TREASURY ERA1 REALLOCATION GUIDANCE

10/06/2021

The U.S. Department of the Treasury issued on October 4 guidance and a one-pager on reallocating the $25 billion in Emergency Rental Assistance (ERA) appropriated under the Consolidated Appropriations Act of 2021, referred to as "ERA1." The reallocation guidance will, as NLIHC recommended, require poor performing program administrators to submit improvement plans outlining how they will adopt these best practices to expedite the delivery of assistance to renters and landlords. Importantly, the Treasury guidance makes clear it will hold renters harmless for slow spending programs by looking to other grantees in the state to deliver the funds.

OBLIGATIONS AND EXCESS FUNDS

The ERA1 statute requires Treasury to begin reallocating "excess" funds on September 30, 2021. Treasury will not recapture funds a grantee has "obligated" – a measure that includes both spent and committed funds.

- **Grantees who have not obligated at least 65% of their ERA1 funds by September 30, 2021, must submit a program improvement plan by November 15 that outlines how they will speed ERA distribution.** Treasury will consider whether grantees plan to implement the best practices identified in Treasury's ERA guidance, including self-attestation, eviction diversion partnerships, and other effective strategies. Grantees must submit a report on their progress within 60 days of Treasury approving the program improvement plan. If grantees do not submit an adequate plan or the required progress report, 10% of their ERA1 funds will be deemed "excess funds." Treasury will soon publish forms and instructions for program improvement plans.
- **Grantees who have not obligated at least 65% of their ERA1 funding who have expenditure ratios below 30% as of September 30, based on the program data submitted to Treasury by October 15, will be determined to have "excess funds."** The expenditure ratio is a measure of funds actually spent on financial assistance and housing stability services. For programs that spent less than 30% of funds by September 30, Treasury will recapture the difference between the percentage spent by the programs and the 30% threshold. Those programs could keep their remaining funds if they spend at least 30% or commit 65% of the funds by November 15.
- **Treasury's reallocation guidance makes clear grantees cannot use subrecipient agreements to avoid meeting the statutory obligation deadlines.** Funds paid to a subgrantee that have not been expended will be considered obligated only if the funds compensate the subgrantee for ERA1-related activities or will be used to pay contractual obligations.
- **The expenditure ratio programs must meet to avoid recapture will increase by 5% each month and be assessed every two months.** The threshold as of November 30 will be 40%.
- **Any funds not obligated by March 31, 2022, may be deemed excess funds subject to potential recapture,** helping to ensure funds do not go unused given the September 30, 2022 statutory deadline for obligating ERA1 funds.

MITIGATING FACTORS

Grantees who have inadequate obligations and insufficient expenditures will have several ways to mitigate the amount Treasury would otherwise recapture as a result of the first assessment.

- Grantees can avoid recapture if they certify by November 15, 2021, that their expenditure ratio is at least 30%, or that they have obligated at least 65% of its ERA1 allocation.
- Additionally, in cases where Treasury approves a grantee's program improvement plan, the department will recalculate the grantee's excess funds by assuming a one-time 15% addition to their expenditure ratio to help them meet the minimum threshold of 30%. This will allow grantees to accelerate spending before losing funds as they implement new ERA policies to improve distribution.

DISTRIBUTING RECAPTURED FUNDS

Treasury will distribute recaptured funds about every two months based on availability and confirmed need. Treasury will soon begin accepting requests from grantees for allocated funds through a form that will be published on October 15. Each request will be evaluated based on the grantee's demonstrated capacity to meet and exceed the minimum expenditure ratio and on other indications of ERA need within the jurisdiction. Treasury will prioritize, when feasible, requests to reallocate funds to other grantees in the same state. Treasury will also prioritize grantees already on track to expend their remaining ERA1 and ERA2 funds. The administration is committed to ensuring improved relief – not less – to residents in low-performing jurisdictions.

VOLUNTARY REALLOCATION

Beginning September 30, 2021, grantees may request to transfer some or all of their allocations to another grantee in their state that has obligated or spent at least 65% of its own allocation.

ADMINISTRATIVE EXPENSES

For reallocation purposes, Treasury will consider 10% of each grantee's initial allocation as having been obligated for administrative costs regardless of the grantee's actual expenditures, commitments, or obligations. Grantees may spend up to 10% of its initial ERA1 allocation for administrative expenses only if they obligate at least 30% of its initial allocation for the provision of financial assistance and housing stability services by September 30, 2022. If a grantee has obligated less than 30% of its initial allocation providing financial assistance and housing stability services by September 30, 2022, Treasury will presume the grantee's administrative expenses were not attributable to providing those services if they exceed 10% of the grantee's allocation after deducting amounts recaptured or reallocated.

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