



November 3, 2021

The Honorable Maxine Waters  
Chairwoman  
Committee on Financial Services  
United States House of Representatives  
Washington, DC 20515

The Honorable Patrick McHenry  
Ranking Member  
Committee on Financial Services  
United States House of Representatives  
Washington, DC 20515

Dear Chairwoman Waters and Ranking Member McHenry:

The undersigned national associations represent for-profit and non-profit owners, operators, developers, lenders and property managers and housing cooperatives involved in the provision of rental housing, both affordable and conventional. As the Committee, Congress and the Administration develop proposals to implement improvements to the Emergency Rental Assistance Program (ERAP) we write to provide input on specific policies that we believe will enhance and accelerate the distribution of federal funds to renters and housing providers in need, and to express our opposition to proposals that we believe will hinder the distribution of funds and deter participation in the program.

While ERAP fund distribution has increased, changes still 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.

Housing providers are an important partner in helping to get the word out about the availability of ERAP funds and in facilitating its distribution. By working together, grantees, residents and housing providers can do much to ensure that the funds reach the families and individuals in need of this assistance. We appreciate the work that the members of the House Financial Services Committee have done aimed at addressing some of the shortcomings of the program.

Although we agree that changes are needed to maximize the reach of ERAP funds to renters and housing providers and to ensure greater consistency across programs, we encourage Congress also to focus on efforts to break down barriers that unnecessarily complicate getting program funds into the hands of struggling renters and housing providers—rather than implementing further roadblocks or unnecessary rules changes that could unintentionally slow disbursement of ERAP.

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

**1. Eliminate Counter-Productive Eviction Moratorium Provisions.**

Eviction moratoria have been a core concern of housing providers since the start of the pandemic. Inclusion of a 4-month eviction moratorium, upon acceptance of ERAP funds in H.R. 5196, the Expediting Assistance to Renters and Landlords Act of 2021 is of particular concern to our industry. Tying eviction moratorium language to rental assistance with no certainty of assistance from ERAP grantees is a programmatic barrier to housing provider participation that further exacerbates the problems we are trying to solve. This puts the renter and the housing provider in an untenable situation with the renter again incurring debt they may not be able to repay.

Furthermore, it is imperative that housing providers continue to ensure the safety and well-being of all residents. Housing providers must be allowed to terminate a lease or evict a resident who poses a direct threat to the health and safety of other individuals on the property. A housing providers' ability to remove residents who endanger the security of other residents, damage property, exhibit unlawful behavior, or engage in other activities expressly prohibited by the lease must be strengthened and well-defined in order to ensure the continued safety of their residents and the community.

**2. Reinforce statutory requirements that ERAP assistance is available for residents earning up to 80 percent of AMI.**

Under the statutory ERAP requirements, priority for rental assistance is given to renters earning up to 50 percent and below of area median income (AMI), with renters earning up to 80 percent also qualifying 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. While we appreciate that the statute includes a preference for 50 percent and below, Congress and the Administration should stress to grantees that the statute clearly states that residents between 50 and 80 percent of AMI are eligible to apply for these funds.

**3. 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 previous CDC eviction order declaration of COVID-impact should suffice to move these applications forward. As owners are

required to provide documentation when applying for assistance on the resident's behalf, it is imperative that when grantees provide direct-to-renter assistance, the resident document the payment of rent or outstanding rent to the landlord.

**4. Prioritize arrearages and remove 18-month limit.**

Renters and property owners that have been hard hit by the pandemic receive the greatest benefit from having current rent due paid and rent arrearages paid. We believe Congress should require grantees to address any and all rental arrearages for households in need before any future payments of rent or other services are made in order to keep families stably housed. Furthermore, given the current state of the pandemic and prolonged economic uncertainty faced by millions of renters, we believe the current 18-month limitation on assistance should be removed to avoid interfering with grantees' ability to provide critical rental arrearage and future rental assistance to those in need for both the ERA 1 and ERA 2 programs.

**5. 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 previous CDC Orders made it clear that individuals were 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 Orders expired, these renters may still face the consequences of an eviction record, and those renters who leave housing providers with unpaid balances continue to carry that debt, 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 moved 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. Some have suggested that property owners should be prohibited from securing ERAP funds when there has been a filing, or the vacancy is due to an eviction. It is important to note that there are other reasons for eviction filings and orders, other than non-payment of rent, like criminal activity/endangering other residents, or other lease violations, just to name a few. In these instances, the property owner is left with unrecoverable debt, while still facing their own financial obligations. This causes significant harm to overall viability of a property and threatens the long-term affordability of rental housing.

**6. 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.

**7. 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. Grantees should be allowed to accept the self-attestation of renters to document that a renter meets the eligibility requirement, including the income determination. In addition, it is important to clarify that renters experiencing hardship “during” the pandemic can qualify. Currently under ERAP 1, only renters experiencing hardship “due, directly or indirectly” to the pandemic can qualify, but ERAP 2 allows for “during or due, directly or indirectly.” Further, given that this is an emergency rental assistance program, grantees must make clear that renter eligibility is only contingent on financial impact during the pandemic.

**8. Require state and local grantees to facilitate bulk/aggregated 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. We support requiring grantees to create systems to process and approve bulk applications and believe that bulk applications should be allowed for both the ERA 1 and ERA 2 programs.

**9. Avoid the imposition of program requirements or proscriptions unrelated to payment of outstanding or future rental assistance.**

There are a number of programmatic barriers that have been implemented by grantees that have made the administration of the program more difficult and have also deterred participation by both residents and housing providers such as:

- 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 owners to 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).

**10. Provide Technical Assistance and Technology Solutions to Aide Struggling Grantees.**

Despite Congressional and Administration efforts, some jurisdictions continue to struggle to get ERPA funds to rents and property owners in need. We believe that funds should be allocated to Treasury to provide technical assistance, information and technology solutions to grantees who have been unable to efficiently disburse rental assistance.

As Treasury makes decisions about reallocating ERAP funds from poorly performing grantees, technical assistance will be necessary to ensure that the status of ERAP applications and payments are transparent. Communication will be critical during the reallocation. It will require coordinated efforts to direct new applications where to apply, inform renters and property owners who submitted applications to the underperforming grantee who will be processing the applications going forward and if any additional steps are required from them. It is essential that the new grantee act quickly and decisively to expedite ERAP payments to the appropriate property owner or renter.

**11. Enhance ERAP Outreach.**

We support additional outreach by federal, state and local governments to increase awareness of ERAP eligibility amongst renters and rental property owners. These efforts, carried out by mail, social media and public relations campaigns will complement the work of the multifamily industry in promoting ERAP and its work in assisting renters in need applying for help.

**12. Miscellaneous Technical Correction to the Consolidated Appropriations Act of 2021 (CARES Act) – Clarifying the Notice to Vacate Provision.**

The rental housing industry remains concerned about ambiguous language in the CARES Act that can be read to substantially extend notice to vacate requirements prior to eviction filings. The term “notice to vacate” itself has contrasting legal meanings depending on the jurisdiction, making this temporary federal requirement difficult to interpret in light of the unique eviction and termination of tenancy procedures across the country. According to a survey the National Apartment Association (NAA) conducted of its members, 91.7 percent of respondents found the notice to vacate requirement conflicting with local eviction laws or process, confusing and/or makes the process more complicated. The CARES Act notice to vacate language is inconsistent with existing eviction laws, complicates compliance for housing providers, and interferes with mediation discussions between the housing provider and the resident. It is important to note that this notice procedure is just the first step in the eviction process and does not limit tenants’ rights in the overall eviction process.

To remove confusion, we urge Congress to insert a clear sunset date in the law; we believe a technical correction should sunset the 30-day notice to vacate on August 23, 2020. An ERAP reform package is an appropriate place to make such a correction as it directly impacts a property owners' ability to maintain the viability, safety and security of their property for all residents.

In sum, ERAP remains a critical lifeline to renters and property owners affected by the pandemic. Efforts to break down barriers that unnecessarily complicate getting ERAP funds into the hands of struggling renters and housing providers – rather than implementing further roadblocks or unnecessary rule changes that could unintentionally slow disbursement of ERAP – is the direction Congress must take. By making the above reforms, the Administration and Congress can address the underlying financial distress faced by renters, ensure they are 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  
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: U.S. House of Representatives  
U.S. Senate Committee on Banking, Housing, and Urban Affairs  
House and Senate Leadership  
The Honorable Marcia Fudge  
The Honorable Janet Yellen