

# Frequently Asked Questions: Federal Emergency Rental Assistance

*Dated: August 25, 2021*

On June 24, the U.S. Treasury Department, announced a plan to implement a government-wide effort to expedite the distribution of the \$46 billion in emergency rental assistance funds.

In December 2020, the Consolidated Appropriations Act of 2021, was signed into law and included \$25 billion in emergency rental assistance (ERA 1). The March 2021 American Rescue Plan Act further supplemented these funds with an additional \$21.6 billion in emergency rental assistance (ERA 2).

## Key Resources

- Treasury Department FAQ (most recent dated, August 25)
  - Treasury FAQ Link: <https://home.treasury.gov/system/files/136/ERA-FAQ-8-25-2021.pdf>
  - Treasury Press Release Link: <https://home.treasury.gov/news/press-releases/jy0333>
- Treasury Department List of Funding Distributed to States, Localities and More
  - ERA 1 Link: <https://home.treasury.gov/system/files/136/Emergency-Rental-Assistance-Payments-to-States-and-Eligible-Units-of-Local-Government.pdf>
  - ERA 2 Link: [https://home.treasury.gov/system/files/136/ERA2\\_Allocations\\_Eligible\\_Entities\\_572021.pdf](https://home.treasury.gov/system/files/136/ERA2_Allocations_Eligible_Entities_572021.pdf)
- National Council of State Housing Agencies (NCSHA) State Level Emergency Assistance Programs. <https://bit.ly/302vfjn>
- NMHC Rental Assistance FAQ (continuously updated as new information becomes available). <https://bit.ly/3r5Xeuo>
- IRS Emergency Rental Assistance FAQ (most recent version dated March 26). <https://bit.ly/2PD5Hrl>
- Treasury Department Centralized Portal for Emergency Rental Assistance (<https://home.treasury.gov/policy-issues/coronavirus/assistance-for-state-local-and-tribal-governments/emergency-rental-assistance-program/program-index>)
- Consumer Financial Protection Bureau (CFPB) Resources
  - **Help for Housing Providers Resource Link:** <https://www.consumerfinance.gov/coronavirus/mortgage-and-housing-assistance/help-for-landlords/>
  - **Help for Renters Resource Link:** <https://www.consumerfinance.gov/coronavirus/mortgage-and-housing-assistance/renter-protections/>

## Who Received Funding?

ERA 1 funds were provided to every state that applied in January 2021, with states receiving at least \$200 million; although higher population states received more funding. Cities with populations over 200,000 were allowed to request to receive their allocations directly.

Link: <https://home.treasury.gov/system/files/136/Emergency-Rental-Assistance-Payments-to-States-and-Eligible-Units-of-Local-Government.pdf>

ERA 2 funds were provided to the states on May 7, 2021, with allocations for smaller states reduced from \$200 million to \$152 million.

Link: [https://home.treasury.gov/system/files/136/ERA2\\_Allocations\\_Eligible\\_Entities\\_572021.pdf](https://home.treasury.gov/system/files/136/ERA2_Allocations_Eligible_Entities_572021.pdf)

## Who Is Eligible for Assistance?

An “eligible household” for ERA 1 is defined as a renter household in which at least one or more individuals meets the following criteria:

- Qualifies for unemployment benefits or has experienced a reduction in household income, incurred significant costs, or experienced a financial hardship due directly or indirectly to the COVID-19 pandemic;
- Demonstrates a risk of experiencing homelessness or housing instability; or
- Has a household income at or below 80 percent of the area median.

An “eligible household” for ERA 2 is defined as a renter household in which at least one or more individuals meets the following criteria:

- Qualifies for unemployment benefits or has experienced a reduction in household income, incurred significant costs, or experienced a financial hardship *during or* due directly or indirectly to the COVID-19 pandemic;
- Demonstrates a risk of experiencing homelessness or housing instability; or
- Qualifies as a low-income family (as such term is defined in section 3(b) of the United States Housing Act of 1937 (42 U.S.C. 1437a(b)).<sup>1</sup>

Importantly, in ERA 1 residents must show financial hardship “due, directly or indirectly, to” COVID-19. The definition for eligibility was expanded in ERA 2 to include a financial hardship “during” the pandemic.

Beyond that, jurisdictions are directed to prioritize households that are currently unemployed and have been unemployed for 90 days as well as households earning 50 percent of area median income (AMI) and below. Importantly, the measure bases qualifying income on the income the household is receiving at the time of application for assistance and not their prior income. Despite this preference, jurisdictions do have some flexibility to serve those with incomes up to 80 percent of AMI and can establish additional criteria.

## How Much Aid Is Available to Renters?

Under ERA 1, eligible households may receive up to 12 months of assistance, plus an additional three months if necessary, to ensure housing stability. Assistance can only be allowed in three-month increments, after which point an eligible household must re-apply for funds. The aggregate amount of financial assistance an eligible household may receive under ERA 2, when combined with financial assistance under ERA 1, must not exceed 18 months.

The ERAP program can be used to cover rental payments and arrears beginning after March 13, 2020.

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<sup>1</sup> As of the date of these FAQs, the definition of “low-income families” in 42 U.S.C. 1437a(b) is “those families whose incomes do not exceed 80 per centum of the median income for the area, as determined by the Secretary [of Housing and Urban Development] with adjustments for smaller and larger families, except that the Secretary may establish income ceilings higher or lower than 80 per centum of the median for the area on the basis of the Secretary’s findings that such variations are necessary because of prevailing levels of construction costs or unusually high or low family incomes.”)

## How Do Renters Apply for the Program?

Each state and locality is charged with creating its own program and determining allocation priorities. The Treasury Department has established an online hub of local emergency rental assistance program links to make it easier for renters and landlords to find programs in their area.

Treasury Department Centralized Portal for Emergency Rental Assistance (To find help in your area, search your state: <https://home.treasury.gov/policy-issues/coronavirus/assistance-for-state-local-and-tribal-governments/emergency-rental-assistance-program/program-index>)

A chart with links to existing state programs is available from NCSHA at <https://www.ncsha.org/wp-content/uploads/2021-Updated-State-Level-ERA-Administrative-Entities.pdf>.

Firms are encouraged to research how their state or locality is distributing their aid so they can share that information with residents.

## Can I Apply on Behalf of My Resident?

Under the ERA 1 program, federal law makes it clear that if your resident does not apply for the relief directly and is behind on their rent, you, as a housing provider, can apply on their behalf and receive the funds directly. The law says you will need the resident's signature/permission to do so, however, and provide documentation of such application to the resident. In terms of practical application, though, this specific issue will likely be determined by each jurisdiction distributing the federal funds.

Unlike the first round of funding for ERA 1, the May 7 Treasury guidance states that ERA 2 funding must be made available to renters "first and immediately." Implications for this new requirement are still unclear. However, many are interpreting this to mean that renters may now receive funding directly—rather than the current practice of housing providers receiving it on their behalf.

## Does Treasury Place a Prohibition on Evictions?

For housing providers that receive funds under an ERA program for prospective rent or for rental arrearages, "the grantee must prohibit the landlord from evicting the tenant for nonpayment of rent with respect to the period covered by the assistance." In addition, for landlords receiving funds for rental arrears, Treasury strongly encourages grantees "to prohibit the landlord from evicting the tenants for nonpayment of rent for some period of time." Finally, Treasury also "strongly encourages grantees to require landlords that receive funds under the ERA, as a condition of receiving the funds, not to evict tenants for nonpayment of rent for 30 to 90 days longer than the period covered by the rental assistance."

- NMHC Resident Communication Tool - Behind on Your Rent? New Emergency Rental Assistance Program May Help: <https://www.nmhc.org/research-insight/analysis-and-guidance/emergency-preparedness/communicating-with-residents-rent/>

## Can I Apply on Behalf of a Resident with Past-Due Rent Who Has Since Vacated the Property?

As written, the legislation requires housing providers to secure the resident's signature or approval to seek rental assistance. That may complicate efforts by housing providers to seek past rent reimbursements for residents who have left the property. In numerous communications, NMHC continued to urge Congress, Treasury and local jurisdictions to allow for housing providers to be able to recoup lost rent through ERAP. According to Treasury's August 25 guidance, "past arrears at a previous address may be covered." In order to remove barriers a household may face in accessing new house, a grantee may, at the tenant's request, provide assistance for rental arrears after an otherwise eligible tenant has vacated a unit.

## Will Assistance Be Paid Directly to Me?

As long as your firm is participating in your jurisdiction's program, any relief approved for your residents will be paid directly to you. Some jurisdictions are requiring owners to erase some amount of past-due rent or forego their ability to evict a non-paying resident, which may cause your firm not to actively participate in the program. In that case, the resident can apply on their own and will be directed to deliver any relief they receive to their housing provider. Enforcement of this requirement is undetermined at this point.

The May 7 Treasury guidance makes clear that ERA 2 funds "must be offered directly to renters when landlords do not accept payment." ERA 2 does not require grantees to seek the cooperation of the landlord before providing assistance directly to the resident.

## Do I Have to Participate in the Program?

No. You do not have to participate. If you choose not to participate, your resident may receive funds directly, which they are supposed to use to pay the property owner. The enforcement mechanisms to make this happen are unclear, however. Importantly, per the Treasury May 7 FAQ, once an owner is notified that a resident has applied for the assistance, they have a 7-calendar-day window to decide whether to participate in the program (if notified by mail) and 5 calendar days if notified by phone, text or email.

## How Is Household Income Determined?

Household income is determined as either the household's total income for calendar year 2020 or the household's monthly income at the time of application. For household incomes determined using the latter method, income eligibility must be redetermined every three months. If an applicant's household income has been verified to be at or below 80 percent of the area median income for ERA 1, or if an applicant's household income has been verified as a low-income family as defined in section 3(b) of the United States Housing Act of 1937 (42 U.S.C. 1437a(b) for ERA 2, grantees are permitted to rely on a determination letter from the government agency that verified the applicant's household income, as long as the determination was made on or after January 1, 2020. Importantly, the August 25 Treasury FAQ clarifies how applicant income should be documented and verified, allowing self-attestation to be used in documenting each aspect of a household's eligibility.

## Do Federally Assisted Households Qualify for ERAP?

ERA 1 requires that payments not be duplicative of any other federally funded rental assistance. With respect to ERA 2, grantees must not refuse to provide assistance to households on the basis that they receive assistance, due to the disproportionate effect such a refusal could have on populations intended to receive assistance under the ERA and the potential for this practice to violate Title VI of the Civil Rights Act.

## What Are Eligible "Other Expenses" Under the ERA Program? Can Funds Be Used for Rental Arrears and Utility Arrears?

ERA 1 and ERA 2 permit the enrollment of households for prospective rent. ERA 1 requires grantees not make commitments for prospective rent unless it has also provided assistance to reduce the rental arrears, this requirement does not apply to ERA 2.

Per the Treasury FAQ, funds may be used for "other expenses related to housing" including:

- Internet service provided to the rental unit;
- Relocation expenses (including rental security deposits<sup>2</sup>);
- Rental fees (including application or screening fees);

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<sup>2</sup> Grantees are encouraged to establish a policy with regard to the payment and disposition of security deposits. To the extent that the security deposit is not returned to the tenant, Treasury has advised that the funds be returned to the grantee.

- Reasonable accrued late fees;
- Utilities and home energy costs; and
- Utilities and home energy costs arrears.

Importantly, the May 7 Treasury FAQ, acknowledged “that there may be increased need over the coming months for more hard-pressed renters to find new housing,” a recognition that alternative housing options will be an important consideration for some individuals. To that end, Treasury has widened the scope of qualified expenses to include “moving expense, security deposits, future rent, utilities and the cost of a transitional stay in a hotel or motel when a family has been displaced.” The Treasury FAQ also defines terms and how these costs should be documented.

In addition, the August 25, Treasury FAQ address “rent bonds.” A tenant’s costs associated with obtaining a hearing or appealing an order of eviction may be covered with ERA funds. Many states and localities require tenant payments of rent to a court on behalf of the landlord, often referred to as “rent bonds,” where a tenant posts a bond with a court as a condition to obtaining a hearing, reopening an eviction action, appealing an order of eviction, reinstating a lease, or otherwise avoiding an eviction order, may also be considered an eligible expense.

## What Documentation Is Required to Apply for Assistance?

This will vary by state and locality, however; the Treasury Department did clarify in its FAQ that residents may self-attest as to their eligibility for the program. Specifically, the FAQ reads, “... given the challenges presented by the COVID-19 pandemic, grantees may be flexible as to the particular form of documentation they require, including by permitting photocopies or digital photographs of documents, e-mails, or attestations from employers, landlords, caseworkers, or others with knowledge of the household’s circumstances. Grantees must require all applications for assistance to include an attestation from the applicant that all information included is correct and complete.”

The May 7, Treasury FAQ specifically states that, “Treasury strongly encourages grantees to avoid establishing documentation requirements that are likely to be barriers to participation for eligible households.”

Importantly, the August 25, Treasury FAQ clarifies how applicant income should be documented and verified allowing self-attestation. Self-attestation can be used in documenting each aspect of a household’s eligibility for ERA, including with respect to: a) financial hardship, b) the risk of homelessness or housing instability, and c) income. During the public health emergency, Treasury has clarified that grantees may rely solely on a self-attestation of income when applicants are unable to provide other documentation of their income.

## As an Owner, Am I required to Include an Emergency Rental Assistance Payment as Gross Income?

Yes. Per the IRS FAQ, Section 501 Emergency Rental Assistance payments received – whether from a tenant or from a Distributing Entity on a tenant’s behalf – are includible in your gross income.

## If Multiple Residents are Applying, Can I receive a Bulk Payment and Provide Estimates of Arrears Owed to Landlords?

Treasury has laid out new guidance that establishes data-sharing agreements between the grantee and housing provider to reduce administrative burdens. When implemented, this should allow for a grantees to collect bulk data from housing providers and then bundle the payments from multiple residents into a single disbursement.

Grantees may establish prudent information sharing arrangements with utility providers and landlords for determining household eligibility. Grantees may also establish reasonable procedures for combining the assistance provided for multiple households into a single “bulk” payment made to a utility or landlord.

In addition, to speed the delivery of assistance, grantees may adopt policies and procedures enabling landlords and utility providers to receive assistance based on reasonable estimates of arrears owed by multiple households before their application and documentation requirements are satisfied.

## To Whom Should the Landlord Return the Security Deposit at the End of the Lease?

Treasury has encouraged grantees to establish a policy with regard to the payment and disposition of security deposits, which should include a reasonable limit on the amount of a security deposit to be paid using ERA program funds. To the extent that the security deposit is not returned to the tenant, it should be returned to the grantee.

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