Testimony On
"Protecting Renters During the Pandemic:
Reviewing Reforms to Expedite Emergency Rental Assistance"

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Introduction

Chairwoman Waters, Ranking Member McHenry, and members of the Committee, thank you for this opportunity to testify on behalf of Oregon Housing and Community Services (OHCS) and the National Council of State Housing Agencies (NCSHA) on protecting renters through the Emergency Rental Assistance (ERA) program.

My name is Margaret Salazar, and I am the Executive Director of OHCS, Oregon's housing finance agency. We envision a future where all Oregonians can live free from poverty and pursue prosperity. OHCS administers federal and state programs that provide housing stabilization across the housing continuum — from preventing and ending homelessness, to assisting with utility costs, to financing affordable housing, to providing homeownership resources. I also have the privilege of serving as the Vice Chair of NCSHA, which is a nonprofit, nonpartisan professional trade organization created by the nation's state Housing Finance Agencies (HFAs) more than 40 years ago.[1]

OHCS, like 27 other state and territorial HFAs, serves as a statewide administrator of the Emergency Rental Assistance Program. Overall, state HFAs are responsible for roughly 30 percent of the total amount of funding Congress has appropriated for the program. NCSHA has included the other statewide ERA agencies in all its technical assistance, best practice exchange, and policy activities related to the program.

Background: ERA Is Working Better Every Day and Can Improve with Federal Reforms

This hearing and Chairwoman Waters' proposed "Expediting Assistance to Renters and Landlords Act of 2021" come at an inflection point for ERA. Through tremendous effort every state and hundreds of local jurisdictions and tribal governments are providing ERA funds to vulnerable renters and landlords in need. The recent end of the federal eviction moratorium, the lack of similar moratoria in most states, and the expiration of expanded unemployment benefits just this week means millions of low-income renters face imminent and grave financial and health risks that are neither their fault nor in their power to fully overcome. While the ERA program cannot completely avert this national emergency on its own, it can and must be a big part of the nation's response to continuing economic fallout from the pandemic.

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[1] NCSHA is a nonprofit, nonpartisan organization. None of NCSHA's activities related to federal legislation or regulation are funded by organizations that are prohibited by law from engaging in lobbying or related activities.

The positive news is that ERA has already provided a lifeline to more than a million vulnerable renters and made thousands of landlords whole. Hundreds of state and local ERA programs, hardly any of which existed as recently as six months ago, have launched and evolved. Many have made significant improvements in response to regularly revised rules from the Treasury Department and recommendations from the National Low Income Housing Coalition, the National Multifamily Housing Council, and other program stakeholders. That process continues, and state programs welcome it.

State ERA programs overall have consistently accelerated their distribution of ERA funds since the spring. Every month, state grantees have increased their pace of progress. With program infrastructure fully in place, states have delivered more than $1 billion in each of the last three months. NCSHA estimates state ERA programs provided more than $1.6 billion in emergency rental assistance in August, the highest monthly amount to date.

For example, the Oregon Emergency Rental Assistance Program (OERAP) launched in May 2021 after OHCS launched $200 million in state rental assistance in early 2021. In just over three months, OHCS and our local program administrators have allocated nearly $35 million in ERA dollars to more than 5,500 households. This represents double the amount of rental assistance typically allocated by OHCS in a typical year. In the last month, our agency has implemented bold surge efforts, hiring more than 60 temporary and contract staff and bringing on an outside vendor to boost capacity and speed application processing. OHCS is seeing the results of surge efforts at the state and local level. Over the last month, local OERAP program administrators have processed approximately 3,893 applications, nearly 3.5 times the total applications processed in July. This work is in addition to administering $200 million in state funded rental assistance to tenants and landlords in the six-month period of January to June 2021.

To be sure, there is still room for improvement in some state ERA programs. NCSHA is supporting the efforts of state administrators to continue to make their programs more widely available and easily accessible, especially for the most vulnerable, without sacrificing accountability. NCSHA is also assisting state administrators in more widely and effectively marketing their assistance programs, again with a focus on renters and landlords who are hardest to reach: those of color, in rural communities, and in the smallest rental properties.

But beyond what state and local ERA administrators have the power to do, there are limits to what ERA can achieve as currently authorized and regulated. We agree with Chairwoman Waters that "legislation is needed to further reform this program to greatly strengthen its effectiveness."[2] We also believe the Treasury Department has the ability with its current authority to accelerate the delivery of assistance — and have provided the administration with detailed recommendations in a number of key areas.[3]

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[2] U.S. House Committee on Financial Services, "Waters Details Plans to Reform the Emergency Rental Assistance Program and Expedite Aid to Renters and Landlords," August 27, 2021.

[3] NCSHA, "Steps the Administration Can Take to Accelerate Utilization of Federal Emergency Rental Assistance Funds," July 8, 2021.

In terms of legislative reforms, we strongly support Chairwoman Waters' proposal. The main provisions would make ERA more efficient and effective in the hands of state and local administrators. We also encourage the committee to make several additional statutory improvements that we believe would further strengthen the program.

All these proposed reforms reflect the fundamental balances that agencies at all levels of government must strike — the practical realities they must accommodate — in achieving Congress' goals for emergency rental assistance and the dire need for it on the ground. They are:

- The balance between renter protection and landlord participation;
- The balance between equity, efficiency, and accountability; and
- The balance between current and coming demand.

Balancing Renter Protection and Landlord Participation

The administration has recently framed ERA's ultimate metric as serving to help "prevent" and "create alternatives to evictions." In doing so, the administration recognizes that ERA itself is only one part of what needs to be a comprehensive set of interventions, as it has called for "the acceleration of ERA funds to renters and landlords in need *in addition* to an all-hands-on-deck effort by local governments, courts, community organizations, and the legal community to create alternatives to evictions" (emphasis supplied). The administration's approach aligns with research by the American Bar Association and Harvard's Negotiation and Mediation Clinical Program, which finds:

> In fact, most stakeholders across these groups suggested that rental assistance is a necessary but insufficient condition of any eviction prevention program…[S]takeholders involved in eviction diversion programs also universally agreed that rental assistance acts best as a complement to other interventions and services which can holistically address the root causes of a tenant's housing instability.[4]

It is state HFAs' experience, having worked with thousands of landlords, in every state, that the overwhelming majority of landlords want to avoid evictions at all costs. NCSHA on behalf of state ERA administrators has repeatedly and publicly acknowledged the extraordinary and often unheralded efforts of landlords large and small to keep people safely housed during the pandemic and acknowledged their legitimate frustrations with aspects of some state programs.[5]

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[4] Deanna Pantín Parrish, "Designing for Housing Stability: Best Practices for Court-Based and Court-Adjacent Eviction Prevention and/or Diversion Programs," 2021.

[5] National Council of State Housing Agencies, "An Open Letter to America's Landlords," July 15, 2021.

This said, it seems clear that eviction-related renter protections discourage some landlords from participating in ERA programs or accepting their renters' payments from these programs. In May, a survey of small landlords by Avail found 22 percent of landlords eligible for ERA assistance had not applied because of "having to waive evictions during the period of assistance." Last month, during a video conference NCSHA convened of hundreds of city, county, state, and tribal ERA grantees, 21 percent reported that in their ERA implementation experience to date "limiting assistance during evictions periods discourages landlords from participating." *The Wall Street Journal* has reported:

> Many landlords say they have no wish to keep renting to tenants who have repeatedly shown them that they cannot pay. That sentiment has sometimes been a barrier in administering pandemic rental aid. Program rules often require landlords who accept rent aid, even in partial sums, to forgo evictions for a set period. Many property owners don't want to keep tenants with a history of not paying.[6]
>
> Some rental assistance programs pay directly to tenants, cutting out landlords that refuse to acknowledge the program. But some tenants are finding that receiving the money directly doesn't always solve the problem, because some landlords are still unwilling to take it, according to housing attorneys and tenants.[7]

OHCS's experience mirrors these trends. OHCS initially structured OERAP with requirements for participating landlords not to evict tenants for 90 days as a precondition of accepting funds. However, we heard from landlord organizations that these tenant protections were manifesting as a barrier to participation. In an effort to do everything in our power to keep people housed, after conversations with partners we made the decision to be adaptive and flexible and removed that language in order to expedite funds out the door. We are continuing to work with landlords and are imploring them to remain patient in receiving the funds that are flowing out the door each week. Eviction should be a last resort.

We support the provisions in Chairwoman Waters' proposal to expand ERA's capacity to support comprehensive eviction protections while also encouraging more landlord participation by:

- Allowing landlords to apply for ERA on behalf of tenants, even if the landlord is unable to gain the renter's consent, either because the tenant is not responsive to the landlord or because the tenant has vacated the property;
- Adjusting eligibility requirements for households receiving "housing stability services" under the program; and
- Providing additional funding for outreach to tenants and landlords and so that Treasury may provide technical assistance to grantees.

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[6] Ackerman, Andrew and Will Parker, "Eviction Moratorium's Renewal Squeezes Small Landlords," *The Wall Street Journal*, August 9, 2021.

[7] Will Parker, "Why Some Landlords Don't Want Any of the $50 Billion in Rent Assistance," *The Wall Street Journal*, March 19, 2021.

We also recommend:

- Further streamlining the requirements related to housing stability services so grantees may use ERA resources to stand up service programs, such as eviction diversion programs, without having to first ensure that all households receiving services through these programs are low income.

Balancing Equity, Efficiency, and Accountability

State, county, city, and Indian governmental administrators have been accused of unnecessarily prioritizing documentation requirements aimed at avoiding fraud over the urgent need to make rental assistance as accessible as possible for people who are unable to show their eligibility beyond their own attestation.

OHCS has been nimble in responding to the changing landscape of rental assistance and the changing expectations to meet necessary tenant protection policies. We remain committed to keeping Oregonians stably housed while being careful stewards of taxpayer resources. OHCS has taken bold steps to increase access to ERA funds while also maintaining fiscal responsibility. We have seen unprecedented demand for these resources, with more than 31,000 Oregon households applying for assistance.

To meet this need, our agency brought on support of an outside vendor to process applications and make payments, adding capacity to local program administrators and creating more uniformity in program administration. OHCS created self-attestation forms to ease the use of self-attestation while ensuring clarity statewide. We created user-friendly websites that provide tools such as the option for digital image uploads, and disseminated informational videos and website content translated into multiple languages. OHCS also partnered with community-based organizations to increase outreach and support to communities disproportionately impacted by housing instability. We are currently exploring additional opportunities to improve access to ERA-2 resources.

The fact of the matter is, even with the new flexibilities in the Treasury rules as of two weeks ago — flexibilities state and local ERA administrators had requested since May — the ERA statute and Treasury requirements still impose specific and significant accountability responsibilities on state and local ERA administrators.

This is what the law says:

The Inspector General of the Department of the Treasury shall conduct monitoring and oversight of the receipt, disbursement, and use of funds made available under this section…If the Inspector General of the Department of the Treasury determines that a State, Tribal government, or unit of local government has failed to comply with subsection (c), the amount equal to the amount of funds used in violation of such *subsection shall be booked as a debt of such entity owed to the Federal Government. Amounts recovered under this subsection shall be deposited into the general fund of the Treasury.* [8]

Here is what Treasury's rules for the program say:

> 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.[9]

We appreciate verbal assurances from US Treasury and other senior Administration officials that ERA administrators need not worry about potentially punitive actions by auditors if they fail to properly use and document uses of taxpayer funds. Our experience tells us that these verbal assurances will not necessarily guide actual oversight, either under this administration, or another one, or through state or local audits.

State and local officials on the line for meeting this unprecedented emergency are acting in good faith when they work to balance urgency and accountability. We take exception to suggestions that our efforts to meet clear federal requirements and to follow longstanding commonsense procedures are inherently inequitable. Those assertions do a grave disservice to the public servants Congress charged with ERA administration on the ground.

We support the provisions in Chairwoman Waters' proposal that would enable ERA administrators to further reduce remaining administrative barriers while maintaining program integrity by:

- Providing safe harbor protections to grantees so they would not be subject to liability to repay assistance funds provided in good faith, relying on the attestation of the tenant, if they later discover the tenant did not meet the statute's eligibility requirements.
- Streamlining eligibility criteria for ERA 1 by conforming the requirements related to having experienced a hardship to what is allowed for funds made available through the second appropriation ("ERA 2"). (Proposals that would go the other way, to make ERA 2 more like ERA 1, would be highly counterproductive.)
- Increasing ERA 1 funds for administration to align with administrative funding under ERA 2 so that grantees will have the resources they need to increase the speed at which claims are processed while also preventing the funding of fraudulent applications.

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[8] Consolidated Appropriations Act of 2021.

[9] U.S. Department of the Treasury, "Emergency Rental Assistance Frequently Asked Questions Revised August 25, 2021."

Balancing Current and Coming Demand

While we fully understand the focus on state and local ERA spend-out as a share of total funds appropriated for the program, we believe it is incomplete at best and highly misleading at worst as an indicator of ERA grantee performance, for several reasons.

First, this committee and ultimately the Congress authorized the initial $25 billion appropriation of ERA funding until September 30 of next year and the second appropriation of $21.55 billion until September 30 of 2025 — and set those timetables with the expectation that the national eviction moratorium would expire long before the funding expiration dates. Second, the statutory funding formula resulted in some states (and presumably some localities) receiving amounts that probably exceed both demand and need for ERA, at least as currently designed — which Congress always anticipated and included in the law a "reallocation" process specifically to address.[10]

Third, not only has the pace of state program spending consistently increased since programs opened over the course of last spring, state programs on average have funded more than one-third of the applications they have received — with many funding 40 or 50 percent or more — which we would argue is a more valid measure of program efficiency than spend-out for a program that Congress authorized to exist for years.

Additional factors bear directly on the pace of ERA spending so far in some states. Several state programs, such as those in Alabama, Georgia, Nebraska, and South Carolina, are or have been until very recently intentionally not operating in some or all the large cities and counties that received their own allocations of ERA funding, so as to avoid creating confusion among landlords and renters in those areas. The result is that such state programs are available only to smaller, much-harder-to-reach pools of renters, often in remote rural communities.

It is also critical to view the ERA expenditures in the context of state and local rental assistance programs and eviction prevention efforts. Some HFAs are operating ERA in addition to state funded rental assistance programs. On the same day in December 2020 Congress created the ERA program, the Oregon Legislature created two new state rental assistance programs. As a result, OHCS received $200 million in state general funds, which dwarfed any prior rental assistance received by the agency simultaneously to receiving an allocation of $204 million in ERA funds.

Our state programs – the Landlord Compensation fund and the STARR program - were complex and highly visible and had spend down deadlines of June 30, 2021. Legislators expected speedy launch of these programs which by necessity drew focus from the launch of ERA. Our ERA program, OERAP, launched in May 2021.

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[10] NCSHA and the other national organizations representing state, county, city, and tribal governmental entities responsible for delivering ERA around the country have made recommendations to the Treasury Department for the reallocation process, linked here.

Since the beginning of the calendar year, OHCS has obligated more than $204 million in rental assistance to Oregon households. This is equivalent to our entire ERA 1 allocation, but it represents a combination of state and federal funds. Looking at OHCS' spend down of ERA in a vacuum misses the larger context: OHCS has allocated more rental assistance this year than our agency typically allocates in a decade.

The launch of ERA has truly been a start-up effort. Though many HFAs, including OHCS, administered rental assistance in 2020 using Coronavirus Relief Funds (CRF), it is important to note that the ERA program is distinct from CRF, with totally different and additional federal rules. For many of our agencies, the ERA program could not be viewed as a continuation of the programs run with CRF. This was certainly true for the state of Oregon; our local program administrators did amazing work to serve tenants with CRF last year, but the programs offered in 2020 did not align with the ERA program guidance.

Additionally, state HFAs and other administrators are navigating a changing landscape of eviction policies which have created important protections for tenants, and added complexity and competing priorities to the provision of ERA on the ground. As Oregon's statewide eviction moratorium neared its June 30, 2021 expiration date, the Oregon Legislature enacted Senate Bill 278. This law provides a 60-day "safe harbor" period. Tenants that apply for rental assistance can provide written documentation to their landlords of this application and may not be evicted for non-payment of rent for a period of 60 days. OHCS worked swiftly to build these protections into our administration of the ERA program, which was not part of the initial program design.

To be clear, state ERA administrators recognize the dire housing instability millions of renters face and are committed to moving more assistance more quickly in the weeks and months ahead. If anyone takes anything from my testimony today, it should be that I and my entire team in Oregon, and my colleagues at state HFAs and other ERA grantees around the country, are totally committed to helping as many eligible renters as quickly as possible with ERA and understand the urgency to do so.

In fact, we believe ERA will be needed more than ever in the months ahead. Even before the pandemic, millions of renters experienced significant housing instability and faced eviction risk for failing to pay small amounts of rent.[11] The unevenness of the economic recovery, and the specific weaknesses in parts of it that disproportionately employ low-income renters, suggests that ERA will become more needed in more states and cities in the months ahead as both a financial lifeline to families and an economic stabilizer for communities. These needs may well persist for the full period for which ERA 1 and 2 are authorized — any effort to shorten those statutory timetables would be deeply misguided.

Earlier this week, 7.5 million Americans lost unemployment benefits, and millions more lost up to $300 a week in relief. As a result, according to the Century Foundation, "States need to prioritize messaging about rental assistance to unemployment insurance exhaustees, and whenever possible, work with state and

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[11] Emily Badger, "Many Renters Who Risk Eviction Owe Less Than $600," *New York Times*, December 12, 2019.

regional housing agencies to share information about rental assistance to the unemployment claimant population."[12]

There are also indications that utility arrearages, an eligible household expenditure ERA can and does cover, remain substantial and may be rising. Estimates of unpaid utilities range from $10 billion to $30 billion.[13] In a survey last month, 24 percent of the low-income respondents indicated they had made a partial payment or missed a payment to a utility in the previous 12 months, and "almost half of the at-risk customers surveyed are clearly feeling high levels of anxiety over the prospect of paying their utility bills and possibly needing assistance."[14]

While state and local utility disconnection moratoria are more widespread than rental eviction moratoria, an estimated 60 percent of Americans live in areas without a moratorium, according to the National Energy Directors Association, whose executive director said recently, "The sheer number of people affected by COVID-19 threatens to overload the existing private and public programs that have alleviated financial struggle over utility bills."[15]

We support the provision in Chairwoman Waters' proposal that would address the continuing and coming demand for ERA by:

- Extending the time period during which an individual household may receive ERA funds to up to 24 months.

We also recommend:

- Explicitly allowing grantees to use ERA funds for hotel and motel master lease agreements so grantees may assist evicted households with temporary housing while the households are seeking more permanent housing. While Treasury guidance allows the use of ERA for hotel and motel stays for individual households, Treasury has indicated that it does not believe it has the ability under the statute to extend this to master lease agreements, which have been shown to be more economically efficient and simpler to administer as a homelessness prevention strategy than covering individual hotel rooms on a one-off basis.

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[12] Andrew Stettner, "7.5 Million Workers Face Devastating Unemployment Benefits Cliff This Labor Day," The Century Foundation, August 5, 2021.

[13] Rachel M. Cohen, "There Could Be an Energy Bill Debt Tsunami, Too," Bloomberg CityLab, February 4, 2021.

[14] DEFG, "Millions of Americans Could Avoid Eviction but Lose Utility Service Going Into Winter," PR Newswire, August 26, 2021.

[15] Taylor Moore, "Utility Bill Deferments Are Ending. Here's a State-by-State List of Programs That Can Help," Next Advisor, August 30, 2021.

Conclusion

The administration has accurately said the launch of ERA required building "a new national infrastructure for rental assistance and eviction prevention that did not previously exist."[16] Now up and running everywhere, the program is delivering better results by the day. Additional improvements to the ERA statute as proposed by Chairman Waters and recommended by NCSHA, along with ever deeper commitment by state and local ERA administrators, will get more help to more renters and landlords in the short and long terms.

[16] US Department of the Treasury, "Treasury Data: Amount of June Emergency Rental Assistance Resources to Households More Than All Previous Months Combined," July 21, 2021.