the law if it applies to nonpayment of rent between March 27, 2020 and July 24, 2020 and that no fees and penalties related to nonpayment of rent can be charged. If a landlord proceeds with an eviction in violation of the eviction moratorium, the household would qualify for ESG HP assistance. In such situations, providers are encouraged to pursue other options first, such as explaining the terms of the applicable eviction moratorium to the landlord, enlisting legal services, and contacting the local HUD Field Office prior to providing financial assistance or rental assistance. For more information on how the Eviction Moratorium impacts the ESG and CoC Programs, please review the following HUD guidance: [How Does the Federal CARES Act Eviction Moratorium Impact the ESG and CoC Programs?](#)

### *Other State or Local Eviction Moratoria*

Consult with state and local officials as to whether they have enacted a moratorium on evictions during the emergency. Be sure to identify the time period when the moratorium is in effect and be aware of any upcoming extensions. Also be aware of the applicability of the moratorium; for example, identify whether the moratorium applies only for nonpayment of rent or for other lease violations as well. Just as with the CARES Act Eviction Moratorium, state eviction moratoria also impact eligibility for ESG HP.

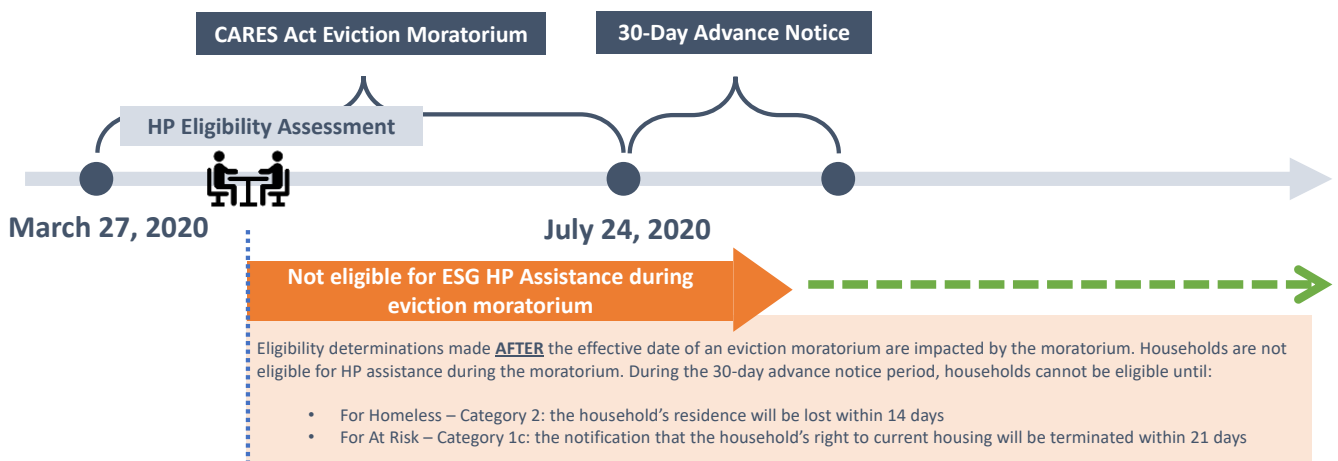
## Impact of CARES Act Eviction Moratorium on HP Eligibility – Scenario 1



### ESG HP Eligibility Determination Completed PRIOR to an Eviction Moratorium Taking Effect

Eligibility for ESG HP assistance depends on whether a household's intake and evaluation process occurred before or after a federal or state eviction moratorium took effect and whether the terms of the moratorium are applicable to the program participant's situation. If a household was determined to be eligible for ESG HP assistance before the moratorium took effect, the moratorium would not affect the household's eligibility determination. However, HUD encourages recipients/subrecipients to assess each program participant and assign an appropriate level of service intervention. In determining what additional supports to provide, the intake worker should consider all resources and support networks available to the household. Based on this assessment, the intake worker may determine that the household does not need rental assistance until the moratorium on eviction ends and then, at that point, the intake staff may re-evaluate the household's needs to take into account any recent changes to the household's circumstances prior to providing assistance.

## Impact of CARES Act Eviction Moratorium on HP Eligibility – Scenario 2



## **ESG HP Eligibility Determination Completed AFTER an Eviction Moratorium Taking Effect**

If the federal or state eviction moratorium is applicable to the program participant's situation (e.g., nonpayment of rent) and took effect prior to a determination of eligibility for ESG HP assistance, then the moratorium must be considered in the evaluation. This means that the household would not meet the eligibility requirements of ESG HP assistance until either: a) 21 days prior to the termination of a tenant's right to occupy the unit; or b) 14 days before a court-ordered eviction notice takes effect. Additionally, consider the moratorium as an eviction prevention support when determining a participant's resources and support networks available to retain housing.

Case managers need to use their judgment and consider changing circumstances such as a moratorium extension. Under all circumstances, a case manager should work with the household on their plan to retain permanent housing after the ESG assistance ends and to connect them to mainstream and other resources.

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

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

## **Other Considerations: Prioritization & Written Standards**

### ***Prioritization***

HUD strongly encourages each jurisdiction to focus as much of its ESG HP funding as possible on prioritizing those with the greatest need of assistance, which could mean targeting HP assistance on those households that are more likely to be evicted without ESG assistance.

### ***Written Standards***

In addition to complying with ESG Program regulations, ESG HP providers must also comply with their recipient's written standards. The ESG written standards include policies and procedures for determining and prioritizing which eligible families and individuals will receive HP assistance. The recipient may choose to modify HP prioritization to better target those in need of the most assistance due to the COVID-19 pandemic.