

Emergency Rental Assistance Program Guidance Recommendations

Updated January 8, 2021

In response to the coronavirus pandemic's escalation of the already existing housing affordability crisis facing renters, the 116th Congress established an Emergency Rental Assistance (ERA) program authorized under Title V of the Consolidated Appropriations Act of 2021. The following are NCSHA's recommendations for Treasury guidance to help grantees, including state HFAs, with program design and implementation.

Issues Requiring Specific Treasury Guidance Necessary for Programs to Launch

The statute requires Treasury to establish certain definitions and set certain policies which will impact grantees program design efforts. Thus, it is critical that Treasury provide guidance in these areas as soon as possible. Specifically:

- §501(k)(3)(C)(i)(II) provides that grantees may assist qualifying households based on their monthly income at the time of application with confirmation of income *as determined by the Secretary*. **We strongly encourage Treasury to specify that tenant self-certification of income is acceptable documentation for this purpose, and that grantees have discretion to allow qualification for applicable means-tested government programs as a proxy for income qualification for ERA.** HFAs' experiences of running emergency assistance programs over the last year has confirmed that the ability to self-certify income is critical to helping households, as so many simply do not have the documentation available to them to prove that they have lost a job or lost income.
- §501(d) requires the Secretary to recapture funds that grantees have not "obligated" for an allowable purpose as of September 30, 2021 and reallocate those funds to grantees who have obligated at least 65 percent of the amount originally allocated to that grantee. **For purposes of this section, we encourage Treasury to be as flexible as possible in its definition of "obligated."** For example, contracted commitments to providers and commitments for future months rental/utility assistance payments should be considered obligations.
- §501(c)(2)(A)(v) provides that other expenses related to housing incurred due to, directly or indirectly, to the novel coronavirus disease outbreak, *as defined by the Secretary* are eligible expenses. **We encourage Treasury to broadly and non-exhaustively define these expenses, deferring to grantees on whether they will cover specific fees and expenses.**
- §501(c)(3) provides that grantees may use up to 10 percent of their funds for housing stability services *as defined by the Secretary*. **Again, we encourage Treasury to broadly and non-exhaustively define housing stability services, deferring to grantees on the specific services they will fund under ERA.**

- §501(g) requires extensive reporting on households served and program operations. **We urge Treasury to expedite its determination of how it will collect this data so that grantees can prepare the technological systems necessary to collect and provide the data to Treasury in a standardized manner.**

Issues on Which Treasury Should Communicate Grantee Discretion So Programs Can Launch

While the statute prescribes that Treasury must act in the above respects, in other areas, it does not require Treasury to set policy. In general, we encourage Treasury, not only to defer policy decisions to grantees where possible, but to communicate to grantees that it is providing them this flexibility, which they will need for program design. Specifically:

- §501(k)(3)(A)(i)(II) provides that households are eligible if one or more household members experienced a reduction in household income, incurred significant costs, or experienced other financial hardship due directly or indirectly the novel coronavirus disease. NCSHA urges Treasury to specify that grantees may define “directly and indirectly” and may allow applicants to self-certify that they have experienced financial hardships.
- §501(c)(4) requires grantees to prioritize application by households with incomes under 50 percent of AMI and households in which one or more individual is unemployed and has been unemployed for 90-days. NCSHA urges Treasury to specify that grantees are to establish and document policies for meeting the statutorily required priorities for assistance. We discourage Treasury from setting any rigid policy requirements related to these preferences.
- §501(c)(2)(A)(iii) and (iv) provide that utilities and home energy costs, both prospective and arrears, are eligible uses of funds. NCSHA urges Treasury to specify that grantees may establish policies on which utilities and home energy costs are allowable under their program. For example, in addition to traditional heating and electricity, grantees may choose to treat expenses such as water and sewer fees and internet costs as utilities, and may also choose to fund costs related to utility use such as utility set-up fees, deposit fees, and interest on utility arrears. All of this should be at the discretion of the grantee. Moreover, grantees should be able to provide utility assistance regardless of whether the utility is publicly or privately owned.
- §501(c)(5) provides that up to 10 percent of program grants may be used to cover administrative costs. Grantees should be able to cover any reasonable administrative expense associated with running an ERA program.

Issues Requiring Specific Treasury Guidance as Soon as Possible

- §501(e) gives grantees until December 31, 2021 to spend the reallocated portion of the grant, after which they may request a 90-day extension; thus, March 31, 2022 is the last possible date by which funding is available under the ERA program. We encourage Treasury to minimize disruptions to grantees who will be actively administering programs at the time of the recapture and reallocation.

We also urge Treasury to make the request for the 90-day extension after December 31, 2021 as simple as possible, as it is likely that the vast majority of grantees that continue administering programs after September 30, 2021 will need such an extension.

- §501(c)(2)(B) requires households to reapply for assistance once every three months if ongoing assistance is needed. We urge Treasury to allow for streamlined application processes for households upon reapplication for assistance.
- §501(c)(2)(C)(i)(I) allows grantees to make payments to the eligible household so that they may pay their rent or utility costs, but only if the lessor or utility provider does not agree to accept the payment directly. We urge Treasury to provide that nonresponse by the lessor or utility provider to documented contact by the grantee over a specified time period constitutes not agreeing to accept the payment.
- §501(c)(2)(B)(iii) prohibits grantees from making prospective rent payments for an eligible household unless they have also provided assistance to reduce the household's rental arrears. We urge Treasury to hold harmless from penalty grantees in instances in which the grantee makes a prospective payment and neither the household nor the lessor/utility provider makes the grantee aware of the existence of unpaid arrears.
- The legislation does not establish eligibility requirements in relation to applicants' citizenship or immigration status. We discourage Treasury from setting eligibility requirements based on immigration status. Further, we urge Treasury not to apply the Public Charge Rule to this program.