

Steps the Administration Can Take to Accelerate Utilization of Federal Emergency Rental Assistance Funds



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State Emergency Rental Assistance (ERA) program grantees are committed to facilitating rapid deployment of ERA assistance to eligible tenants and their landlords and utility providers to prevent evictions and utility shut-offs. NCSHA has urged the Administration to adopt the following modifications and clarifications to its ERA guidance to help grantees expedite providing ERA assistance to those who need it.

At a glance

1. Expand and clarify grantee flexibility to rely on self-attestations of eligibility and need
2. Expand the use of fact-specific proxy data to allow up-front, bundled payments to landlords and utilities
3. Allow grantees to establish a rental assistance standard for rehousing in cases of eviction
4. Clarify eligibility for housing stability services
5. Understand the limits of eviction prohibitions
6. Permit hotel and motel master leases
7. Reconcile HUD and Treasury guidance

Expand and clarify grantee flexibility to rely on self-attestations of eligibility and need

Current Treasury guidance allows applicants for assistance to self-attest that they meet the program's income eligibility requirements without further documentation "under certain circumstances." The guidance is silent or ambiguous on the extent to which grantees may rely solely on self-attestation without seeking further documentation with respect to the eligibility requirement related to risk of experiencing homelessness or housing instability. The guidance is silent or ambiguous on the extent to which grantees may rely solely on self-attestation without seeking further documentation with respect to the eligibility requirement related to financial hardship "due, directly or indirectly, to" COVID-19 for ERA 1. In addition, the guidance is silent or ambiguous on the extent to which grantees may rely solely on self-attestation without seeking further documentation with respect to eligible rent and utility expenses and "housing related" expenses.

Treasury should state affirmatively that grantees may rely on applicants' self-attestation of their eligibility with respect to all program eligibility requirements, including limitations regarding duplication of benefits, and with respect to the amount of assistance they need that constitute eligible expenses, without first or ever seeking additional documentation.

Grantees that choose to exercise such broad-based self-attestation would be required to document their basis for determining eligibility and assistance and their related validation and fraud prevention procedures. The use of fact-specific proxy data or categorical eligibility are two potential ways grantees may establish such basis for eligibility and assistance.

Expand the use of fact-specific proxy data to allow up-front, bundled payments to landlords and utilities

Current Treasury guidance ostensibly requires a prior approval of applicant eligibility, hardship, and need on an individual basis before the payment of assistance (to either the applicant or

their landlord). In addition, the guidance allows grantees to rely on applicants' self-attestation of income eligibility "if the grantee also uses any reasonable fact-specific proxy for household income, such as reliance on the data regarding average incomes in the household's geographic areas" (page 5).

Treasury should state affirmatively that grantees may advance payments to or on behalf of multiple applicants in a lump sum ("bundled") amount before they have verified each applicant's eligibility and need, provided they have documented fact-specific proxy data exists for making such determination.

For example, a grantee could rely on a landlord's attestation of total rent owed by multiple, eligible renters in properties in one or more low-income areas to pay that landlord (or the renters directly) the amount cited. A similar scenario could apply with respect bundled payments made on multiple renters' behalf to community-based organizations or utilities.

Grantees that choose to exercise broad-based use of fact-specific proxy data for up-front bundled payments would be required to document their basis for using this approach and their related validation and fraud prevention procedures.

Grantees would also be required to make good faith efforts to retroactively document each covered renter's eligibility and need, including through renter self-attestation. Note that this approach is entirely consistent with the following language in the current Treasury guidance: "Grantees are not required to obtain documentation evidencing the use of ERA funds by tenants and landlords" (page 14).

Allow grantees to establish a rental assistance standard for rehousing in cases of eviction

If a household is evicted, ERA grantees would like to assist them in moving to another apartment so the household will not become homeless. While ERA can be used to cover expenses associated with securing alternative housing, such as moving costs, temporary hotel/motel stays, lease-up costs, etc., the Treasury documentation requirements related to those expenses are likely to prevent grantees from providing this assistance as quickly as necessary to prevent a period of homelessness.

Specifically, question 7 in the May 7th ERA FAQs (page 6) states, "All payments for housing-related expenses must be supported by documentary evidence such as a bill, invoice, or evidence of payment to the provider of the service." It will be difficult for grantees to collect the evidence of payment to the service provider, as required by the FAQs, especially considering the significant number of households who could be facing eviction at the same time and the speed at which this assistance must be provided.

Instead, we suggest that Treasury allow grantees to establish a "Rehousing Assistance Standard" by which evicted households could be provided a flat amount of assistance — paid directly to the tenant so they can reestablish housing stability without the need for documenting each individual expense. ERA administrators could craft customized Rehousing Assistance Standards calibrated to household size and geographic location.

Clarify eligibility for housing stability services

The Treasury guidance states, "For purposes of ERA 1 and ERA 2, housing stability services include those that enable *eligible* households to maintain or obtain housing" (emphasis supplied,

page 11). While the statute authorizing ERA 1 requires households receiving housing stability services to be eligible households, the American Rescue Plan Act authorizing ERA 2 states only that funding “may be used to provide case management and other services intended to help keep households stably housed” with no reference to eligibility (Section 3201(d)(1)(B)).

Treasury should clarify that for purposes of ERA 2, there is no requirement that households receiving housing stability services meet the program’s eligibility criteria, and thus have no requirement to make an eligibility determination for such households prior to providing services.

Understand the limits of eviction prohibition

The Treasury guidance states that grantees are “encouraged to prohibit the landlord from evicting the tenant for nonpayment of rent for some period of time, consistent with applicable law. In all cases, Treasury strongly encourages grantees to require landlords that receive funds under the ERA, as a condition of receiving the funds, not to evict tenants for nonpayment of rent for 30 to 90 days longer than the period covered by the rental assistance” (emphasis supplied, page 14).

Treasury should state that it understands grantees may have no basis to prevent evictions beyond requirements under state and local law, particularly when payment is made directly to renters and the grantee does not have contact with the landlord.

Permit hotel and motel master leases

The FAQs document allows grantees to use ERA to provide assistance to temporarily displaced households living in hotels or motels.

Treasury should state affirmatively that grantees may use the assistance to hold master leases on a block of rooms for families that may be moving in and out as they transition to permanent housing.

Reconcile HUD and Treasury guidance

The Treasury guidance states that households that receive other rental assistance, such as a Housing Choice Voucher, public housing, or project-based assistance, may receive ERA 1 assistance for the renter-owed portion of rent or utilities that is not subsidized; and grantees must not refuse to provide assistance to such households with ERA 2 (page 9).

HUD’s office of Public and Indian Housing (PIH) separately published [FAQs](#) on May 12 state that PHAs may not accept prospective rent payments from a third-party, such as ERA payments, because participating families are statutorily obligated to pay their share of rent. The document says that families may receive rental assistance funds directly from a third party and use it to pay their rent.

HUD should revise its guidance to state that ERA assistance to a household that is assisted with a Housing Choice Voucher or lives in Public Housing or a property with project-based rental assistance may be paid to the household directly or the PHA or landlord on its behalf.