



August 18, 2021

The Honorable Janet Yellen
Secretary
U.S. Department of Treasury
1500 Pennsylvania Avenue NW
Washington, DC 20220

The Honorable Marcia Fudge
Secretary
U.S. Department of Housing and Urban Development
451 Seventh Street, SW
Washington, DC 20410

The Honorable Susan Rice
Director of the United States Domestic
Policy Council
Executive Office of the President,
Domestic Policy Council
Eisenhower Executive Office Building
1650 Pennsylvania Avenue, NW
Washington, DC 20504

RE: Critical Reforms Needed to the Emergency Rental Assistance Program (ERAP)

Dear Secretary Yellen, Secretary Fudge and Ambassador Rice:

The national advocacy organizations below are writing to urge the Administration to immediately implement improvements to the Emergency Rental Assistance Program (ERAP) that can accelerate the distribution of federal funds to renters and housing providers in need.

While many jurisdictions are successfully increasing their ERAP disbursement, others are fraught with significant application processing and payment delivery delays. These are largely attributable to grantees' self-imposed fraud prevention measures, mandates that deter housing provider participation, misapplication of statutory requirements and lack of engagement from certain eligible residents.

Changes are needed to maximize the reach of ERAP funds to renters and housing providers and to ensure greater consistency across programs, especially in areas of overlapping coverage. Without action to improve disbursement of ERAP and increased participation in the program, renters are faced with further uncertainty and a mounting debt cliff, while rental property owners move closer to foreclosure, bankruptcy, or a forced sale of the property—putting the overall stability of the rental housing sector and broader real estate market in peril.

We suggest the following clarifications to ERAP to facilitate expedited processing and distribution of rental assistance payments:

1. Align ERAP income restrictions and eligibility requirements with the federal eviction moratorium.

Under the Centers for Disease Control and Prevention (CDC) Order, an individual earning up to \$99,000 in annual income, or if filing jointly, \$198,000, qualifies for eviction protections. Under the statutory ERAP requirements, priority for rental assistance is given to renters earning 50 percent of area median income (AMI), but renters earning up to 80 percent qualify for rental assistance. However, our members report that some administering entities are not allowing renters who earn up to 80 percent of AMI to apply. The delta between those who qualify for CDC Order protection and those eligible for rental assistance at 80 percent of AMI is significant. For example, in Maricopa County, Arizona, a household of three can only earn up to \$56,900 to qualify for ERAP; in Pima County that same family of three can only earn up to \$49,450. This difference prevents residents above this income limit – but who are experiencing housing instability and submitted a CDC declaration – from receiving rental assistance. This also leaves the housing provider for these residents with no resource to cover lost rent.

2. Direct grantees to allow housing providers to apply on behalf of residents and establish a safe harbor for those attempting to obtain documentation from uncommunicative residents to support those applications.

Despite explicit acknowledgment within ERAP that a rental housing provider may apply for assistance on behalf of their residents, some jurisdictions have erected barriers to this. Further, some residents are entirely uncommunicative and will not provide required information or take necessary action to move applications forward.

There should be no barriers to applying for or receiving ERAP for housing providers who, in good faith, attempt to collect required information from residents and apply on their behalf. The safe harbor should be for those who have notified their residents of their intent to apply for assistance if they cannot obtain consent. Documentation of unpaid back rent or submission of a CDC eviction order declaration of COVID-impact should suffice to move these applications forward.

3. Allow ERAP to reimburse rental property owners even if the renter has moved and prohibit program requirements that force housing providers to return payments when residents move out.

Since the beginning of the pandemic, rental property owners have been encumbered with providing housing without payment. The CDC Order has made it clear that individuals are not relieved of their obligation to pay rent. However, ERAP administrators have prevented housing providers from obtaining rental assistance on behalf of residents who terminated their lease early or abandoned their unit, leaving housing providers without a mechanism to obtain relief. Once the Order expires, these renters may still face eviction due to nonpayment of rent. Furthermore, renters who leave housing providers with unpaid balances are taken to collections, affecting their credit and housing choice in the future.

In order to avoid this, rental property owners should be allowed to apply for ERAP to cover rent arrears even after a renter has moved or if the renter has a judgment entered against them. In the same vein, housing providers should not be required by ERAP administrators to return rental assistance payments that pay for outstanding balances if the resident moves out.

Housing providers must be made whole from debts that renters leave behind. These funds are critical for housing providers to continue managing property operations and maintaining the housing for their residents overall.

4. Require residents to demonstrate eligibility for rental assistance through an affidavit or self-attestation.

For those who participate in the program, a certification or affidavit of need should be sufficient. The income verification process is time consuming for both the renter applying for assistance as well as the agency tasked with deploying the rental assistance. Currently, there is no consistency among state and local governments to allow for “self-attestations” or declarations of income. Some agencies allow for self-attestations while other agencies only allow for income self-attestation as a last resort. This inconsistent process by housing agencies significantly slows the application process.

5. Clarify that renter eligibility is not contingent on having a COVID-19 diagnosis.

There continues to be misconceptions among renters that they or an immediate family member need to prove a COVID-19 diagnosis to qualify for rental assistance. Some grantees’ renter eligibility information and application processes perpetuate this misnomer. The Treasury’s FAQs state: “While grantees relying on clause (ii) in ERA1 must show financial hardship “due, directly or indirectly, to” COVID-19, grantees in ERA2 are also permitted to rely on financial hardship “during” the pandemic,” however grantees must make clear that renter eligibility is only contingent on financial impact during the pandemic.

6. Require state and local grantees to facilitate bulk processing of applications and payments.

While Treasury’s most recent guidance does encourage grantees to obtain information in bulk from housing providers regarding eligible residents and to engage in bundling assistance payments, few, if any, program administrators have implemented these processes. Bulk processing will help streamline the process. It is imperative that bulk processing be required for grantees.

7. Prohibit program grantees from imposing program requirements or proscriptions unrelated to payment of outstanding or future rental assistance.

These include: prohibiting a housing provider from applying on behalf of the resident; imposing additional eviction restrictions—particularly those that interrupt the eviction process without certainty of resident eligibility for rent relief and those that inhibit eviction actions despite continued nonpayment of rent or compliance with payment plan terms; requiring waiver of late fees; imposing rent freezes; and requiring that owners provide sensitive financial information to residents such as W-9 forms that may include social security numbers (i.e. social security numbers routinely serve as tax identification numbers for smaller landlords).

The COVID-19 pandemic has placed an unprecedented strain on renters, individual housing providers and the rental housing industry.

For rental property owners who rely on rent revenue as their primary source of income, mounting rent losses in many cases exceeding tens of thousands of dollars, place them in an untenable and unsustainable position. These same owners have not benefited from relief of their own financial

obligations, including their mortgage, insurance, and property tax payments, and they are still required to meet all their obligations to provide stable and safe housing for their residents.

Our organizations represent for-profit and non-profit housing owners, operators, developers, lenders, property managers and cooperatives involved in the provision of affordable and conventional rental housing. Together, our members serve millions of renters in communities large and small across the country every day. We are committed to working with our residents on the housing solutions right for them and helping renters avoid eviction.

By making the above reforms, the Administration can address the underlying financial distress faced by renters, ensure they're able to remain stable in their housing for the remainder of the pandemic and prevent continued disruption and instability in the rental housing market.

Sincerely,

CCIM Institute
Council for Affordable and Rural Housing
Institute of Real Estate Management
Manufactured Housing Institute
Mortgage Bankers Association
National Affordable Housing Management Association
National Apartment Association
National Association of Home Builders
National Association of Housing Cooperatives
National Association of REALTORS®
National Leased Housing Association
National Multifamily Housing Council

cc: House and Senate Leadership
Members of Congress