

U.S. Department of the Treasury
Emergency Rental Assistance
Frequently Asked Questions
Revised February 22, 2021

The Department of the Treasury (Treasury) is providing these frequently asked questions (FAQs) as guidance regarding the requirements of the Emergency Rental Assistance (ERA) program established by section 501 of Division N of the Consolidated Appropriations Act, 2021, Pub. L. No. 116-260 (Dec. 27, 2020) (the Act). These FAQs will be supplemented by additional guidance.

1. Who is eligible to receive assistance under the Act and how should a grantee document the eligibility of a household?

A grantee may only use the funds provided in the ERA to provide financial assistance and housing stability services to eligible households. To be eligible, a household must be obligated to pay rent on a residential dwelling and the grantee must determine that:

- i. one or more individuals within the household has qualified for unemployment benefits or experienced a reduction in household income, incurred significant costs, or experienced other financial hardship due, directly or indirectly, to the COVID-19 outbreak;
- ii. one or more individuals within the household can demonstrate a risk of experiencing homelessness or housing instability; and
- iii. the household has a household income at or below 80% of area median income.

The FAQs below describe the documentation requirements for each of these conditions of eligibility. These requirements provide for various means of documentation so that grantees may extend this emergency assistance to vulnerable populations without imposing undue documentation burdens. As described below, 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.

In all cases, grantees must document their policies and procedures for determining a household's eligibility to include policies and procedures for determining the prioritization of households in compliance with the statute and maintain records of their determinations. Grantees must also have controls in place to ensure compliance with their policies and procedures and prevent fraud. Grantees must specify in their policies and procedures under what circumstances they will accept written attestations from the applicant without further documentation to determine any aspect of eligibility or the amount of assistance, and in such cases, grantees must have in place reasonable validation or fraud-prevention procedures to prevent abuse.

2. How should applicants document that a member of the household has qualified for unemployment benefits, experienced a reduction in income, incurred significant costs, or experienced other financial hardship due to the COVID-19 outbreak?

A grantee must document that one or more members of the applicant's household either (i) qualified for unemployment benefits or (ii) experienced a reduction in household income, incurred significant costs, or experienced other financial hardship due, directly or indirectly, to the COVID-19 outbreak. If the grantee

is relying on clause (i) for this determination, the grantee is permitted to rely on either a written attestation signed by the applicant or other relevant documentation regarding the household member's qualification for unemployment benefits. If the grantee is relying on clause (ii) for this determination, the Act requires the grantee to obtain a written attestation signed by the applicant that one or more members of the household meets this condition.

3. How should a grantee determine that an individual within a household is at risk of experiencing homelessness or housing instability?

The Act requires that one or more individuals within the household can demonstrate a risk of experiencing homelessness or housing instability, which may include (i) a past due utility or rent notice or eviction notice, (ii) unsafe or unhealthy living conditions, or (iii) any other evidence of risk, as determined by the grantee. Grantees should adopt policies and procedures addressing how they will determine the presence of unsafe or unhealthy living conditions and what evidence of risk to accept in order to support their determination that a household satisfies this requirement.

4. The Act limits eligibility to households with income that does not exceed 80 percent of the median income for the area in which the household is located, as determined by the Department of Housing and Urban Development (HUD), but does not provide a definition of household income. How is household income defined for purposes of the ERA program? How will income be documented and verified?

Definition of Income: With respect to each household applying for assistance, grantees may choose between using HUD's definition of "annual income" in 24 CFR 5.609¹ and using adjusted gross income as defined for purposes of reporting under Internal Revenue Service Form 1040 series for individual federal annual income tax purposes.

Methods for Income Determination: The Act provides that grantees may determine income eligibility based on either (i) the household's total income for calendar year 2020, or (ii) sufficient confirmation of the household's monthly income at the time of application, as determined by the Secretary of the Treasury (Secretary).

If a grantee uses a household's monthly income to determine eligibility, the grantee should review the monthly income information provided at the time of application and extrapolate over a 12-month period to determine whether household income exceeds 80 percent of area median income. For example, if the applicant provides income information for two months, the grantee should multiply it by six to determine the annual amount. If a household qualifies based on monthly income, the grantee must redetermine the household income eligibility every three months for the duration of assistance.

Documentation of Income Determination: Grantees must have a reasonable basis under the circumstances for determining income. Except as discussed below, this generally requires a written attestation from the applicant as to household income and also documentation available to the applicant to support the determination of income, such as paystubs, W-2s or other wage statements, tax filings, bank statements demonstrating regular income, or an attestation from an employer. As discussed below, under limited circumstances, a grantee may rely on a written attestation from the applicant without further documentation of household income. Grantees have discretion to provide waivers or exceptions to this documentation requirement to accommodate disabilities, extenuating circumstances related to the

¹ See https://www.ecfr.gov/cgi-bin/text-idx?rgn=div5&node=24:1.1.1.1.5#se24.1.5_1609.

pandemic, or a lack of technological access. In these cases, the grantee is still responsible for making the required determination regarding the applicant's household income and documenting that determination.

Categorical Eligibility: If an applicant's household income has been verified to be at or below 80 percent of the area median income in connection with another local, state, or federal government assistance program, grantees are permitted to rely on a determination letter from the government agency that verified the applicant's household income, provided that the determination for such program was made on or after January 1, 2020.

Written Attestation Without Further Documentation: To the extent that a household's income, or a portion thereof, is not verifiable due to the impact of COVID-19 (for example, because a place of employment has closed) or has been received in cash, or if the household has no qualifying income, grantees may accept a written attestation from the applicant regarding household income. If such a written attestation without further documentation is relied on, the grantee must reassess household income for such household every three months. In appropriate cases, grantees may rely on an attestation from a caseworker or other professional with knowledge of a household's circumstances to certify that an applicant's household income qualifies for assistance.

Definition of Area Median Income: The area median income for a household is the same as the income limits for families published in accordance with 42 U.S.C. 1437a(b)(2), available under the heading for "Access Individual Median Family Income Areas" at <https://www.huduser.gov/portal/datasets/il.html>.²

5. The Act provides that ERA funds may be used for rent and rental arrears. How should a grantee document where an applicant resides and the amount of rent or rental arrears owed?

Grantees must obtain, if available, a current lease, signed by the applicant and the landlord or sublessor that identifies the unit where the applicant resides and establishes the rental payment amount. If a household does not have a signed lease, documentation of residence may include evidence of paying utilities for the residential unit, an attestation by a landlord who can be identified as the verified owner or management agent of the unit, or other reasonable documentation as determined by the grantee. In the absence of a signed lease, evidence of the amount of a rental payment may include bank statements, check stubs, or other documentation that reasonably establishes a pattern of paying rent, a written attestation by a landlord who can be verified as the legitimate owner or management agent of the unit, or other reasonable documentation as defined by the grantee in its policies and procedures.

Written Attestation: If an applicant is able to provide satisfactory evidence of residence but is unable to present adequate documentation of the amount of the rental obligation, grantees may accept a written attestation from the applicant to support the payment of assistance up to a monthly maximum of 100% of the greater of the Fair Market Rent or the Small Area Fair Market Rent for the area in which the applicant resides, as most recently determined by HUD and made available at <https://www.huduser.gov/portal/datasets/fmr.html>. In this case, the applicant must also attest that the household has not received, and does not anticipate receiving, another source of public or private subsidy or assistance for the rental costs that are the subject of the attestation. This limited payment is intended to provide the most vulnerable households the opportunity to gather additional documentation or negotiate with landlords in order to avoid eviction. Such assistance may only be provided for three months at a time. A grantee must obtain evidence of rent owed consistent with the above after three months in order

² Specifically, 80% of area median income is the same as "low income." For the purpose of prioritizing rental assistance as described in FAQ 22 below, pursuant to section 501(c)(4)(A) of Subdivision N of the Act, 50 percent of the area median income for the household is the same as the "very low-income limit" for the area in question.

to provide further assistance to such a household; Treasury expects that in most cases the household would be able to provide documentation of the amount of the rental obligation in any applications for further assistance.

6. The Act provides that ERA funds may be used for “utilities and home energy costs” and “utilities and home energy costs arrears.” How are those terms defined and how should those costs be documented?

Utilities and home energy costs are separately stated charges related to the occupancy of rental property. Accordingly, utilities and home energy costs include separately stated electricity, gas, water and sewer, trash removal, and energy costs, such as fuel oil. Payments to public utilities are permitted.

All payments for utilities and home energy costs should be supported by a bill, invoice, or evidence of payment to the provider of the utility or home energy service.

Utilities and home energy costs that are covered by the landlord will be treated as rent.

7. The Act provides that ERA funds may be used for “other expenses related to housing incurred due, directly or indirectly, to” the COVID-19 outbreak, as defined by the Secretary. What are some examples of these “other expenses”?

The Act requires that other expenses must be related to housing and be incurred due directly or indirectly due to COVID-19. Such expenses include relocation expenses and rental fees (if a household has been temporarily or permanently displaced due to the COVID-19 outbreak); reasonable accrued late fees (if not included in rental or utility arrears and if incurred due to COVID-19); and Internet service provided to the rental unit. Internet service provided to a residence is related to housing and is in many cases a vital service that allows renters to engage in distance learning, telework, and telemedicine and obtain government services. However, given that coverage of Internet would reduce the amount of funds available for rental assistance, grantees should adopt policies that govern in what circumstances that they will determine that covering this cost would be appropriate.

All payments for housing-related expenses must be supported by documentary evidence such as a bill, invoice, or evidence of payment to the provider of the service.

8. Must a beneficiary of the rental assistance program have rental arrears?

No. The statute does not prohibit the enrollment of households for only prospective benefits. Section 501(c)(2)(B)(iii) of Division N of the Act does provide that if an applicant has rental arrears, the grantee may not make commitments for prospective rent payments unless it has also provided assistance to reduce the rental arrears.

9. May a grantee provide assistance for arrears that have accrued before the date of enactment of the statute?

Yes, but not before March 13, 2020, the date of the emergency declaration pursuant to section 501(b) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5191(b).

10. Is there a limit on financial assistance for prospective rent?

Yes. Under the Act, financial assistance for prospective rent payments is limited to three months based on any application by or on behalf of the household, except that the household may receive assistance for prospective rent payments for additional months (i) subject to the availability of remaining funds

currently allocated to the grantee, and (ii) based on a subsequent application for additional assistance provided that the total months of assistance provided to the household do not exceed 12 months (plus an additional three months if necessary to ensure housing stability for the household, subject to the availability of funds).

11. Must a grantee pay for all of a household's rental or utility arrears?

No. The full payment of arrears is allowed up to the 12-month limit established by the statute. Grantees may provide assistance for an additional three months if the grantee determines that further assistance is necessary to ensure housing stability. A grantee may structure a program to provide less than full coverage of arrears.

12. What outreach must be made by a grantee to a landlord or utility provider before determining that the landlord or utility provider will not accept direct payment from the grantee?

Treasury expects that in general, rental and utility assistance can be provided most effectively and efficiently when the landlord or utility provider participates in the program. As required by the Act, grantees must make reasonable efforts to obtain the cooperation of landlords and utility providers to accept payments from the ERA program. Outreach will be considered complete if (i) a request for participation is sent in writing, by mail, to the landlord or utility provider, and the addressee does not respond to the request within 14 calendar days after mailing; (ii) the grantee has made at least three attempts by phone, text, or e-mail over a 10 calendar-day period to request the landlord or utility provider's participation; or (iii) a landlord confirms in writing that the landlord does not wish to participate. The final outreach attempt or notice to the landlord must be documented. The cost of contacting landlords would be an eligible administrative cost.

13. Is there a requirement that the eligible household have been in its current rental home when the public health emergency with respect to COVID-19 was declared?

No. Payments under ERA are provided to help households meet housing costs that they are unable to meet as a result of the COVID-19 pandemic. There is no requirement regarding the length of tenure in the current unit.

14. What data should a grantee collect regarding households to which it provides rental assistance in order to comply with Treasury's reporting and recordkeeping requirements?

Treasury will provide instructions at a later time as to what information grantees must report to Treasury and how this information must be reported. At a minimum, in order to ensure that Treasury is able to fulfill its quarterly reporting requirements under section 501(g) of Division N of the Act and its ongoing monitoring and oversight responsibilities, grantees should anticipate the need to collect from households and retain records on the following:

- Address of the rental unit;
- For landlords and utility providers, the name, address, and Social Security number, tax identification number or DUNS number;
- Amount and percentage of monthly rent covered by ERA assistance;
- Amount and percentage of separately stated utility and home energy costs covered by ERA assistance;

- Total amount of each type of assistance provided to each household (*i.e.*, rent, rental arrears, utilities and home energy costs, utilities and home energy costs arrears, and other expenses related to housing incurred due directly or indirectly to the COVID-19 outbreak);
- Amount of outstanding rental arrears for each household;
- Number of months of rental payments and number of months of utility or home energy cost payments for which ERA assistance is provided;
- Household income and number of individuals in the household; and
- Gender, race, and ethnicity of the primary applicant for assistance.

Grantees should also collect information as to the number of applications received in order to be able to report to Treasury the acceptance rate of applicants for assistance.

Treasury's Office of Inspector General may require the collection of additional information in order to fulfill its oversight and monitoring requirements.³ Treasury will provide additional information regarding reporting to Treasury at a future date. Grantees must comply with the requirement in section 501(g)(4) of Division N of the Act to establish data privacy and security requirements for information they collect.⁴

The assistance listing number assigned to the ERA program is 21.023.

15. The statute requires that ERA payments not be duplicative of any other federally funded rental assistance provided to an eligible household. Are tenants of federally subsidized housing, *e.g.*, Low Income Housing Credit, Public Housing, or Indian Housing Block Grant-assisted properties, eligible for ERA?

An eligible household that occupies a federally subsidized residential or mixed-use property may receive ERA assistance, provided that ERA funds are not applied to costs that have been or will be reimbursed under any other federal assistance.

If an eligible household receives a monthly federal subsidy (*e.g.*, a Housing Choice Voucher, Public Housing, or Project-Based Rental Assistance) and the tenant rent is adjusted according to changes in income, the renter household may receive ERA assistance for the tenant-owed portion of rent or utilities that is not subsidized.

Pursuant to section 501(k)(3)(B) of Subdivision N of the Act and 2 CFR 200.403, when providing ERA assistance, the grantee must review the household's income and sources of assistance to confirm that the ERA assistance does not duplicate any other assistance, including federal, state, or local assistance provided for the same costs. Grantees may rely on an attestation from the applicant regarding non-duplication with other government assistance in providing assistance to a household. Grantees with

³ Note that this FAQ is not intended to address all reporting requirements that will apply to the ERA program but rather to note for grantees information that they should anticipate needing to collect from households with respect to the provision of rental assistance.

⁴ Specifically, the Act requires grantees to establish data privacy and security requirements for certain information regarding applicants that (i) include appropriate measures to ensure that the privacy of the individuals and households is protected; (ii) provide that the information, including any personally identifiable information, is collected and used only for the purpose of submitting reports to Treasury; and (iii) provide confidentiality protections for data collected about any individuals who are survivors of intimate partner violence, sexual assault, or stalking.

overlapping or contiguous jurisdictions are particularly encouraged to coordinate and participate in joint administrative solutions to meet this requirement.

16. May a Tribe or Tribally Designated Housing Entity (TDHE) provide assistance to Tribal members living outside Tribal lands?

Yes. Tribal members living outside Tribal lands may receive ERA funds from their Tribe or TDHE, provided they are not already receiving assistance from another Tribe or TDHE, state, or local government.

17. May a Tribe or TDHE provide assistance to non-Tribal members living on Tribal lands?

Yes. A Tribe or TDHE may provide ERA funds to non-Tribal members living on Tribal lands, provided these individuals are not already receiving assistance from another Tribe or TDHE, state, or local government.

18. May a grantee provide assistance to households for which the grantee is the landlord?

Yes. A grantee may provide assistance to households for which the grantee is the landlord provided that the grantee complies with the all provisions of the Act, the award terms, and this guidance and that no preferences beyond those outlined in the Act are given to households that reside in the grantee's own properties.

19. May a grantee provide assistance to a renter household with respect to utility or energy costs without also covering rent?

Yes. A grantee is not required to provide assistance with respect to rent in order to provide assistance with respect to utility or energy costs. The limitations in section 501(c)(2)(B) of Division N of the Act limiting assistance for prospective rent payments do not apply to the provision of utilities or home energy costs.

20. May a grantee provide ERA assistance to homeowners to cover their mortgage, utility, or energy costs?

No. Under the Act, ERA assistance may be provided only to eligible households, which is defined to include only households that are obligated to pay rent on a residential unit.

21. May grantees administer ERA programs by using contractors, subrecipients, or intergovernmental cooperation agreements?

Yes. Grantees may use ERA payments to make subawards to other entities, including non-profit organizations and local governments, to administer ERA programs on behalf of the grantees. The subrecipient monitoring and management requirements set forth in 2 CFR 200.331-200.333 will apply to such entities. Grantees may also enter into contracts using ERA payments for goods or services to implement ERA programs. Grantees must comply with the procurement standards set forth in 2 CFR 200.317-200.327 in entering into such contracts. Grantees are encouraged to achieve administrative efficiency and fiduciary responsibility by collaborating with other grantees in joint administrative solutions to deploying ERA resources.

22. The Act requires a prioritization of assistance for households with incomes less than 50% of area median income or households with one or more individuals that have not been employed for the 90-day period preceding the date of application. How should grantees prioritize assistance?

Grantees should establish a preference system for assistance that prioritizes assistance to households with incomes less than 50% area median income and to households with one or more members that have been unemployed for at least 90 days. Grantees should document the preference system they plan to use and should inform all applicants about available preferences.

23. The Act allows for up to 10 percent of the funds received by a grantee to be used for housing stability services related to the COVID-19 outbreak intended to keep households stably housed. What are some examples of these services?

Housing stability services related to the COVID-19 outbreak include those that enable eligible households to maintain or obtain housing. Such services may include housing counseling, fair housing counseling, case management related to housing stability, housing related services for survivors of domestic abuse or human trafficking, attorney's fees related to eviction proceedings, and specialized services for individuals with disabilities or seniors that supports their ability to access or maintain housing. Grantees using ERA funds for housing stability services must maintain records regarding such services and the amount of funds provided to them.

24. Are grantees required to remit interest earned on ERA payments made by Treasury?

No. ERA payments made by Treasury to states, territories, and the District of Columbia are not subject to the requirement of the Cash Management Improvement Act and Treasury's implementing regulations at 31 CFR part 205 to remit interest to Treasury. ERA payments made by Treasury to local governments, Tribes, and TDHEs are not subject to the requirement of 2 CFR 200.305(b)(8)-(9) to maintain balances in an interest-bearing account and remit payments to Treasury.

25. When may Treasury recoup ERA funds from a grantee?

Treasury may recoup ERA funds from a grantee if the grantee does not comply with the applicable limitations on the use of those funds.