



January 25, 2021

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U.S. Department of the Treasury

Jenn Jones
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U.S. Department of Housing and Urban Development

Erika Poethig
The White House

VIA EMAIL

Dear Mr. Liebenluft, Ms. Jones, Ms. Bailey, and Ms Poethig:

Congratulations on your appointments in the Biden – Harris Administration. The National Council of State Housing Agencies (NCSHA) looks forward to working with you and your colleagues to help low-income renters stay stably housed during this difficult time for so many through the Emergency Rental Assistance (ERA) program authorized under Title V of the Consolidated Appropriations Act of 2021.

Fundamentally, we urge you to honor what we believe to be Congress' clear intent to delegate most program design decisions to the states, cities, counties, and tribal entities that will be responsible for deploying ERA funds. The statute specifies several areas for federal direction and discretion. On the rest, we believe Congress wanted state and local administrators to have the flexibility to tailor ERA funds to meet the particular needs of the vulnerable renters in their communities.

Congress has good reason to respect the autonomy of state and local agencies in delivering ERA funds. Many have been delivering emergency rental aid with other resources, learning what works in their jurisdictions. Among them, 36 state housing finance agencies, NCSHA's members, deployed more than \$1.5 billion to serve more than 200,000 at-risk renters last year. Many of these and other state HFAs will administer ERA funds.

This letter contains our recommendations for the federal guidance states and other grantees most need most quickly in order to deliver aid with the timeliness necessary to avert further economic harm to low-income renters in America.

Allow renter attestation of eligibility for rental assistance

§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*. Treasury's recently released Frequently Asked Questions (FAQs) require grantees to obtain at the time of application third party source documents evidencing annual income. Such a requirement will impede grantees' abilities to provide assistance in a timely manner, as applicants may not have this documentation readily available, and some applicants—in particular workers in the gig economy and those who formerly worked for now shuttered companies—may not be able to obtain this documentation at all. For these reasons, we urge Treasury to reconsider this policy, and instead specify that grantees may rely on a household's signed attestation that they qualify for assistance, subject to appropriate state and federal oversight and penalties.

HFAs' experiences of running emergency assistance programs over the last year has confirmed that the ability to self-attest to income is essential, as many applicants do not have the documentation available to them to prove that they have lost a job or lost income.

Moreover, there is ample precedent for Treasury to allow attestation of eligibility. [HUD policy](#) allows assisted tenants to self-certify for annual or interim re-certifications. The [CDC nationwide eviction moratorium](#), which President Biden recently extended, also allows tenants to invoke protections against eviction by providing a signed declaration to their landlords that they meet the CDC's required criteria.

NCSHA, other state and local groups, landlord organizations, and tenant advocates all agree the position Treasury takes in the FAQ is detrimental to timely provision of ERA resources and will prevent many eligible households from receiving assistance at all.

In its FAQs, Treasury also states that to the extent administratively feasible, grantees must require applicants to document their qualification related to financial hardship and risk of homelessness or housing instability. NCSHA urges Treasury not to require source documentation related to these eligibility criteria, and rather to leave such policies up to grantees, including whether to allow households to document such circumstances by signed attestation.

For the same reasons as noted above in regards to income documentation, source documentation of financial hardship is onerous and will only result in a slowing down the provision of resources and preventing many eligible households from receiving help.

Provide flexibility on eligible renter expenses and "housing stability services."

§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.

Further, while the FAQ specifies that internet is not include as a utility cost, NCSHA urges Treasury to allow internet services to be covered as an expense related to housing, as internet service is essential for those who work or attend school remotely and for telehealth purposes.

§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 the term, ultimately deferring to grantees on the specific services they will fund under ERA.

Clarify ERA funds can cover renter-paid rent and utilities additional to what is covered by another subsidy.

The FAQs note that households receiving monthly federal rental assistance through subsidy programs such as the Housing Choice Voucher program, Public Housing, or Project-Based Rental Assistance and for whom the tenant rent is adjusted according to changes in income, may not receive ERA assistance. However, the FAQs go on to say that ERA may be used to pay the tenant-paid portion of rent or utility costs not paid for by other rental assistance. These two statements appear contradictory, and we request that Treasury provide clarity in this regard.

We urge Treasury to allow grantees to cover the tenant-paid portion of rent or utilities for households that receive federal rental assistance. In many instances, it may take time for Public Housing Authorities (PHA) to recertify a tenant’s income, and even after the recertification, households receiving federal rental assistance subsidies typically pay at least a minimum rent payment, which in some instances can be unaffordable. Moreover, tenants receiving federal rental assistance subsidies may qualify for ERA due to an increase in their expenses, which would not factor into an income recertification by the PHA.

Minimize funding disruptions for state and local communities.

§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 request Treasury to clarify that grantees may rely on 31 U.S. Code §1301.

In addition, the statute provides discretion to the Treasury Secretary to determine the amount of not-yet obligated funds to recapture from each grantee. NCSHA strongly urges Treasury to ensure that every grantee retains enough grant funding to continue operating their program through the end of the period allowed by the law.

§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.

Other priority recommendations.

§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 appreciate Treasury's policy in the FAQs providing that nonresponse on the part of a landlord or utility provider may be considered not agreeing to accept the payment.

However, the 21-day period the FAQs require grantees to give the landlord/utility provider to respond is far too long, as households may risk eviction or utility shut off during that time period. Instead, we recommend shortening this period to no more than 10 days.

§501(c)(5) provides that up to 10 percent of the amount paid to an eligible grantee may be used for administrative costs. However, §501(c)(2)(A) provides that at least 90 percent of the funds received by an eligible grantee be used for the primary eligible activities (rent, arrears, utilities, etc.) and §501(c)(3) provides that no more than 10 percent of funds may be used for housing stability services.

We urge Treasury to clarify the breakdown of funding use such that up to 10 percent of the overall grant may be used for administrative expenses, and that the remaining grant funding be split by at least 90/10 for primary eligible activities and housing stability services, respectively. Some grantees may need the full 10 percent allowed for Administration of ERA, which would mean that no funding would be left for housing stability services if such services must be funded from the same pot of resources.

§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.

In regards to the requirement to provide certain demographic information about applicants, Treasury should provide a definitive list of the options available for each demographic category, and in each should provide an option for applicants who do not wish to provide the information. Moreover, there should be an "other" category provided under sex so that applicants are not required to select from two binary options.

§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. The FAQs provides some guidance in relation to the types of costs that can be considered to be utilities. However, NCSHA urges Treasury to provide further guidance specifying that grantees fund costs related to utility use such as utility set-up fees, deposit fees, and interest on utility arrears and that grantees may provide utility assistance regardless of whether the utility is publicly or privately owned.

Lastly, 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.

We appreciate your interest in our recommendations and are available to discuss them further with you at any time.

Sincerely,



Stockton Williams
Executive Director