

United States House of Representatives
Committee on Financial Services
2129 Rayburn House Office Building
Washington, D.C. 20515

September 7, 2021

Memorandum

To: Members, Committee on Financial Services
From: FSC Majority Staff
Subject: September 10, 2021, Full Subcommittee Hearing entitled, “Protecting Renters During the Pandemic: Reviewing Reforms to Expedite Emergency Rental Assistance”

The full Committee will hold a hearing entitled, “Protecting Renters During the Pandemic: Reviewing Reforms to Expedite Emergency Rental Assistance” on Friday, September 10, 2021, at 12 p.m. on Cisco Webex. There will be one panel with the following witnesses:

- **Kadeem Morris**, Supervising Attorney, Community Legal Services Inc.
- **Margaret Salazar**, Executive Director of Oregon Housing and Community Services Department
- **David Schwartz**, CEO, Chairman & Co-Founder of Waterton, Chair of National Multifamily Housing Council
- **Diane Yentel**, President and CEO, National Low Income Housing Coalition
- **Gilbert Winn**, Chief Executive Officer, Winn Companies

Background

The pandemic has put an increasing number of people at risk for eviction. Millions of renters have lost their jobs, and many have fallen behind on rent after exhausting alternative sources of income.¹ Though cost burdens affect households of all races and ethnicities, minority renters are more likely to be housing cost-burdened than White renters.² In 2019, prior to the pandemic, 37.1 million households, nearly one-third of all the households in the U.S., spent over 30% of their incomes on housing, and nearly half of them (17.6 million) paid over 50% of their incomes on housing.³ Over 60% of these severely cost-burdened, low-income renters were people of color.⁴ The United States Census Bureau's Household Pulse Survey analyzed data from August 4 to August 16, 2021, and reported that 3,511,086 million renters are likely to be evicted in the next two months.⁵

To address the escalating housing crisis and to prevent evictions as well as public health concerns associated with evictions during the pandemic, on December 20, 2020, Congress passed H.R. 133, the FY2021 Omnibus and COVID Relief and Response, which included \$25 billion in emergency rental assistance and an extension of the eviction moratorium until January 31, 2021.⁶ On March 11, 2021, Congress passed H.R. 1319, “The American Rescue Plan Act,” which provided an additional \$21.6 billion

¹ Turner Center for Housing Innovation UC Berkeley, [The Uneven Impact of the Pandemic on Tenants and Owners of Small Rental Properties](#) (July, 2021).

² Joint Center for Housing Studies of Harvard University, [America's Rental Housing 2020](#) (2020).

³ Harvard Joint Center on Housing Studies, [State of the Nation's Housing 2020](#), (2020).

⁴ Center on Budget and Policy Priorities, [More Housing Vouchers: Most Important Step to Help More People Afford Stable Homes](#), (April 14, 2021).

⁵ United States Census Bureau, [Likelihood to Having to Leave this Housing in Next Two Months Due to Eviction, by Select Characteristics](#) (Aug. 25, 2021).

⁶ Sec. 502 of Subtitle A of Title V (Banking) of P.L. 116-260.

in emergency rental aid for a total of \$46.6 billion.⁷ The eviction moratorium was extended multiple times due to the changing public health landscape and expired July 31, 2021; however, on August 3, 2021, as a result of the surge in cases brought by the highly transmissible Delta variant, the CDC issued a new order halting evictions for persons in counties experiencing substantial or high rates of transmissions⁸. This order was set to expire October 3, 2021, but was overturned by the Supreme Court on August 26, 2021.⁹

Beginning in March of 2021, grantees began processing payments to landlords and renters. However, many renters and landlords who have applied to receive assistance through local and state programs are still waiting due to delays by grantees in reviewing and processing applications, which have included documentation requirements above and beyond federal requirements.¹⁰ Other renters lack internet access or the technology needed to apply online and require additional supports to access assistance. The Urban Institute also found that awareness of the emergency assistance programs is not widespread as “[m]ore than half of renters and 40 percent of landlords are still unaware of federal assistance.”¹¹

According to the latest data from the Department of Treasury (“Treasury”), as of July 2021, \$5.1 billion or 11% of the \$46.6 billion in emergency rental assistance funds had been spent by state and local governments to assist approximately one million renters.¹² The pace of assistance delivered to tenants has increased, with 341,000 tenants assisted in July, compared to 293,000 in June and 157,000 in May. Similarly, through the first three months data was reported (March-May), grantees provided \$1.5 billion in relief but distributed \$3.6 billion in June and July.¹³ On January 19, 2021, one day before the end of the Trump Administration, Treasury issued emergency rental assistance program guidance in the form of “Frequently Asked Questions.”¹⁴ In addition to setting the requirements for renter applications, the guidance also prohibited using rental assistance to provide legal services to tenants facing eviction.¹⁵ In February 2021, under the Biden Administration, Treasury issued new guidance, which it has subsequently updated multiple times (in February, March, May, June, and August) to improve the ability of state and local officials to expedite the distribution of relief to families.¹⁶

Emergency Rental Assistance Programs

The provision of \$25 billion for emergency rental assistance through H.R.133 (Emergency Rental Assistance 1, or ERA 1) and \$21.6 billion through H.R. 1319 (Emergency Rental Assistance 2, or ERA 2) are now being implemented by Treasury as two programs due to differences in the statutory provisions governing those two tranches of federal funds. Generally, both ERA 1 and ERA 2 provide funding for state, localities, and territories to help families and individuals pay their rent and utility bills and remain stably housed.

⁷ American Rescue Plan Act of 2021, H.R. 1319, 117th Congress.

⁸ Center for Disease Control and Prevention, [Temporary Halt in Residential Evictions in Communities with Substantial or High Levels of Community](#).

⁹ [U.S. Supreme Court, Alabama Association of Realtors, et al. v. Department of Health and Human Services et al.](#) (August 26, 2021)

¹⁰ U.S. Department of the Treasury *Press Release: Treasury Announces Seven Additional Policies to Encourage State and Local Governments to Expedite Emergency Rental Assistance* (Aug. 25, 2021).

¹¹ Urban Institute, [With Just a Month Left, of the Eviction Moratorium, Many Mom-and-Pop Landlords and Tenants Are Still Unaware of Federal Rental Assistance](#) (June 30, 2021).

¹² See U.S. Department of the Treasury [Emergency Rental Assistance Program \(ERA\) Reporting Consolidated Appropriations Act, 2021](#).

¹³ See U.S. Department of the Treasury *Press Release: Treasury Announces Seven Additional Policies to Encourage State and Local Governments to Expedite Emergency Rental Assistance* (Aug. 25, 2021).

¹⁴ U.S. Department of the Treasury, [Emergency Rental Assistance Frequently Asked Questions](#) (Jan. 19, 2021).

¹⁵ *Ibid.*

¹⁶ U.S. Department of the Treasury, [Emergency Rental Assistance Frequently Asked Questions](#) (Jun. 24, 2021).

Emergency Rental Assistance 1

ERA 1 provides \$25 billion in funds to states and localities using the same formula used to distribute Coronavirus Relief Funds.^{17, 18} Renters apply for assistance with entities that state and local grantees select to administer the program. Renters can qualify for up to 12 months of rental and utility arrears plus an additional three months if necessary to ensure housing stability for their household. Once a renter qualifies for assistance, the administering entity sends the payment directly to the landlord. If a landlord declines to receive the assistance from the administering entity, a grantee may provide the assistance to renters directly to make rental payments to their landlord themselves. Property owners can also assist renters in applying for rental assistance under the program or apply on behalf of the tenant, but they are required to obtain the consent of the renter before applying.

Households must be deemed eligible to receive rental assistance from ERA 1. Eligible households are defined as renter households who: (1) have a household income not more than 80 percent of the area median income (AMI); (2) have one or more household members who can demonstrate a risk of experiencing homelessness or housing instability; and (3) have one or more household members who qualify for unemployment benefits or experienced financial hardship due, directly or indirectly, to the pandemic.¹⁹ Assistance must be prioritized for renter households with incomes that do not exceed 50 percent of AMI, as well as renter households who are currently unemployed and have been unemployed for 90 days.²⁰ In determining household income, the administering entity must consider the household's income for 2020 or the household's monthly income at the time of application for assistance, which must be re-certified every three months if the household is receiving ongoing rental assistance.²¹ Grantees have until September 30, 2022, to apply for ERA 1 funds.²²

Emergency Rental Assistance 2

The Department of Treasury distributed \$21.6 billion in funds to states and localities under the same formula used to distribute ERA 1 funds.^{23, 24} Eligible renters can receive up to 18 months of financial assistance, including any prospective rent and utility payments (including pad rents in manufactured housing communities) and unpaid rent or utility bills that have accumulated.²⁵ Renters can also receive assistance for other housing-related expenses necessary to promote housing stability, such as but not limited to: security deposits; relocation and rental fees for displaced households; late fees related to a former or current rental unit; and internet service provided to the rental unit.²⁶ Additionally, funds can be

¹⁷ Congressional Research Service, [Emergency Rental Assistance through the Coronavirus Relief Fund](#) (Jul. 9, 2021).

¹⁸ Small states received a minimum of \$200 million in emergency rental assistance while Localities with populations over 200,000 people had the option to request to receive their allocation of emergency rental assistance directly. Under the program, the District of Columbia is treated as a state. The U.S. territories shared a set-aside of \$400 million (with a small territory set-aside), while \$800 million was set aside for Native Americans, Alaska Natives, and Native Hawaiians.

¹⁹ Consolidated Appropriations Act of 2021, H.R. 133, 116th Congress (2019-2020).

²⁰ *Id.*

²¹ *Id.*

²² Note that the American Rescue Plan of 2021 amended the expiration of ERA1 funds by extending the deadline from December 31, 2021 to September 30, 2022.

²³ American Rescue Plan of 2021, H.R. 1319, 117th Congress.

²⁴ Small states received a minimum of \$152 million in emergency rental assistance. Localities with populations over 200,000 people may request to receive their allocation of emergency rental assistance directly.²⁴ Under the program, the District of Columbia is treated as a state. The U.S. territories share a set-aside of \$305 million (with a small territory set-aside).²⁴ Treasury also distributed a \$2.5 billion to "high-need" grantees based on the number of very low-income renters paying more than 50 percent of income on rent or living in substandard or overcrowded conditions, rental market costs, and change in employment since February 2020. While tribal governments did not receive allocations under ERA2, Congress provided other housing relief to tribal governments through the Native American Housing Block Grant and the Indian Community Development Block Grant.

²⁵ American Rescue Plan of 2021, H.R. 1319, 117th Congress (2021).

²⁶ *Id.*

used to provide housing stability services, such as but not limited to: case management; tenant-landlord mediation; legal services related to eviction and housing stability; housing counseling; fair housing counseling; and specialized services for people with disabilities; people with chronic health conditions; seniors; or survivors of domestic violence or human trafficking.²⁷

Although ERA 1 and ERA 2 have similar requirements for determining the eligibility of renters, a key difference in ERA 2 is that renters may demonstrate that they experienced a financial hardship “during” the pandemic or “due, directly or indirectly” to the pandemic.²⁸ In addition, grantees can disburse funds on behalf of eligible renters under ERA 2 until September 30, 2025.

Program Implementation and Concerns from Stakeholders

The National Low Income Housing Coalition surveyed grantees and found that almost half of program administrators said their program faced limitations related to the completeness of applications and staff capacity.²⁹ Incomplete applications by renters and landlords added to the capacity challenges as following up with applicants to collect missing information adds additional time and administrative strain.³⁰ On May 7, 2021, Treasury provided subsequent guidance to encourage state and local governments to expedite emergency rental assistance, including measures to reduce processing delays by providing explicit permission for grantees to rely on applicant’s self-attestation without further documentation and to rely on proxies to verify an applicant’s eligibility.³¹

Housing advocates, landlords, and grantees have raised concerns about the implementation of the ERA programs. The National Multifamily Housing Council reports that landlords willing to participate in the program are concerned about delays in application processing, payment, and delivery.³² They contend that while many jurisdictions are increasing ERA disbursement, others are fraught with grantees’ self-imposed fraud measures, and some impose mandates that deter housing provider participation and misapplication of statutory requirements, all of which contribute to the lack of engagement.³³ The National Council of State Housing Agencies (NCSHA) reports delays in expediting the delivery of rental assistance are in part the result of grantees seeking to reduce the likelihood of an ex-post audit by the Treasury Inspector General (IG), which might find minor mistakes in an application and require the grantee to reimburse the Treasury.³⁴ The NCSHA also noted that when a landlord initiates ERA application assistance, the tenant must consent to the application and attest to their eligibility, which has created problems when a tenant has accumulated arrears but no longer resides in the property and cannot be located.³⁵

Legislation

1. The “Expediting Assistance to Renters and Landlords Act of 2021” (Waters). This bill would make several changes to the ERA 1 and ERA 2, by:

²⁷ *Id.*

²⁸ U.S. Department of the Treasury, [Emergency Rental Assistance Frequently Asked Questions](#) (Aug. 25, 2021)

²⁹ National Low Income Housing Coalition, [COVID-19 Emergency Rental Assistance: Analysis of a National Survey of Programs](#) (Jan. 2021).

³⁰ *Id.*

³¹ See U.S. Department of the Treasury [Press Release: Treasury Announces Seven Additional Policies to Encourage State and Local Governments to Expedite Emergency Rental Assistance](#) (Aug. 25, 2021).

³² National Multifamily Housing Council, letter to Secretary Yellen, Secretary Fudge, and Ambassador Rice (Aug. 18, 2021).

³³ *Id.*

³⁴ National Council of State Housing Agencies, letter to The Honorable Maxine Waters (Sept. 2, 2021).

³⁵ *Id.*

- Allowing landlords to directly apply for back rent after providing notice to their tenants that they intend to apply, and conditioning the federal assistance the landlord receives on specific requirements, such as the tenant being able to remain stably housed for at least 120 days after receiving the assistance, to which the landlord can apply for rent payments to cover the 120 days;
- Allowing landlords of vacant properties to apply for rental arrears, provided that the reason the property is vacant is not as a result of the landlord evicting the tenant;
- Requiring grantees to accept the self-attestation of a tenant and providing a safe harbor for grantees relying on the attestation, easing the ability of renters to demonstrate hardship as a result of COVID, providing assistance directly to tenants in certain circumstances, prohibiting written leases being required in applications, and extending assistance from 15 months in ERA 1 and 18 months in ERA 2 to a total of 24 months across both programs;
- Directing Treasury and grantees to conduct additional outreach to prospective tenants and landlords, including by sending mailings to all taxpayers stating that they may be eligible to apply, and taking out radio, tv, and internet ads to promote the program;
- Directing Treasury to provide technical assistance and IT solutions to grantees to support applications being processed more quickly, and requiring struggling grantees to develop a performance improvement plan that describes how the grantee will adopt best practices to improve the distribution of assistance;
- Providing Treasury with an additional \$50 million to conduct such outreach and provide TA and IT solutions;
- Authorizing grantees to spend up to 15% of their allotted funds under ERA 1 on admin expenses;
- Authorizing Treasury to reallocate funds to housing nonprofits and entities supervised by courts that operate in the jurisdiction of a grantee that had funds reallocated; and,
 - Providing more guidance to grantees on how they can engage with local governmental bodies, such as schools and libraries, to better facilitate the awareness and distribution of emergency rental assistance.

2. H.R. 3913, The Renter Protection Act of 2021 (McHenry). This bill would revise the Emergency Rental Assistance program by making the following changes:

- Transferring all allocated but undisbursed ERA 2 program funds into the ERA 1 program, and requiring Treasury to disburse the funds within 30 days;
- Requiring that grantees with any unused ERA funds after July 1, 2021, use such funds exclusively to pay off rental arrears of COVID-impacted eligible households and not to provide prospective rent payments; and
- Reversing the amendment made in the American Rescue Plan Act that extended the timeline to use ERA 1 funds (including transferred ERA 2 funds), requiring grantees to spend funds by December 31, 2021.³⁶

³⁶ Grantees who receive reallocated funds would be able to spend those funds until March 31, 2022.