Principles for Emergency Rental Assistance during the COVID-19 Crisis

On January 5, 2021, the U.S. Department of Treasury launched the $25 billion Emergency Rental Assistance Program (“ERAP”) established by the Consolidated Appropriations Act of 2021. These principles are intended to assist policymakers, program administrators, and advocates in the implementation of ERAP funds.

Please note that this is intended to be a working document. It will be continuously updated as NHLP receives feedback from the Housing Justice Network, a national network of housing legal services attorneys and other advocates for low-income tenants’ rights.

General Principles

● Rental assistance policies and programs should be structured to achieve the following goals:
  o Prevent a mass eviction crisis;
  o Protect the public health and address the racial disparities resulting from it, stemming from long standing structural inequities;
  o Ensure the immediate and future economic stability of low-income tenants;
  o Assist in closing the racial wealth gap that has been exacerbated by the Covid-19 pandemic.

● Rental assistance programs alone are insufficient to achieve the above goals and must be paired with other policies to stabilize renter households, including but not limited to an extension of an improved federal eviction moratorium, and policies that promote the immediate and long-term housing and economic stability of low-income tenants.

● Federal rental assistance policies should not preempt the passage of more protective state or local eviction and debt relief measures for low-income renters.

Ten Principles for Distributing ERAP Funds

Rental assistance policies and programs should:

1. Ensure that ERAP funds are targeted to tenants most in need of assistance.
   ● Establish mandatory targeting and prioritization guidelines
     o Income Targeting: Prioritize tenants at or below 50% AMI
     o Other Prioritization: Consider targeting assistance to census tracts with the greatest indicators of housing instability, using tools such as the Urban Institute rental assistance targeting tool (available at: https://www.urban.org/features/where-prioritize-emergency-rental-
assistance-keep-renters-their-homes). Take into account pre-pandemic economic conditions.

- Conduct advanced planning and continuous oversight to ensure racially equitable distribution of funds.

2. Require ongoing tenant/tenant advocate input and participation.
   - ERAP grantees should immediately establish an advisory commission which includes low-income tenants and tenant advocates and a broad geographic representation including tenants and advocates from small and large jurisdictions. The advisory commission should provide ongoing input into rental assistance program design, administration, and evaluation.
   - ERAP grantees should also administer an expedited public comment process prior to distributing funds.

3. Attach robust, enforceable tenant protections to acceptance of federal rental assistance dollars.
   - ERAP payments must eliminate all tenants’ rental debt, including late fees, interests, and other penalties. ERAP payments should be conditioned on the landlord forgiving any past rental debt or fees not covered by the ERAP payment.
   - Acceptance of ERAP payments should be tied to additional tenant protections. Potential protections include, but are not limited to:
     - Eviction protections
       - Agreement not to evict for the duration of the COVID-19 emergency, and for a period following the end of the emergency
       - Agreement that the tenancy is subject to just cause protections for the duration of the tenancy or the term of the ERAP funds, whichever is longer
     - Commitment to pursue eviction diversion strategies
       - Agreement to enter into a reasonable repayment plan as defined by the program administrators prior to pursuing eviction
       - Agreement to participate in available mediation prior to pursuing eviction
       - Agreement to participate in any local eviction diversion programs
     - Temporary reduction in rent
     - Caps on rent increases
     - Elimination of late fees, penalties, interest on arrearages for the duration of the COVID-19 emergency, and for a period following the emergency
     - Agreement to cooperate with future rental assistance applications and agreement to accept third party payment of rent for duration of the tenancy
     - Agreement not to report debts to credit agencies
4. **Allow rental assistance to cover a broad range of housing expenses and housing stability services.**

- In addition to the expenses enumerated in the federal statute, ERAP “financial assistance” payments should cover, but not be limited to:
  - Rental arrears, broadly defined to include any unpaid past rental amount. Rent and rental arrears should also cover rents that have been forgiven through any local or state rental debt relief measures where the property owner was not otherwise compensated.
  - Moving and relocation expenses, including but not limited to: security deposits, move-in fees, utility deposits, application fees and credit checks, early lease termination charges for survivors of domestic and sexual violence who need to leave units for safety, lock-changing charges for survivors of domestic and sexual violence who are staying in their units, moving trucks and related expenses, including disability-related moving expenses and precautions to limit exposure to COVID-19.

- ERAP “housing stability services” should include, but not be limited to, the following services:
  - Legal services
  - Case management services
  - Housing navigation, housing search, and housing counseling services that aid tenants who need to move and act in accordance with fair housing obligations
  - Previously unfunded or unbudgeted mediation services, which have an express mandate of preserving tenancies rather than expediting move out agreements
o Capacity-building and technical assistance to tenant associations and tenant organizing initiatives, including for tenants organizing to preserve current affordable housing, improve housing conditions, and prevent displacement.
o Tenant outreach and education about tenants’ rights during the COVID-19 emergency

● ERAP payments must fund permanent housing solutions only, and not shelter or other temporary housing solutions

5. **Eliminate barriers to accessing rental assistance.**
   ● Proactive outreach and accessible program administration
     o Rental assistance programs should conduct affirmative outreach. Outreach must be conducted in a manner to ensure that hard to reach and disenfranchised populations can access the funds, including individuals with limited English proficiency, low-literacy, low-tech or no-tech populations, justice-involved individuals, and persons with disabilities. Materials and outreach should be in different languages and accessible modes of communication. This includes requiring the jurisdiction to proactively translate important information and documents in different languages spoken in the jurisdiction.
     o Outreach and administration of programs should include multiple methods by which to apply for assistance, including that do not require internet access or tech literacy. Programs must include a means by which tenants living with disabilities can request reasonable accommodations, and by which tenants with limited English proficiency can easily request free language assistance.
     o Outreach and administration of rental assistance should be implemented in partnership with community-based organizations.
     o Rental assistance programs should not use a strictly first-come-first-serve model, as these systems exclude tenants and lower-income landlords with the highest needs, including tenants with disabilities.
     o States and localities should **immediately** establish administrative systems for tenants to apply directly for rental assistance.
     o States and localities should review rental assistance programs to ensure compliance with Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, the Fair Housing Act, and other federal, state, and local civil rights laws, including their duty to affirmatively further fair housing if an entitlement jurisdiction or subrecipient.
   ● Immigrant households
     o States and localities should make clear that immigrants, who may be currently ineligible for other forms of federal assistance, can access this pot
of rental assistance dollars, and will not share renter or household information with immigration authorities.

- State and localities should make clear that rental assistance programs are not authorized to exclude individuals due to their immigration status or impose criteria that would have the effect of excluding them (i.e. requiring a driver’s license, Social Security Number, or state ID).
- For states and localities that use the Homeless Management Information System (HMIS) to administer rental assistance programs, program administrators should make clear that applicants need not provide a Social Security Number in order to access rental assistance.
- State and localities should make clear that these rental assistance dollars are not subject to the “public charge” test.

- **Survivors of domestic violence**
  - States and localities must ensure that rental assistance programs to meet the unique needs of survivors of domestic and sexual violence, including the need for survivors to separate from perpetrators, with in some cases either the perpetrator or survivors leaving the rental home.
    - The term “eligible households” should not limit the ability of grantees to issue assistance to a household separating as a result of domestic or sexual violence, including offering rental assistance to remaining household members and offer other assistance, including moving expenses, security deposits, move-in fees, early lease termination fees, and rent, to the household members who move.
    - Survivors should be able to access rental assistance funds to cover the cost of changing locks.
    - Applications for assistance should be allowed to proceed even when the perpetrator refuses to participate in the application process, which is a common tactic of perpetrators.
    - Income eligibility should be separately assessed for the separate or separating households to reflect a change in income as a result of the separation.
    - Survivors should be permitted to apply directly to the program for assistance if they are doing so as a result of domestic or sexual violence, including because they need to move, or because the perpetrator refuses to apply for the funds or permit a request to the landlord to apply for the funds.
    - Confidentiality during the application process is critical to the survivor’s safety and the program must only contact survivors in a
manner the survivor has stated is safe. Program administrators may
wish to ask on an application form what the preferred method of
contact is for the applicant.

- Programs should allow survivors of domestic or sexual violence
  provide alternative documentation than what is required if required
documents cannot be accessed due to the abuse.
- Partnerships with local and state domestic violence and sexual assault
  programs can help the grantees ensure that survivors’ needs are
  prioritized and considered in a trauma-informed way.

● Tenants in federally-subsidized housing
  - States and localities should make clear that tenants in federally-subsidized
    housing are eligible to receive rental assistance for their portion of the rent.
  - Public housing authorities and federally-assisted owners should be advised to
    properly and expeditiously recertify tenants prior to submitting an
    application for rental assistance on a tenant’s behalf.

6. Eliminate adverse consequences for tenants receiving rental assistance

- Tax implications
  - Tenants must not face adverse tax consequences for accessing rental
    assistance.
  - Tenants should not be taxed for any rental debt that has been forgiven.

- Immigration consequences
  - Tenants should be informed that the state and localities will not take steps
    that could impose adverse immigration consequences for accessing rental
    assistance.

- Fraud Allegations / Future Access to Federally-Subsidized Housing
  - Tenants should not be required to sign declarations, certifications, or
    documents that they do not understand. Tenant certifications should not
    place tenants at unnecessary risk of fraud allegations, duplication of benefits,
    or other future consequences for accessing public benefits, including access
to federally-subsidized housing; state and localities should be required to
determine if there would in fact be a duplication of benefits --not tenants.

7. Increase incentives for landlords to participate in rental assistance programs.

- States and localities must increase incentives to participate – or increase
  disincentives not to participate—in rental assistance programs. Examples of
  incentives/disincentives may include:
  - Amending eviction laws to require that landlords apply for and accept any
    available rental assistance prior to evicting tenants for nonpayment of rent.
  - Including rental assistance under source of income protections.
o Barring landlords from other forms of financial assistance or mortgage relief from state and local governments if they have failed to apply for rental assistance or declined rental assistance payments.

o Providing state and local tax incentives for landlords to participate.

8. **Allow states and localities the flexibility to use ERAP funds within more protective eviction and debt relief schemes for low-income tenants.**
   - State and local governments should urge the Treasury Department to issue guidance that grants administrative waiver authority to states and localities that wish to enact eviction and rental debt relief plans aimed at providing more protections and stability to low-income tenants.
   - Waiver authority should be automatic and not require advanced approval by the Treasury in order to prevent delay.

9. **Work in concert with other policies that promote the immediate and long-term housing and economic stability of low-income tenants.**
   - Rental assistance must be coupled with other policies and programs that promote the long-term housing and economic stability of low-income tenants, including but not limited to:
     - Eviction moratoria
     - Right to counsel for tenants facing eviction
     - Policies that provide rental debt relief and minimize credit harms
     - Policies to ensure that existing federal housing programs minimize the need for rental assistance
       - E.g. ensuring that PHAs are doing proper and timely interim recertifications of tenants’ income and conducting retroactive recertifications.
     - Funding existing federal housing programs and taking proactive measures to preserve existing affordable housing
     - Investment in other long-termaffording housing options
     - Reform practices that impose hardships on low-income tenants, such as application fees, late fees, and high security deposits or move-in fees.

10. **Include data collection and other mechanisms to evaluate the efficacy of programs.**
    - ERAP-funded financial assistance and housing stability services present an opportunity to evaluate new and existing housing stability interventions, including evaluating to the extent such assistance and services are being provided equitably. To the extent possible, rental assistance programs should collect quantitative and qualitative data with which to evaluate the efficacy of programs.
    - Where possible, states/localities and local programs should partner with research institutions to assist with this evaluation.