The emergency COVID-19 relief bill passed by Congress in December 2020 established a $25 billion emergency rental assistance (ERA) program administered by the U.S. Department of the Treasury. The ERA program was created by Congress to distribute critically needed emergency rental assistance to millions of households at risk of losing their homes.

The Treasury Department released on February 22 a new FAQ that directly addresses the significant flaws in the previous guidance issued by the Trump administration and includes many of the recommendations made by NLIHC and the NLIHC-led Disaster Housing Recovery Coalition (DHRC). The DHRC developed these recommendations with direct input from local stakeholders about challenges and lessons learned in responding to the pandemic. The recommendations are also based on NLIHC’s analysis of more than 600 state and local rental assistance programs created or expanded during the pandemic.

NLIHC anticipates that Treasury will issue further guidance, and we will continue to advocate for improvements to ensure the funding reaches the lowest-income and most marginalized renters.

**HOW WILL THE DEPARTMENT OF TREASURY DISTRIBUTE THE FUNDING?**

ERA payments will be made directly to states (including the District of Columbia), U.S. territories (Puerto Rico, the Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands, and American Samoa), local governments with more than 200,000 residents, the Department of Hawaiian Home Landlords, and Indian tribes or the tribally designated housing entity of an Indian tribe.

For your state or locality to get its share of emergency rental assistance funds, they were required to submit completed payment information and a signed acceptance of award terms by 11:59 pm ET on January 12, 2021. See Treasury’s website for a list of payments to states and eligible units of local government and details on the data and methodology used to determine allocations. Details on the data and methodology and payments for tribal communities may also be found online. See NLIHC’s fact sheet on state and territory allocations for more information.

**WHAT TYPES OF ASSISTANCE CAN ELIGIBLE HOUSEHOLDS RECEIVE?**

**Financial Assistance:** At least 90% of the funds must be used to provide financial assistance, including back and forward rent and utility payments and other housing expenses that were incurred due, directly or indirectly, to the pandemic.

According to Treasury’s FAQ, “other expenses” can include relocation expense and rental fees, reasonable accrued late fees, and Internet service. While the Trump administration’s guidance excluded Internet service as an eligible cost, the revised FAQ states that Internet is a vital service needed for distance learning, telework, and telehealth, helping to keep families connected to school, work, and healthcare.

Assistance can be provided for up to 12 months, plus an additional three months if the grantee determines the extra months are needed to ensure housing stability and funds are available. When providing forward rent, assistance can only be given for 3 months, though households can subsequently reapply for additional assistance. Assistance must be provided to reduce a household’s rental arrears before the household may receive assistance for future rent payments.

The COVID-19 relief legislation does not include resources for foreclosure prevention.

**Supportive Services:** Recipients can use up to 10% of funds for housing stability services related to the COVID-19 pandemic. According to the FAQ, housing stability services may include housing counseling, fair housing counseling, case management, attorney’s fees related to eviction proceedings, housing-related...
services for survivors of domestic violence or human trafficking, and specialized services for seniors or individuals with disabilities that supports their ability to access or maintain housing.

**Administrative Fees:** The Trump administration’s guidance incorrectly stated that administrative costs were to come out of the 10% of funds also used for housing stability services. NLIHC is urging Treasury to provide explicit guidance clarifying that housing stability services and administrative fees are separate expenses. Without this change, it would be nearly impossible for states and localities to provide critically needed housing stability services because administrative fees would quickly consume the available funds set-aside for this purpose.

**WHO IS ELIGIBLE TO RECEIVE EMERGENCY RENTAL ASSISTANCE?**

Households are eligible for ERA funds if one or more individuals: (1) has qualified for unemployment benefits or can attest in writing that he or she has experienced a reduction in household income, incurred significant costs, or experienced other financial hardship due, directly or indirectly, to the pandemic; (2) can demonstrate a risk of experiencing homelessness or housing instability; and (3) has a household income below 80% AMI.

Funds must be used for households with incomes below 80% of area median income (AMI), and states and localities must prioritize households below 50% of AMI or those who are unemployed and have been unemployed for 90-days. States and localities can provide additional prioritization of funds. Treasury’s guidance states that grantees should establish a preference system, document the preference system, and inform all applicants about available preferences.

**WHAT FORMS OF DOCUMENTATION WILL APPLICANTS BE REQUIRED TO SUBMIT WHEN APPLYING FOR ERA?**

The law states that applicants must qualify for unemployment benefits or attest in writing that they have experienced a reduction in household income, incurred significant costs, or experienced other financial hardship due, directly or indirectly, to the pandemic. Additionally, applicants must demonstrate a risk of experiencing homelessness or housing instability. This risk can be demonstrated through a past due utility or rent notice or eviction notice; unsafe or unhealthy living conditions; or any other evidence of such risk, as determined by the eligible grantee involved.

The Trump administration’s FAQ imposed additional, unnecessary documentation requirements in direct conflict with the statute by stating that grantees must require applicants to document hardship beyond self-attestation. Under Treasury’s revised guidance, renters may self-attest to meeting most eligibility criteria, including income, housing stability, and the amount of back rent owned, provided that certain safeguards are met. Grantees should obtain, if available, a current lease signed by the landlord or sublessor that identifies where the applicant resides and states the amount of rent or back rent owed. If the household does not have a signed lease, grantees may accept other types of documentation that can be used to prove residency and the amount of back rent owed.

The updated guidance allows for various means of documentation requirements to enable grantees to extend these critical resources to vulnerable populations without imposing unnecessary documentation burdens. Grantees can be flexible as to the form of documentation they require, including by allowing photocopies or digital photographs of documents, emails, or attestations from employers, landlords, caseworkers, or others with knowledge of the household’s circumstances. In all cases, grantees must require applicants to self-attest that all information is correct and complete.

**HOW WILL GRANTEES DOCUMENT AND VERIFY INCOME?**

Income determination will be based on either the household’s total income in 2020, or the monthly income the household is receiving at the time of application. If income determinations are made based on the applicant’s monthly income, the state or locality must review the monthly income information
provided at the time of application and extrapolate over a 12-month period to determine whether the household’s income exceeds 80% AMI. If a household qualifies based on monthly income, the grantee must redetermine eligibility every three months.

To document income determination, renters may self-attest to household income and provide available documentation, such as paystubs, W-2s or other wage statements, tax filings, bank statements demonstrating regular income, or an attestation from an employer. Under Treasury’s revised guidance, grantees can provide waivers or exceptions to this documentation requirement to accommodate a variety of circumstances. If a household’s income is not verifiable due to the impact of COVID-19 or has been received in cash, or if the household has no qualifying income, grantees can accept a written attestation without further documentation. In these instances, grantees must reassess household income every three months.

If an applicant’s household income has been verified to be at or below 80% AMI in connection with another local, state, or federal assistance program, grantees can rely on a determination letter from a government agency that verified the applicant’s household income, provided that determination was made on or after January 1, 2020.

The now-rescinded Trump administration’s FAQ imposed burdensome documentation requirements for income determination. Rather than allowing self-certification by the household of their monthly income, the FAQ document directed households to provide “source documentation” to verify two months of income. This requirement went beyond the federal statute and would have made it more difficult for renters in need to receive assistance. The revised guidance from Treasury does not include this requirement, which will help states and communities quickly distribute ERA funds.

 ARE THERE RESTRICTIONS BASED ON IMMIGRATION STATUS FOR THE EMERGENCY RENTAL ASSISTANCE?

The law establishing the emergency rental assistance program does not impose restrictions based on immigration status. In the absence of federal restrictions, state and local governments cannot impose their own immigration status or Social Security Number requirements. This FAQ from NLIHC, the National Housing Law Project, and the National Immigration Law Center provides information on eligibility for assistance based on immigration status.

 WHO WILL ADMINISTER RENTAL ASSISTANCE PROGRAMS? HOW WILL RENTERS OR LANDLORDS APPLY FOR OR RECEIVE ASSISTANCE?

Renters will apply for assistance with entities that state and local grantees select to administer the program. States and localities can make payments directly to landlords or utility companies on behalf of renters.

The Trump administration’s FAQ would have required grantees to wait a full 21 days after conducting outreach to the landlord or utility provider before providing assistance directly to the renter. Under Treasury’s updated guidance, this timeframe is shortened from 21 days to as little as 10 days before assistance can be provided directly to tenants in cases where their landlord refuses to participate in the program. If a landlord refuses to accept the rental assistance within 14 days of the grantee sending a request in writing by mail, or after the grantee has made at least three attempts by phone, text, or email over a 10-day period, the administering entity can provide assistance directly to the renter, who can then make payments to the landlord or utility provider. This shorter timeframe will help ensure housing stability and avoid unnecessary evictions during the pandemic.

Landlords can directly apply for rental assistance under the program but are required to notify the tenant that assistance is being provided on their behalf and obtain the tenant’s consent.
HOW WILL THE EMERGENCY RENTAL ASSISTANCE PROGRAM WORK WITH “DUPLICATION OF BENEFITS?”

The legislation states that “to the extent feasible,” grantees should ensure that any rental assistance provided to an eligible household is not duplicative of other federally-funded rental assistance. Treasury’s FAQ clarifies that eligible households living in federally subsidized housing may receive ERA assistance, provided that the ERA funds are not applied to costs that have been or will be reimbursed under any other federal assistance. Renters may self-attest that they are not receiving duplicative government assistance.

WILL CONGRESS PROVIDE ADDITIONAL HOUSING AND HOMELESSNESS RESOURCES IN THE NEXT COVID RELIEF PACKAGE?

Congress will vote on the “American Rescue Plan,” President Biden’s $1.9 trillion coronavirus relief package that includes over $40 billion in housing and homelessness resources, including an additional $25 billion in emergency rental and utility assistance and $5 billion to assist people who are homeless with immediate and longer-term needs, among other vital provisions. House and Senate leaders aim to have a final bill sent to President Biden by March 14, when extended unemployment benefits are set to expire. If enacted, these investments will help prevent millions of low-income people from losing their homes during the pandemic and will provide cities and states with the resources they need to help people experiencing homelessness be safely housed during and after the pandemic.

WHY IS A STRENGTHENED AND ENFORCED EVICTION MORATORIUM STILL NEEDED?

Both emergency rental assistance and a strengthened and enforced eviction moratorium are needed to help keep renters stably housed during the pandemic. An improved eviction moratorium can help keep renters housed while state and local governments work to distribute aid to households in need.

The federal eviction moratorium issued by the Centers for Disease Control and Prevention (CDC) has kept millions of people who otherwise would have been evicted stably housed, but it has significant shortcomings that undermine its public health impacts. Under the CDC moratorium, renters are only protected if they know about it and take affirmative steps to be protected. As a result, corporate and other landlords continue to evict renters before renters know about the moratorium’s protections and can make use of its protections. The failure to address issues with the current moratorium has allowed some landlords to wrongfully evict tens of thousands of renters without consequence.

NLIHC and over 2,000 organizations and elected officials continue to urge the Biden administration to extend, improve, and enforce the CDC eviction moratorium until the end of the pandemic. The current moratorium expires on March 31, 2021. The Biden administration should: extend the moratorium through the end of the pandemic, improve the moratorium order by making its protections automatic and universal; rescind the Frequently Asked Questions (FAQ) issued last year by the CDC that created loopholes in the moratorium’s protections; empower the Department of Justice or Consumer Financial Protection Bureau to enforce the moratorium; and create a renter hotline to report abuses.