



To: Housing Justice Network Advocates  
From: NHLP Staff  
Re: Covid Relief Package and Final FY21 Spending Bill  
Date: December 23, 2020

On December 21, Congress reached an agreement on a Covid relief package. Congress also released a final FY21 spending bill that included funding for HUD and affordable housing programs. Below is a summary and analysis of the key components of [both bills](#) with respect to affordable housing and tenants' rights. NHLP will provide additional guidance to advocates in the coming weeks.

### **COVID RELIEF PACKAGE**

There are several important housing provisions in the emergency Covid relief package. The bill provides essential funding for emergency rental assistance, extends the CDC eviction moratorium for one month, extends the deadline for the use of CRF funds, establishes a permanent floor for 4% tax credits, and creates a new tax credit for disaster allocation.

#### **Emergency Rental Assistance**

The relief package includes \$25 billion for emergency rental assistance, funded through the Coronavirus Relief Fund (CRF) and administered through the Department of Treasury. The assistance will cover a small fraction of the vast need for rental assistance throughout the country. However, Congress made some improvements to CRF since the CARES Act, including adding a requirement that 90% of the funds be used towards rental assistance, which may include current rent, prospective rent, and rental arrears, as well as utility payments, utility arrears, and other potential housing costs incurred due to the Covid-19 pandemic. In addition, CRF funds must now be distributed to renter households with incomes at or below 80% of the Area Median Income, with a priority for households at or below 50% AMI, or households that include at least one person who has been unemployed for 90 days at the time they apply for rental assistance. Up to 10% of CRF funds may also be used for housing stability services, which the Act defines as "case management and other services related to the novel coronavirus disease (COVID-19) outbreak, as defined by the Secretary, intended to help keep households stably housed." Legal aid may qualify as "housing stability services" but ultimately the Treasury will interpret what activities are authorized with the funds. A full outline of the emergency rental assistance provisions in the relief package is below.

Advocates must start working immediately with state and local policymakers to ensure that rental assistance funds are fairly and equitably distributed to the tenants most at risk of housing instability and homelessness. Rental Assistance programs should include further targeting and prioritization guidelines, along with strong tenant protections, such as eviction protections, rent forgiveness, and other measures to ensure that tenants remain housed until the Covid-19 pandemic is contained.

#### **Extension of the CDC Eviction Moratorium**

The relief package extends the CDC Eviction moratorium for one month, to January 31, 2021. No other changes were made to the eviction moratorium.

### Extension on Deadline for Use of CRF Funds

The bill extends the deadline for the use of CARES Act Coronavirus Relief Funds (CRF) from December 30, 2020 to December 31, 2021. This is important because advocates throughout the country reported that many jurisdictions faced challenges in spending their allocations by the end of the year.

### **SPENDING BILL**

The spending bill renews or slightly increases funding for most HUD and USDA housing programs. It funds these programs at levels above what both the President and Senate requested but below the House request. In other words, Congress rejected any attempt at drastic budget cuts. For more on the spending bill, see the National Low Income Housing Coalition's [bill summary](#).

### New Funding for Legal Representation for Evictions

The bill (similar to one that was introduced in the House as the "Legal Assistance to Prevent Evictions Act of 2020") provides \$20 million for legal housing assistance. The funding is made available through HUD's Housing Counseling account and will be awarded through a competitive grant process to nonprofit or government entities providing free legal services to low income tenants at risk of eviction. HUD must ensure that tenants living in rural areas are served with the funds. The funds are available until December 30, 2023. NHLP will provide additional information about the use of the funds as we learn more and will continue to advocate that funds support existing eviction defense programs and services.

### Floor for 4% Tax Credits

The Appropriations bill establishes a floor for 4% tax credits in the LIHTC program, which, by replacing the prior method of establishing the applicable percentage, will increase the amount of tax credit equity that can be raised for such projects. The Consolidated Appropriations Act of 2021 amends 26 U.S.C. §42(b) to provide that the applicable percentage shall not be less than 4% for 4% tax credit projects. The new rule applies to new or existing buildings that are put in service after 12-31-2020. (A floor of 9% for 9% tax credit projects was established in 2013).

Unlike the 9% tax credit, the 4% credit is often used to finance acquisition and/or rehabilitation of existing federally subsidized developments, providing a critical preservation tool. The 4% floor should incentivize investment in 4% tax credit projects and thus advance subsidized housing preservation efforts and expand the supply of other LIHTC units.

### New Tax Credits for Disaster recovery

The bill authorizes the IRS to allocate additional tax credits to the 11 states that experienced non-COVID-19 major disasters in 2020 that qualified for FEMA assistance. These additional tax credits will apparently be allocated based on each state's disaster area population. California will receive the lion's share of these credits with a disaster area population of over 23 million, which translates into an additional credit allocation of over \$80 million.

### New Requirement for All Federally Assisted Units to Have Working CO Detector

The package includes the “Carbon Monoxide Alarms Leading every Resident to Safety Act (CO Alerts Act). The Act protects people in federally assisted housing from carbon monoxide exposure by (1) requiring CO alarms or detectors in housing that receives public funding including both project and tenant-based assistance and rural housing, (2) requiring that CO alarms comply with widely-adopted international Fire Code standards which includes installation in any dwelling unit containing a fuel-burning appliance, fireplace, furnace, or enclosed garage and (3) authorizing appropriations necessary to carry out the act. Housing providers will have two years to comply with the law. Carbon monoxide is a toxic gas that cannot be seen, smelled, or tasted and exposure can cause headaches, nausea, seizures, brain damage, and death. Until now, housing inspectors were not required to inspect for working CO detectors in most federally assisted housing.

### Outline of Rental Assistance Provisions in Relief Package

Consolidated Appropriations Act 2021 – 12/21/20  
Rental Assistance Summary

#### **TITLE V—BANKING; Subtitle A—Emergency Rental Assistance; Section 501 EMERGENCY RENTAL ASSISTANCE.**

- **Appropriation**
  - \$25bn of total rental assistance, including:
    - \$400m to Puerto Rico, U.S. Virgin Islands, Guam, Northern Mariana Islands, and American Samoa
    - \$800m to tribal communities
    - \$15m for administrative expenses of the Secretary of Treasury, including for technical assistance to grantees
  - Remaining \$25bn after above allocations goes to states, the District of Columbia, and eligible units of local government
    - The term “unit of local government” means a county, municipality, town, township, village, parish, borough, or other unit of general government below the State level with a population that exceeds 200,000.
- **Distribution**
  - CRF funds must be distributed to states, tribal governments, territories, and eligible units of local government within 30 days of the enactment of the law
  - Funding is distributed according to relative population of the state for the 50 states plus District of Columbia, with a minimum payment of \$200m to all 50 states plus the District of Columbia
  - There is a separate formula for tribal communities and U.S. territories
- **Use of Funds**
  - This round of CRF funding must be used “to provide financial assistance and housing stability services to eligible households.” Title V, Section 501(c)(1).
  - **Financial Assistance**

- At least **90%** of funds must be used to provide financial assistance to eligible households
- Financial assistance includes:
  - Rent
  - Rental arrears
  - Utilities and home energy costs
  - Utilities and home energy costs arrears; and
  - Other expenses related to housing incurred due, directly or indirectly, to the Covid-19 outbreak, as defined by the Secretary of Treasury
- Maximum period of assistance
  - Financial assistance may be provided to an eligible household for a maximum period of 12 months, with an additional 3 month allowable extension if it's necessary to ensure housing stability for the household. The 3 month extension is also subject to availability of funds. The maximum period of assistance is 15 months.
- Prospective rent payments
  - Eligible households may not receive financial assistance for prospective rent payments for more than 3 months, subject to the below exceptions.
    - Exception: Eligible households can receive *more* than 3 months of prospective rent payments if:
      - Funds are available
      - Household reapplies for financial assistance, provided that the household doesn't exceed the 15 month cap on assistance.
    - Further limitation on prospective rent payments:
      - If rental assistance applicants have rental arrears, grantees can't make commitments for prospective rent payments unless they have also provided assistance to reduce the household's rental arrears
- Distribution of financial assistance
  - Payments must be made directly to landlord or utility provider on behalf of the tenant, *except* that:
    - If landlord or utility provider does not agree to accept the payment, then tenants can receive the payment directly.
- Documentation
  - If grantee makes a payment to a landlord or utility provider on behalf of an eligible household, the grantee must provide documentation of such payments to the tenant household
- **Housing Stability Services**
  - **10%** of funds received may be used for housing stability services
    - Housing stability services are defined in the Act as "case management and other services related to the novel coronavirus disease (COVID-19)

outbreak, as defined by the Secretary, intended to help keep households stably housed.” Title V, 501(c)(3).

- Prioritization of assistance
  - In reviewing applications for financial assistance and housing stability services, rental assistance administrators must prioritize consideration of applications that satisfy any of the following conditions:
    - Income of households doesn’t exceed 50% of AMI; or
    - 1 or more of the individuals within the households are unemployed as of the date of the application for assistance and have not been employed for the 90-day period preceding such date
  - Grantees may provide a process for further prioritizing applications for financial assistance and housing stability services
- **Administrative Costs**
  - Not more than **10%** of funds received may be used for administrative costs attributable to providing financial assistance and housing stability services, including for data collection and reporting requirements related to the funds
  - Programs may not use CRF funds for other administrative costs
- **Eligible Households**
  - Households must meet the following three eligibility requirements, as determined by the rental assistance provider:
    - (1) At least 1 member of the household has:
      - Qualified for unemployment benefits; or
      - Experienced a reduction in household income, incurred significant costs, or experienced other financial hardship due, directly or indirectly, to the COVID-19 outbreak. The applicant must attest this in writing.
    - (2) A member of the household can demonstrate a risk of experiencing homelessness or housing instability, which may include:
      - A past due utility or rent notice or eviction notice;
      - Unsafe or unhealthy living conditions; OR
      - Any other evidence of such risk, as determined by the administering rental assistance program; AND
    - (3) The household income is 80% AMI and below.
  - Income determination
    - A tenant’s income is determined by:
      - (i) The household’s total income for calendar year 2020; OR
      - (ii) Sufficient confirmation (as determined by the Treasury Secretary) of the household’s monthly income at the time of application for assistance
        - If income is determined under option (ii), above, the rental assistance administrator is required to redetermine income after every 3 month period that the household receives CRF rental assistance.
- **Duplication of Benefits**

- *“To the extent feasible,”* rental assistance providers must ensure that rental assistance provided to an eligible household is not duplicative of any other federally funded rental assistance provided to the same household.
- **Treatment of Assistance for Purposes of Other Public Benefits**
  - CRF rental assistance payments under this section shall not be regarded as income and shall not be regarded as a resource for purposes of determining the eligibility of the household or any member of the household for benefits or assistance, or the amount or extent of benefits or assistance, under any Federal program or under any State or local program financed in whole or in part with Federal funds.
- **Applications for Rental Assistance by Landlords**
  - Nothing in the act prevents a landlord or owner from:
    - Assisting renter to apply for rental assistance
    - Applying for rental assistance on behalf of the renter
  - Requirements for landlord applications submitted on behalf of tenants
    - If a landlord applies for rental assistance on behalf of the renter, the landlord must:
      - Obtain signature of the tenant on the rental assistance application. Signature may be electronic;
      - Provide documentation of the rental assistance application to the tenant; AND
      - Use the payment to satisfy the tenants’ rental obligations to the owner. Title V, Section 501 (f)(2)(C).
- **Reallocation of Unused Funds**
  - Beginning **9/30/2021**, the Secretary shall recapture excess funds that are not obligated by a grantee for rental assistance, housing stability services, or the associated administrative costs
    - Secretary shall reallocate amounts to eligible states and units of local government, who at the time of such reallocation, have obligated at least 65 percent of the original funds. These states and units of local government must use the funds towards the same purpose—financial assistance and housing stability services.
      - Amount of any such reallocation shall be determined based on demonstrated need within the grantees’ jurisdiction, as determined by the Treasury Secretary
- **Deadlines for spending**
  - Funds remain available through **December 31, 2021**
    - Extensions:
      - For funds reallocated to an eligible grantee, an eligible grantee may request a 90-day extension of December 31, 2021 deadline
  - Unspent funds revert back to the Treasury Department.
- **Reporting Requirements**
  - The Treasury Secretary shall provide public reports at least quarterly regarding the use of funds
  - The reports shall contain:

- Number of eligible households that receive assistance from CRF payments
- Acceptance rate of applicants for assistance
- Type or types of assistance provided to each eligible household
- The average amount of funding provided per eligible household receiving assistance
- Household income level, with disaggregated data for households in the following income brackets:
  - Less than 30% AMI
  - 30-50% AMI
  - 50-80% AMI; and
- Average number of monthly rental or utility payments that were covered by the funding amount that the household received
- Additional race, ethnicity and gender reporting requirements:
  - The above information relating to households must also be reported by the gender, race, and ethnicity of the primary application for rental assistance.
- Privacy requirements
  - Each grantee shall establish data privacy and security requirements that:
    - Include appropriate measures to ensure privacy is protected;
    - Provide that information, including any personally identifiable information, is collected and used only for the purposes of submitting reports; and
    - Provide confidentiality protections for data collected about an individuals who are survivors of intimate partner violence, sexual assault, or stalking.

*Please contact Mariel Block ([mblock@nhlp.org](mailto:mblock@nhlp.org)) with questions about emergency rental assistance.*