



September 2, 2021

The Honorable Maxine Waters  
Chairwoman  
House Financial Services Committee

Dear Chairwoman Waters:

The hundreds of state, county, local, and tribal governments responsible for administering the federal Emergency Rental Assistance (ERA) program share your goal of expediting the delivery of aid in the most efficient and accountable manner possible. We appreciate your leadership on this program and were pleased to learn that you will be introducing legislation to eliminate some of the statutory and regulatory barriers grantees have encountered in its administration.

Like you, we support the use of self-attestation in documenting household eligibility for the program, in lieu of more stringent documentation requirements, as it often takes time to collect documentation even when it is available. Our organizations were pleased when Treasury on August 25 released updated ERA Frequently Asked Questions (FAQs) modifying previous guidance to facilitate the use of self-attestation. The new FAQs allow grantees to accept self-attestation in documenting all aspect of a household's eligibility and made clear that, during the public health emergency, grantees may rely on self-attestation alone to document income, rather than first and additionally seeking other documentation. Our organizations had been asking Treasury for this flexibility since last Spring.

As you consider amendments to the ERA statute, we urge you to include the following in your legislation:

Simplify the eligibility requirements under ERA 1: To qualify for the \$25 billion Congress provided for the ERA in the Consolidated Appropriated Act of 2021 (ERA 1), households must either have a member who qualifies for unemployment benefits or has experienced a hardship due directly or indirectly to the COVID-19 outbreak.

This requirement is more rigid than under the \$21.6 billion Congress provided in the American Rescue Plan (ERA 2), under which a household qualifies so long as the hardship they experienced occurred *during* the COVID-19 outbreak, but not necessarily caused by the pandemic. Some grantees, especially those in states where the businesses remained open throughout the pandemic, have struggled to use ERA

1 funds, as most households do not meet the more rigid ERA 1 eligibility requirement. Thus, we urge you to modify the ERA 1 requirement so that it mirrors ERA 2.

Provide “safe harbors” for ERA grantees: Grantees’ concerns about having to repay rental assistance ex post audit should the Treasury Inspector General (IG) find minor mistakes have slowed down the provision of rental assistance in some instances. To expedite the provision of assistance and encourage grantees to simplify their application process, we urge you to include in your legislation an explicit safe harbor to protect grantees that have de minimis improper payments. Specifically, the following are examples that should be covered by safe harbor:

- A tenant self-attests to eligibility, but upon further examination of documents provided the grantee finds that the tenant was not eligible and the grantee is not able to recoup the payment;
- A duplication of benefits occurs and a tenant or landlord/utility provider receives payment from both a state and local or tribal grantee, but neither grantee is able to recoup their payment;
- A grantee makes an up-front bulk payment to a landlord or utility provider and later finds that a tenant(s) on whose behalf the payment was made was not eligible and the grantee was unable to recoup the payment from the landlord or utility provider;
- A tenant self-attests to their eligibility but provides multiple, conflicting documentation sources raising questions about their eligibility;
- A household receives housing stability services from a third-party subrecipient of a grantee’s funds but is later found to not have been eligible for such services.

Allow grantees to assist landlords if a tenant is not cooperative or cannot be located: As it currently stands, when a landlord initiates the application for assistance under ERA, the tenant must consent to the application and attest to their eligibility. This has caused challenges when a tenant has amassed arrears but no longer lives in the property and cannot be located. Moreover, in rare instances, tenants still living in a property do not want to participate in the ERA application process for various reasons. Current ERA requirements prohibit grantees from helping landlords that seek assistance to cover arrears in such instances.

We urge you to allow grantees to cover arrears owed to landlords with ERA, so long as the landlord attests to the household’s eligibility and/or the tenant would qualify under a fact-specific proxy or categorical eligibility, and the assistance is used to satisfy the tenant’s debt and the debt is forgiven.

Extend the time period during which a household may receive assistance: Individual households may receive ERA 1 assistance—including both arrears and prospective assistance—for just up to 12 months, or 15 months if the grantee determines the additional 3 months are needed to ensure the household remains stably housed and funding is available. Grantees may use ERA 2 funding to assist households for another 3 months, bringing the maximum period in which an individual may receive assistance to no more than 18 months. Already, some needy households are hitting up against the 15 months allowed under ERA 1 and are likely to need assistance for additional time even beyond the 18 months allowed by ERA 2.

We urge you to eliminate the sections of the ERA statutes—both in the Consolidated Appropriations Act of 2021 for ERA 1 and the American Rescue Plan Act for ERA 2—that impose a time limit on assistance to individual eligible households. At a minimum, grantees should be able to assist households for 24 months.

Facilitate the use of ERA for master leases in hotels and motels: While the ERA program allows grantees to cover a temporary hotel or motel stay for a household, this has been difficult to implement in practice on a household-by-household basis.

We have asked Treasury to facilitate more effective use of ERA for hotel and motel stays by suggesting it allow grantees to set up master leases with hotels and motels. Under such an arrangement, the grantee would contract with a hotel or motel for a block of rooms for a period of time, allowing different households to move in and out as needed as they transition to permanent housing. Treasury has suggested that it is unable to implement this due to statutory restrictions. Thus, we urge you to explicitly allow master leases in your amendments to the ERA authorizing language.

Thank you for the opportunity to provide comments on your forthcoming legislation. We look forward to working with you to improve the ERA program so that grantees can serve more households more quickly.

Sincerely,

American Public Human Services Association  
Council of State Community Development Agencies  
National American Indian Housing Council  
National Association of Counties  
National Council of State Housing Agencies  
National Community Development Association  
National League of Cities