Congressional Research Service
Informing the legislative debate since 1914

Emergency Rental Assistance through the Coronavirus Relief Fund

Updated July 9, 2021

Congressional Research Service
https://crsreports.congress.gov
R46688

CRS REPORT
Prepared for Members and
Committees of Congress

Congressional Research Service
Informing the legislative debate since 1914

SUMMARY

R46688

July 9, 2021

Grant A. Driessen
Specialist in Public Finance

Maggie McCarty
Specialist in Housing Policy

Libby Perl
Specialist in Housing Policy

For a copy of the full report, please call 7-5700 or visit www.crs.gov.

Emergency Rental Assistance through the Coronavirus Relief Fund

In response to concerns about the economic effects of the Coronavirus Disease 2019 (COVID-19) pandemic on renters and their landlords, Congress created a $25 billion Emergency Rental Assistance (ERA) program in the Consolidated Appropriations Act, 2021 (Division N of P.L. 116-260). A second round of ERA funding—$21.55 billion—was included in Section 3201 of the American Rescue Plan Act (P.L. 117-2).

The ERA program is funded through the Coronavirus Relief Fund (CRF) that was established by the Coronavirus Aid, Relief, and Economic Security Act (CARES Act, P.L. 116-136) and implemented by the Department of the Treasury. Like the CRF, the ERA directs resources to states and localities via a per capita formula allocation, although the ERA uses a somewhat different formula that treats the District of Columbia as a state and includes a lower threshold for localities to qualify for direct allocations (among other differences). The second round of ERA funding includes a set-aside of $2.5 billion for "high need" grantees. Unlike the CRF, which can be used for a broad set of purposes including rental assistance, the ERA may only be used for financial assistance and housing stability services for renters.

P.L. 116-260 established various parameters for how the first round of ERA funding can be used. Among other requirements, states and localities must use at least 90% of their funds for financial assistance, which is defined to include rental assistance and utility assistance (including payment of arrearages). Remaining funds may be used for housing stability services (case management and other supports to help families retain their housing), and administrative expenses are capped at 10%. Renters are eligible for assistance if they are low-income, experiencing financial hardship, and at risk of homelessness or housing insecurity. Grantees are directed to prioritize very low-income renters for assistance. The law also established expenditure deadlines and imposed various reporting requirements on the Treasury Secretary.

These parameters were changed somewhat for the second round of ERA funding under P.L. 117-2. Specifically, the amount that can be spent on housing stability services was increased, and grantees may be able to use funds that remain unobligated as of October 1, 2022, for additional affordable housing and eviction prevention activities. P.L. 117-2 also extended the availability of first round ERA funding from December 31, 2021, to September 30, 2022.

Within the statutory requirements—and any additional guidance established by Treasury—states and localities have flexibility in designing their rental assistance programs. Many had used CARES Act and other funding to establish earlier rental assistance programs; if those programs are consistent with ERA requirements, they may be available to facilitate relatively rapid distribution of ERA funds.

The ability of states and localities to structure their programs differently will mean that the experience of similarly situated renters seeking assistance will likely vary geographically. Similarly, there may be geographic variability in the degree to which existing resources—both ERA and earlier funds—are adequate to meet demand for rental assistance. Estimates from January 2021 suggest that as much as $57 billion in rental and utility debt may be outstanding nationally.

Contents

Introduction 1
Background: Rental Assistance During the COVID-19 Pandemic 1
State and Local Allocations 2
P.L. 116-260 (ERA-1) 2
P.L. 117-2 (ERA-2) 3
ERA Program Parameters 6
Eligible Use of Funds 7
Financial Assistance 7
Administrative Costs and Housing Stability Services 8
Individual Eligibility and Prioritization 9
Eligibility 9
Prioritization 9
Documentation 10
Funding Availability and Reallocation 10
Reporting Requirements 10
Outstanding Questions 10
How will local programs be structured? 11
Will rental assistance prevent loss of housing? 11
Will state and local governments use other federal funding for rental assistance and eviction prevention? 13

Tables

Table 1. Emergency Rental Assistance Allocations in P.L. 116-260 (ERA-1) and P.L. 117-2 (ERA-2, ERA-2 High Need) 4

Contacts

Author Information 13

Introduction

The Consolidated Appropriations Act, 2021 (P.L. 116-260) included an appropriation of $25 billion to help low-income households make rent and utility payments through an Emergency Rental Assistance (ERA) program.[1] The ERA is funded through the Coronavirus Relief Fund (CRF), a program created as part of the Coronavirus Aid, Relief, and Economic Security (CARES) Act (P.L. 116-136), and administered by the Department of the Treasury, to assist state, local, territorial, and tribal governments.[2] While the CARES Act CRF appropriation could be used for multiple purposes, the ERA appropriation in P.L. 116-260 is directed only to rent and utility assistance and housing stability services. A second appropriation—of $21.550 billion—for ERA was included in Section 3201 of the American Rescue Plan Act (P.L. 117-2).

This report briefly describes the need for rental assistance during the Coronavirus Disease 2019 (COVID-19) pandemic, provides information about the allocation of ERA funds, describes the parameters of the ERA program, and discusses outstanding questions about the program and renter needs.

Background: Rental Assistance During the COVID-19 Pandemic

Even before the onset of the COVID-19 pandemic, low-income renters struggled with housing affordability. In 2020, the Joint Center on Housing Studies reported that nearly half (48%) of all renters were cost burdened (i.e., paying more than 30% of their income in rent), with higher numbers for lower-income (80%), Black (55%), and Hispanic (53%) renters.[3] The pandemic may have made renter housing arrangements even more precarious. Renters have been more likely to lose employment income than homeowners.[4] This is particularly the case for Black and Hispanic renters, who are also estimated to face the greatest threat of eviction during the pandemic.[5] Millions of renters report being behind on their rent and lacking confidence in their ability to pay next month's rent.[6]

Efforts to assist renters include eviction moratoriums at the state and federal levels. A national eviction moratorium issued by the Centers for Disease Control and Prevention took effect on

[1] See Division N, Title V, Section 501 of P.L. 116-260.

[2] For more information about CRF in the CARES Act, see CRS Report R46298, *General State and Local Fiscal Assistance and COVID-19: Background and Available Data*.

[3] Joint Center for Housing Studies, *America's Rental Housing 2020*, January 2020, pp. 26-29, https://www.jchs.harvard.edu/sites/default/files/reports/files/Harvard_JCHS_Americas_Rental_Housing_2020.pdf.

[4] Alexander Hermann and Sharon Cornelissen, *Using the Census Bureau's Household Pulse Survey to Assess the Economic Impacts of COVID-19 on America's Households*, Harvard Joint Center for Housing Studies, July 2, 2020, https://www.jchs.harvard.edu/blog/using-the-census-bureaus-household-pulse-survey-to-assess-the-economic-impacts-of-covid-19-on-americas-households/.

[5] Whitney Airgood-Obrycki, "The Impact of COVID-19 on Renters and Rental Markets," Harvard Joint Center for Housing Studies virtual event, September 4, 2020, https://www.jchs.harvard.edu/calendar/impact-covid-19-renters-and-rental-markets. See also, Sophia Wedeen, *Black and Hispanic Renters Face Greatest Threat of Eviction in Pandemic*, Harvard Joint Center for Housing Studies, January 11, 2021, https://www.jchs.harvard.edu/blog/black-and-hispanic-renters-face-greatest-threat-eviction-pandemic.

[6] See Census Bureau Pulse survey data, available at https://www.census.gov/programs-surveys/household-pulse-survey/data.html#phase3.

September 4, 2020, and has been extended several times, most recently through July 31, 2021.[7] While the moratoriums prevent eviction for nonpayment of rent, they do not prevent arrearages from accumulating, which could result in eviction when moratoriums lift. Renter inability to maintain payments also affects landlords. This may particularly result in hardship for smaller landlords, who are estimated to have lower incomes and make up larger shares of Black and Hispanic landlords.[8]

At the outset of the COVID-19 pandemic, states and localities relied on federal funds appropriated as part of the CARES Act, including funds distributed through CRF, to operate rental assistance programs.[9] Households may have drawn on CARES Act stimulus checks, expanded unemployment benefits, and borrowing to cover rent. However, some of these sources of funds became depleted as the pandemic continued.[10] Estimates suggest that total rental arrears were $57 billion as of the end of January 2021.[11]

Organizations representing both tenants and landlords have advocated for additional federal funds to help tenants pay their rent.[12] Legislation was introduced in the 116th Congress that would have provided as much as $100 billion to help tenants pay rent.[13] Ultimately, Congress appropriated nearly $47 billion for emergency rent and utility assistance through ERA.

State and Local Allocations

P.L. 116-260 (ERA-1)

P.L. 116-260 provided a total of $25.000 billion in ERA support to governments in states, territories, and tribal areas. Payments (denoted as ERA-1 payments here and in Treasury documentation) are distributed across these jurisdictions as follows:

- $23.785 billion is allocated for governments in the 50 states and the District of Columbia (DC) based on their populations (as projected by the U.S. Census Bureau for July 2020),[14] with no state receiving less than $0.200 billion;

[7] For more information, see CRS Insight IN11673, *The CDC's Federal Eviction Moratorium*.

[8] Small landlords in the analysis are those owning 2-4 unit properties; Jung Hyun Choi and Caitlin Young, *Owners and Renters of 6.2 Million Units in Small Buildings Are Particularly Vulnerable during the Pandemic*, The Urban Institute, August 10, 2020, https://www.urban.org/urban-wire/owners-and-renters-62-million-units-small-buildings-are-particularly-vulnerable-during-pandemic.

[9] See examples from the National Conference of State Legislatures, which tracks the ways in which states are using their CRF allocations: https://www.ncsl.org/research/fiscal-policy/state-actions-on-coronavirus-relief-funds.aspx.

[10] Jim Parrott and Mark M. Zandi, *Averting an Eviction Crisis*, Urban Institute, January 25, 2021, https://www.urban.org/sites/default/files/publication/103532/averting-an-eviction-crisis.pdf (hereinafter, *Averting an Eviction Crisis*).

[11] Ibid.

[12] See, for example, National Housing Conference, "31 housing organizations tell administration and Congress to immediately return to negotiations," press release, August 21, 2020, https://nhc.org/press-release/31-housing-organizations-tell-administration-and-congress-to-immediately-return-to-negotiations/.

[13] See the Heroes Act (H.R. 6800) and the Emergency Rental Assistance and Rental Market Stabilization Act (H.R. 6820, S. 3685).

[14] U.S. Census Bureau, "Vintage 2020 Population Estimates for the United States and States," December 2020, https://www.census.gov/programs-surveys/popest/technical-documentation/research/evaluation-estimates.html. Allocations are determined by total state populations, including nonrenters; for recent estimates of state renter populations, see U.S. Census Bureau, "American Community Survey 2015-2019 5-Year Data Release," December

- $0.800 billion is set aside for governments in tribal areas, with individual government allocations distributed in proportion to relative payments made under the Native American Housing Block Program in FY2020;[15]
- $0.400 billion is allocated to the territories of Puerto Rico, the U.S. Virgin Islands, Guam, the Northern Mariana Islands, and American Samoa, with $0.325 billion provided to Puerto Rico and $0.075 billion distributed to the remaining territories based on their relative population share; and
- $0.015 billion is set aside to cover federal administrative costs related to program implementation.

ERA-1 payments are generally provided to state (or territorial) governments, though state governments may transfer any funds received to local governments so long as funds are used for eligible purposes. Local governments serving a population of at least 200,000 (as measured by the U.S. Census Bureau in 2019),[16] may elect to receive assistance directly from Treasury. Any payments made directly to localities reduce the allocation made to the state government (keeping the total amount provided across each state constant), and are the product of (1) the state or territorial allocation amount, (2) the percentage of the state or territorial population attributable to the local government, and (3) 45%.

In many cases, populations are served by more than one local government that is eligible for direct assistance from the CRF (e.g., a city with a population of 300,000 located in a county with 200,000 other people and thus having a county population of 500,000). Treasury clarified that in such cases, all overlapping governments are eligible for assistance.[17] However, direct assistance payments to larger localities is calculated using only their unique population, or will be reduced by any amounts also attributable to smaller localities receiving assistance (i.e., in the above example, the county government would only use a population of 200,000 for its direct payment calculation).

P.L. 117-2 (ERA-2)

P.L. 117-2 provided a total of $21.550 billion in ERA support to governments in states and territories. Unlike P.L. 116-260, P.L. 117-2 did not include a separate allocation of funds for tribal governments. Payments (denoted as ERA-2 payments here and in Treasury documentation) are distributed across these jurisdictions as follows:

- $18.712 billion is allocated for governments in the 50 states and the District of Columbia (DC) based on their populations (as projected by the U.S. Census Bureau for July 2020),[18] with no state receiving less than $0.152 billion;

2020, https://www.census.gov/newsroom/press-kits/2020/acs-5-year.html.

[15] For more on the Native American Housing Block Grant program, see CRS Report R43307, *The Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA): Background and Funding*, by Katie Jones.

[16] U.S. Census Bureau, "Subcounty Resident Population Estimates: April 1, 2010 to July 1, 2019," May 2020, https://www.census.gov/data/tables/time-series/demo/popest/2010s-total-cities-and-towns.html.

[17] U.S. Treasury, "Emergency Rental Assistance Program: Data and Methodology for State, Local Government, and Territory Allocations," January 2021, https://home.treasury.gov/system/files/136/Emergency-Rental-Assistance-Data-and-Methodology-1-11-21.pdf.

[18] U.S. Census Bureau, "Vintage 2020 Population Estimates for the United States and States," December 2020, https://www.census.gov/programs-surveys/popest/technical-documentation/research/evaluation-estimates.html. Allocations are determined by total state populations, including nonrenters; for recent estimates of state renter populations, see U.S. Census Bureau, "American Community Survey 2015-2019 5-Year Data Release," December 2020, https://www.census.gov/newsroom/press-kits/2020/acs-5-year.html.

- $0.305 billion is allocated to the territories of Puerto Rico, the U.S. Virgin Islands, Guam, the Northern Mariana Islands, and American Samoa, with $0.240 billion provided to Puerto Rico and $0.065 billion distributed to the remaining territories based on their relative population share;
- $2.500 billion is set aside for high-need grantees, to be distributed by the Treasury Secretary using statistics on high-need housing, rental market costs, and unemployment (ERA-2 High Need); and
- $0.033 billion is set aside to cover federal administrative costs related to program implementation.

Direct local allocation identifications, calculations, and division of payments across overlapping governments in P.L. 117-2 are consistent with the methodology from P.L. 116-260. However, P.L. 117-2 directed that ERA-2 funds be staggered in their distribution. Specifically, Treasury was directed to distribute no less than the first 40% of ERA-2 funds within 60 days of enactment, with the remainder to be distributed after grantees expend 75% of their initial ERA-2 allocation.[19]

Table 1 shows ERA-1 and ERA-2 allocations and estimates broken out by state and territory, and government level.[20]

Table 1. Emergency Rental Assistance Allocations in P.L. 116-260 (ERA-1) and P.L. 117-2 (ERA-2, ERA-2 High Need)

(All allocations in millions of dollars)

	Allocations to State Governments			Allocations to Local Governments			
State or Territory	ERA-1	ERA-2	ERA-2 High Need	ERA-1	ERA-2	ERA-2 High Need	Grand Total
Alabama	263	208	21	63	50	10	616
Alaska	165	125	0	35	27	0	352
American Samoa	10	9	0	0	0	0	19
Arizona	290	229	0	203	160	39	920
Arkansas	174	137	0	27	22	0	360
California	1,498	1,185	26	1,113	881	495	5,197
Colorado	248	196	0	137	109	29	719
Connecticut	236	187	35	0	0	0	457
Delaware	200	152	0	0	0	0	352
District of Columbia	200	152	0	0	0	0	352
Florida	872	689	51	570	451	124	2,757
Georgia	552	437	42	158	125	34	1,348
Guam	33	29	0	0	0	0	62

[19] See P.L. 117-2, §3201(c) available at https://www.congress.gov/bill/117th-congress/house-bill/1319/text#H61B6162AB8EC496ABB590ADA8F6898FF.

[20] U.S. Treasury, "Emergency Rental Assistance Program," May 2021, https://home.treasury.gov/policy-issues/coronavirus/assistance-for-state-local-and-tribal-governments/emergency-rental-assistance-program.

State or Territory	Allocations to State Governments			Allocations to Local Governments			Grand Total
	ERA-1	ERA-2	ERA-2 High Need	ERA-1	ERA-2	ERA-2 High Need	
Hawaii	125	95	0	75	57	14	366
Idaho	176	134	0	24	18	0	352
Illinois	566	448	32	268	212	70	1,597
Indiana	372	294	32	76	60	11	845
Iowa	195	154	0	15	12	0	376
Kansas	169	129	0	31	23	0	353
Kentucky	264	209	24	33	26	6	562
Louisiana	249	197	0	59	47	18	570
Maine	200	152	0	0	0	0	352
Maryland	258	204	0	143	114	34	754
Massachusetts	421	333	55	36	29	20	893
Michigan	623	493	25	38	30	45	1,254
Minnesota	289	229	0	86	68	18	690
Mississippi	187	145	0	13	10	2	358
Missouri	324	256	23	84	67	18	772
Montana	200	152	0	0	0	0	352
Nebraska	159	121	0	41	31	5	357
Nevada	125	99	0	83	66	21	394
New Hampshire	179	136	0	21	16	0	352
New Jersey	354	280	0	235	186	86	1,141
New Mexico	161	123	0	39	29	6	358
New York	801	634	39	481	381	258	2,594
North Carolina	547	432	57	156	124	14	1,331
North Dakota	200	152	0	0	0	0	352
Northern Mariana Islands	10	9	0	0	0	0	19
Ohio	565	447	49	210	167	39	1,476
Oklahoma	210	166	0	54	43	12	485
Oregon	204	162	0	77	61	22	526
Pennsylvania	570	451	49	278	220	43	1,610
Puerto Rico	325	240	0	0	0	0	565
Rhode Island	200	152	0	0	0	0	352

	Allocations to State Governments			Allocations to Local Governments			
State or Territory	**ERA-1**	**ERA-2**	**ERA-2 High Need**	**ERA-1**	**ERA-2**	**ERA-2 High Need**	**Grand Total**
South Carolina	272	215	31	74	59	0	651
South Dakota	200	152	0	0	0	0	352
Tennessee	383	303	29	73	58	16	862
Texas	1,308	1,035	66	639	506	133	3,686
U.S. Virgin Islands	21	18	0	0	0	0	40
Utah	150	119	0	65	52	6	392
Vermont	200	152	0	0	0	0	352
Virginia	525	415	43	45	36	15	1,079
Washington	322	255	24	188	149	41	979
West Virginia	200	152	0	0	0	0	352
Wisconsin	322	255	26	65	51	16	735
Wyoming	200	152	0	0	0	0	352
All Tribal Governments	800	0	0	0	0	0	800
Totals	**18,305**	**14,195**	**779**	**6,680**	**4,822**	**1,721**	**46,502**

Source: U.S. Treasury, "Emergency Rental Assistance Program," May 2021, https://home.treasury.gov/policy-issues/cares/emergency-rental-assistance-program.

Notes: Recipients may choose to transfer funds to governments within their jurisdiction, but are not obligated to do so. Sums may not equal totals due to rounding.

ERA Program Parameters

When P.L. 116-260 created the ERA program under the CRF, it established parameters for how the funds can and should be spent. Those parameters are relatively broad, but are more prescriptive than what was included in the original CARES Act CRF. Treasury has issued Frequently Asked Questions (FAQs) and other guidance documents regarding how certain aspects of the law are to be applied.[21] For the second round of ERA funding, P.L. 117-2 made some changes that are applicable to the first round of funding (i.e., expenditure deadlines); and others that are applicable only to the second round (i.e., income eligibility and caps on administrative and housing stability services funding). Treasury has revised its FAQs multiple times to reflect the requirements of both ERA-1 and ERA-2 and in response to stakeholder feedback.[22]

[21] Treasury guidance can be found at https://home.treasury.gov/policy-issues/cares/emergency-rental-assistance-program.

[22] Treasury has revised FAQs in February, March, May, and June of 2021. See the February FAQs at https://home.treasury.gov/system/files/136/ERA-Frequently-Asked-Questions_Pub-2-22-21.pdf, March FAQs at https://home.treasury.gov/system/files/136/ERA-Frequently-Asked-Questions_Pub-3-16-21.pdf, May FAQs at https://home.treasury.gov/system/files/136/ERA2FAQs%205-6-21.pdf (hereinafter, "Treasury May 7, 2021, FAQs"),

As noted, ERA funds are provided from Treasury to states and localities, which can use the funds to design their own rental assistance programs within the requirements of the law and Treasury guidance. Some states and localities may be able to use the new funds to supplement existing rental assistance programs created with CARES Act or other funds, to the extent their existing programs align with the emergency rental assistance statutory requirements (which are outlined below).

Eligible Use of Funds

P.L. 116-260 directed that 90% of ERA funds be spent on direct financial assistance and that up to 10% could be spent on administrative expenses and housing stability services.[23]

For the second round of ERA funding, P.L. 117-2 directed that no more than 15% be spent on administrative expenses and 10% be spent on housing stability services, leaving at least 75% to be spent on direct financial assistance.

Financial Assistance

P.L. 116-260 defined financial assistance as assistance to tenants for

- rent and rental arrears,
- utilities and home energy costs and arrears, and
- other expenses related to housing incurred due, directly or indirectly, to the COVID-19 outbreak, as defined by the Treasury Secretary.

The definition of financial assistance under P.L. 117-2 is nearly identical, except when it comes to other expenses related to housing. The P.L. 117-2 definition does not require that the expenses be related to the COVID-19 outbreak.

Treasury issued an FAQ document in January 2021 clarifying that telecommunications services are not considered utilities under this program.[24] However, Treasury later revised the FAQs to define "other expenses" eligible for assistance to include internet service, if it allows renters to engage in distance learning, telework, and telemedicine and obtain government services.[25] Additional "other expenses" identified in the FAQ include relocation expenses and rental fees (if a household has been displaced due to COVID-19), and accrued late fees.

Length of Assistance

Under P.L. 116-260, assistance can be provided for no more than 12 months, with the possibility of one 3-month extension. Payments made for prospective rent are subject to additional

and June FAQs at https://home.treasury.gov/system/files/136/ERA_FAQs_6-24-21.pdf (hereinafter, "Treasury June 24, 2021, FAQs").

[23] Treasury's initial guidance interpreted this 10% limitation as applying to both administrative fees and housing stability services combined. Subsequent guidance has amended that interpretation to allow grantees to use up to 10% of ERA-1 funds for housing stability services, and up to 10% of total funds for administrative expenses.

[24] See the January FAQ at https://home.treasury.gov/system/files/136/ERA-Frequently-Asked-Questions_Pub-1-19-21.pdf.

[25] See the February FAQ revision at https://home.treasury.gov/system/files/136/ERA-Frequently-Asked-Questions_Pub-2-22-21.pdf, FAQ 7, p. 4.

limitations; they can only be provided in 3-month increments and only if rental arrearages are addressed.

Under the terms of P.L. 117-2, recipients can receive no more than 18 months of assistance under both rounds of ERA combined.

Treasury's May 7, 2021, FAQs clarified that grantees must prohibit landlords from evicting tenants for nonpayment of rent during the period for which they have received prospective rent payments. Treasury's guidance also encourages grantees to set policies prohibiting landlords who receive payment for rental arrearages from evicting tenants for nonpayment of rent for some period, consistent with applicable law.[26]

Payments

P.L. 116-260 directed that payments be made directly to landlords or utility providers, but it allows payments to be made directly to tenants if landlords or utility providers are unwilling to accept such payments. According to the May 7, 2021, FAQs, Treasury has reduced the amount of time grantees must wait for landlords or utility providers to respond to outreach efforts before making payments directly to tenants.[27]

Landlords are permitted to aid their tenants in applying, or they may apply directly. Landlords who apply directly must meet certain conditions (including obtaining tenant signatures, notifying tenants of the application, and ensuring any funds received are applied to tenants' rental obligations).

The requirements for ERA-2 funding set by P.L. 117-2 are largely the same, although, according to guidance in the May 7, 2021, FAQs, grantees may use their ERA-2 funding to offer assistance directly to tenants without first attempting to contact landlords or utility providers.[28] Additionally, a revision to the FAQs issued on June 24, 2021, permitted grantees to enter into data sharing agreements and bulk payment arrangements for large landlords and utility providers.[29]

Administrative Costs and Housing Stability Services

Under P.L. 116-260, the remaining 10% of grant funds can be used for grantee administrative costs and housing stability services, which Treasury has interpreted as allowing grantees to use up to 10% of grant amounts each for housing stability services and administrative costs.[30]

P.L. 116-260 defined "housing stability services" as case management and other services related to COVID-19, to be defined by the Secretary, that are intended to keep tenants stably housed. It restricted administrative expenses to those tied to providing financial assistance and housing stability services, including for data collection and reporting requirements.

P.L. 117-2 established a cap of up to 15% of total grant funding for administrative expenses and up to 10% can be for housing stability services. The law defined "housing stability services" as case management and other services intended to keep households stably housed, without reference to COVID-19. It defined "administrative expenses" as those included under P.L. 116-

[26] Treasury May 7, 2021, FAQs, FAQ 32, p. 14.

[27] Treasury May 7, 2021, FAQs, FAQ 12, p. 8.

[28] Treasury May 7, 2021, FAQs, FAQ 12, p. 8.

[29] Treasury June 24, 2021, FAQs, FAQ 38, p. 16.

[30] See footnote 23.

260, as well as costs associated with other affordable rental housing and eviction prevention activities.

Individual Eligibility and Prioritization

P.L. 116-260 established a three-part eligibility test based on income level, income loss or other financial hardship, and risk of homelessness or housing instability. It also established a set of income targeting requirements to guide states and localities in prioritizing assistance. P.L. 117-2 largely adopted the same requirements, but with some changes.

Eligibility

Under P.L. 116-260, to be eligible for direct financial assistance or housing stability services, households must be renters and

- low-income, defined (consistent with federal housing law) as having income at or below 80% of local area median income as established by the Department of Housing and Urban Development (HUD);
- experiencing financial hardship, as evidenced by receipt of unemployment benefits or a written attestation of other pandemic-related financial hardship (income loss or increased expenses); and
- have at least one member at risk of homelessness or housing instability, as evidenced by past due rent or utility notices (including eviction notices), unsafe living conditions, or other evidence as established by the grantee.

The eligibility definition in P.L. 117-2 does not include the detail as to how an individual can demonstrate a risk of homelessness or housing insecurity that was included in P.L. 116-260.

Neither law addresses noncitizen eligibility for assistance under the ERA program.[31]

Prioritization

P.L. 116-260 directs grantees to prioritize the following individuals for direct financial assistance and housing stability services:

- very low-income tenants, defined (consistent with federal housing law) as having income at or below 50% of local area median income as established by HUD; and
- applicants who are unemployed and have been unemployed for the prior 90 days.

The law permits states and localities to further establish their own prioritization policies.

P.L. 117-2 made these provisions applicable to the second round of ERA funding.

[31] Some questions have arisen as to whether noncitizen eligibility restrictions under the Personal Responsibility and Work Responsibility Act of 1996 (PRWORA; Title IV of P.L. 104-193, as amended) apply to assistance under the ERA program. To date, Treasury has not issued guidance on the applicability of PRWORA noncitizen restrictions to these funds. For more information about PRWORA's restrictions, see CRS Report R46510, *PRWORA's Restrictions on Noncitizen Eligibility for Federal Public Benefits: Legal Issues*.

Documentation

P.L. 116-260 specified that grantees may determine an applicant's income eligibility based on annual income or current monthly income (subject to three-month recertification).

P.L. 117-2 does not include provisions related to income determination.

Treasury's May 7, 2021, FAQs state: "Treasury strongly encourages grantees to avoid establishing documentation requirements that are likely to be barriers to participation for eligible households."[32] For example, the FAQs say a grantee may rely on an applicant's self-attestation of income under certain circumstances.[33]

Funding Availability and Reallocation

P.L. 116-260 made first round ERA funds available to grantees through December 31, 2021; the deadline was subsequently extended to September 30, 2022, by P.L. 117-2. However, beginning September 30, 2021, the Treasury Secretary is directed to recapture any excess unobligated funds (as determined by the Secretary) and to reallocate them to grantees that have obligated at least 65% of their funds for eligible purposes. Grantees receiving reallocated funds may request up to a 90-day extension of availability deadline.

Funding provided through P.L. 117-2 is available until September 30, 2025. Beginning March 31, 2022, the Treasury Secretary is directed to reallocate undisbursed funds to grantees that have obligated 50% or more of their total allocated funds. These reallocated funds can only be used for financial assistance. Grantees that have obligated at least 75% of their funds for eligible purposes as of October 1, 2022, may obligate remaining funds for other affordable rental housing and eviction prevention purposes for very low-income families.

Reporting Requirements

The Treasury Secretary, in consultation with the Secretary of Housing and Urban Development, is required under P.L. 116-260 to provide quarterly reports on a number of specified program indicators, including the number of households served by the program, their income profiles, the acceptance rate of applicants, and the types and amounts of assistance. Grantees must establish data privacy guidelines for collecting information.

P.L. 117-2 did not contain reporting requirements. Treasury's May 7, 2021, FAQs encouraged ERA-2 grantees to comply with the data privacy and security requirements established for ERA-1.[34]

Outstanding Questions

Several aspects of the ERA program will not be known until grantees receive funds and implement programs at the state and local levels. This section discusses possible questions about the implementation of the ERA program, adequacy of funds, and potential implications if state and local governments were to receive additional funds.

[32] Treasury May 7, 2021, FAQs, FAQ 1, p. 2.

[33] Treasury May 7, 2021, FAQs, FAQ 4, p. 5.

[34] Treasury May 7, 2021, FAQs, FAQ 14, p. 9.

How will local programs be structured?

There is likely to be a great deal of variation across states and localities in terms of how local ERA programs are structured. Treasury has provided links to state and local ERA programs on its website at https://home.treasury.gov/policy-issues/coronavirus/assistance-for-state-local-and-tribal-governments/emergency-rental-assistance-program/program-index.

As noted earlier, ERA funds are allocated to states and localities. States and localities are then charged with distributing assistance to eligible renters based on a limited set of program parameters. Within those parameters, states and localities have authority to determine, for example,

- who will administer assistance (i.e., a government entity vs. a nonprofit or community partner);
- how to prioritize among the eligible uses of the funds (e.g., arrears vs. prospective payments; utilities vs. rent);
- how to ration limited benefits (e.g., lotteries for assistance vs. first-come first-served or referral-based processes);
- whether and how to further prioritize applicants (e.g., adopting deeper income targeting than is required by law);
- how much documentation to require of applicants and for recertification periods;
- the amount and duration of benefits provided;
- whether to place conditions on the recipients of assistance (e.g., requiring landlords to accept partial payment to reduce debt obligations, prohibiting landlords that accept payment from pursuing eviction); and
- whether and what to provide in terms of housing stability services.

One factor that may influence state and local decisions is the extent to which any existing emergency rental assistance programs they administer may already meet, or may be easily adjusted to meet, the requirements for ERA funding. To the extent states and localities can fund existing programs with their ERA dollars instead of having to establish new programs, the assistance could potentially be distributed more quickly.

The ability of state and local governments to structure their programs differently will mean that the experience of similarly situated renters seeking emergency rental assistance will likely vary geographically. How and whether individual renters are made aware of the availability of ERA funds in their communities; their individual eligibility and likelihood of being assisted; and how to access available assistance are currently uncertain.

Treasury's June FAQ revision included encouragement for grantees to coordinate to reduce barriers and delays in providing assistance created by differences in local programs in the same region. The agency also released "promising practices" to ensure assistance can quickly reach renters in need.[35]

Will rental assistance prevent loss of housing?

Both the amount and geographic distribution of ERA funds could determine the extent to which renters may be protected from eviction. Additional federal assistance, which could take various

[35] https://home.treasury.gov/policy-issues/coronavirus/assistance-for-state-local-and-tribal-governments/emergency-rental-assistance-program/promising-practices.

forms, could also affect the need for, and adequacy of, ERA funds. Further, the ability of grantees to establish ERA programs, engage landlords, and process tenant applications could also affect tenant outcomes.

Because there is no definitive estimate of renters in arrears and the amounts they owe, it is unknown whether all renters who are behind will be able to receive assistance with available funding. Estimates of the need for rental assistance vary and may depend on the data source and methodology (which are not examined in this report).[36] Research released in January 2021 predicted that the first round of ERA rental assistance would be insufficient to meet the needs of all delinquent renters.[37] Since that time, P.L. 117-2 funded another $21.550 billion in rental assistance as well as additional direct aid to individuals via stimulus payments and refundable child tax credits. Whether this additional aid will be sufficient to address outstanding arrearages and avoid widespread housing disruption when eviction moratoriums end is yet to be seen.

On June 24, 2021, concurrent with the announcement of the extension of the CDC eviction moratorium through July 31, 2021, the White House announced a series of actions designed to help state and local governments prevent evictions. These included the previously mentioned June revisions to Treasury's ERA FAQs, designed to speed the delivery of assistance; a letter to state and local courts from the Deputy Attorney General encouraging the adoption of eviction diversion efforts and guidance on how ERA funds can be used to support such efforts; and implementation of "a whole-of-government effort to raise awareness about emergency rental assistance."[38]

At the end of June, Treasury released initial data on ERA-1 expenditures. It found that of the $25 billion allocated, grantees had spent approximately $1.45 billion on rent, utilities, and arrears from January to May 2021, serving approximately 345,000 unique households, and separately had committed roughly $1 billion to administrative costs and housing stability services. The data show spending that is accelerating; roughly half of total spending occurred in the last month (May) of the reporting period.[39] Treasury's accompanying analysis of these data stated "while some state and local programs are increasingly reaching households in need, others lag far behind, and many programs have just launched in recent weeks."[40]

[36] Various estimates made in 2020 predicted arrears of $7 billion, $25-$34 billion, and $70 billion by the end of the year. See Davin Reed and Eileen Divringi, *Household Rental Debt During COVID-19*, Federal Reserve Bank of Philadelphia, October 2020, https://www.philadelphiafed.org/-/media/frbp/assets/community-development/reports/household-rental-debt-during-covid-19.pdf; Stout, Risius Ross LLC, *Analysis of Current and Expected Rental Shortfall and Potential Eviction Filings in the U.S.*, National Council of State Housing Finance Agencies, September 25, 2020, https://www.ncsha.org/wp-content/uploads/Analysis-of-Current-and-Expected-Rental-Shortfall-and-Potential-Evictions-in-the-US_Stout_FINAL.pdf; and John Lonski, *Weekly Market Outlook: Markets Avoid Great Recession's Calamities*, Moody's Analytics, August 13, 2020, p. 9, https://www.moodysanalytics.com/-/media/article/2020/weekly-market-outlook-markets-avoid-great-recessions-calamities.pdf.

[37] *Averting an Eviction Crisis*.

[38] White House, "FACT SHEET: Biden-Harris Administration Announces Initiatives to Promote Housing Stability By Supporting Vulnerable Tenants and Preventing Foreclosures," June 24, 2021, https://www.whitehouse.gov/briefing-room/statements-releases/2021/06/24/fact-sheet-biden-harris-administration-announces-initiatives-to-promote-housing-stability-by-supporting-vulnerable-tenants-and-preventing-foreclosures/.

[39] See https://home.treasury.gov/system/files/136/ERA-Compliance-Report-06302021.xlsx

[40] Treasury Department, Emergency Rental Assistance Data Shows Programs Ramping Up, but States and Localities Must Do More to Accelerate Aid, https://home.treasury.gov/system/files/136/2021-07-02-ERA-Data-Blog-Post-vF.pdf.

Will state and local governments use other federal funding for rental assistance and eviction prevention?

How state and local governments choose to distribute ERA funds across programs and other governments may depend on the availability of other federal assistance during the COVID-19 pandemic for rental assistance. Separate from the ERA funding, the federal government provided a total of $512 billion in general assistance to state and local governments through the CARES Act ($150 billion) and P.L. 117-2 ($362 billion). General assistance through the CARES Act was used by government recipients to fund a number of housing initiatives,[41] and eligible uses of P.L. 117-2 general assistance include programs "to respond to the public health emergency … or its negative economic impacts, including assistance to households."[42] The White House fact sheet released in June 2021 highlighted the authority to use state and local fiscal relief funds for eviction diversion purposes.[43]

Treasury published its Interim Final Rule for allowable uses of state and local recovery funds received through P.L. 117-2 in May 2021.[44] The guidance includes an intent to make eligible for funding programs that respond to the negative economic impacts of the COVID-19 public health crisis, with emphasis on mitigating any exacerbation of pre-existing economic disparities. The guidance also allows for payments to replace lost revenues to the extent that annual own-source revenue growth is below the greater of (1) 4.1% or (2) the government's average revenue growth rate in the three years prior to the COVID-19 crisis. Such revenue replacement can then be used for the general provision of government services under the Interim Final Rule. The comment period for the Interim Final Rule closes July 16, 2021, with a Final Rule expected to be released after those comments have been considered.

Author Information

Grant A. Driessen
Specialist in Public Finance

Libby Perl
Specialist in Housing Policy

Maggie McCarty
Specialist in Housing Policy

[41] Pandemic Oversight, "Coronavirus Relief Fund," accessed March 23, 2021, available at https://www.pandemicoversight.gov/track-the-money/funding-charts-graphs/coronavirus-relief-fund.

[42] 42 U.S.C. 801, Section 602(c)(1)(A), which provides eligible uses for the Coronavirus State Fiscal Recovery Fund. Identical language is included in statute for the Coronavirus Local Fiscal Recovery Fund.

[43] White House, "FACT SHEET: Biden-Harris Administration Announces Initiatives to Promote Housing Stability By Supporting Vulnerable Tenants and Preventing Foreclosures," June 24, 2021, https://www.whitehouse.gov/briefing-room/statements-releases/2021/06/24/fact-sheet-biden-harris-administration-announces-initiatives-to-promote-housing-stability-by-supporting-vulnerable-tenants-and-preventing-foreclosures/.

[44] For access to the Interim Final Rule and more information on funding, see Treasury Department, "Coronavirus State and Local Fiscal Recovery Funds," May 2021, available at https://home.treasury.gov/policy-issues/coronavirus/assistance-for-state-local-and-tribal-governments/state-and-local-fiscal-recovery-funds.

Disclaimer

This document was prepared by the Congressional Research Service (CRS). CRS serves as nonpartisan shared staff to congressional committees and Members of Congress. It operates solely at the behest of and under the direction of Congress. Information in a CRS Report should not be relied upon for purposes other than public understanding of information that has been provided by CRS to Members of Congress in connection with CRS's institutional role. CRS Reports, as a work of the United States Government, are not subject to copyright protection in the United States. Any CRS Report may be reproduced and distributed in its entirety without permission from CRS. However, as a CRS Report may include copyrighted images or material from a third party, you may need to obtain the permission of the copyright holder if you wish to copy or otherwise use copyrighted material.