

PUBLICATION

Treasury Releases Information on New Emergency Rental Assistance Program: Opt-in by January 12 Deadline

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The U.S. Department of the Treasury just released details of a new Emergency Rental Assistance Program, including a list of eligible recipients for the \$25 billion in funding, pursuant to Title V, Section 501, of the Consolidated Appropriations Act of 2021. Treasury must provide funding to any eligible recipients within 30 days of enactment, or by January 26, 2021, so states and local governments that are eligible – and willing – to participate will receive funding quickly and must be ready to begin distributing payments to qualified renters, landlords, and utilities.

Background

Of the total funding provided to Treasury:

- \$400 million is reserved for payments to the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, and the Commonwealth of the Northern Mariana Island, and American Samoa;
- \$800 million is reserved for payments to Indian tribes and tribally designated housing entities that meet the definition of such as included in the Act and the Department of Hawaiian Homelands;
- \$15 million is reserved for administrative expenses of the Secretary of the Treasury; and
- The remaining \$23.75 billion will be allocated to states and local governments based on population according to the 2019 Census.

Application

In order to apply for the Emergency Rental Assistance Program, eligible recipients must submit completed payment information and a signed acceptance of award terms by **11:59 p.m. EDT on January 12, 2021**. See [here](#).

Program Administration: Ten Percent Management Costs Allowance

It appears from the Act and initial Treasury guidance that funding will be provided first to states. The states are required to distribute at least 45 percent of this funding to the [local governmental entities that are eligible to receive it](#) and that opt into the program by the deadline. Recipients must [agree](#) to comply with any reporting obligations established by Treasury, including the Treasury Office of Inspector General, as it relates to these funds. Recipients must also agree to comply with the requirements of Section 501 and Treasury interpretive guidance regarding such requirements and all other applicable federal statutes, regulations, and executive orders.

Current Treasury guidance indicates that it will largely be up to the state and local governmental recipients to design and implement the program to administer the assistance to eligible renters, landlords, and utilities. Treasury provides that an application for rental assistance may be submitted by either an eligible household or by a landlord on behalf of that eligible household and must be submitted through the programs established by their respective State and/or local government grantees.

It is clear from current guidance that administration of the new Emergency Rental Assistance Program will carry with it a significant administrative burden and sizable risks in the event of subrecipient or recipient

noncompliance with the many rules and federal regulations that will apply. However, in recognition of this, the Act and Treasury guidance provide that willing state and local government recipients may use up to 10 percent of the total award for management expenses and other eligible costs associated with administration of the program.

Eligibility for Funding

Household Eligibility

Ninety percent of this funding must be used to directly assist eligible households to meet rent, rental arrears, utilities, utility arrears, and other housing expenses resulting from the pandemic. Eligible households are renters with incomes up to 80 percent of the area median income who meet the following criteria:

- One or more individuals in the household has qualified for unemployment benefits or can attest in writing that they have experienced a reduction in household income, incurred significant costs, or experienced other financial hardship due to the coronavirus pandemic; and
- One or more individuals in the household can demonstrate a risk of experiencing homelessness or housing instability that may include a past due utility or rent notice or an eviction notice; or unsafe or unhealthy living conditions; or any other evidence of such risk as determined by the State.

Household Priority

Assistance should be prioritized to the following eligible households:

- Eligible households that include an individual who has been unemployed for the 90 days prior to the application for assistance; and
- Eligible households with income at or below 50 percent of the area median.

Household Income Determinations

Household income is determined as either:

- The household's total income for the calendar year 2020; or
- The household's monthly income at the time of application. If a household qualifies based on the monthly income at the time of application, eligible recipients must verify income eligibility every three months.

Available Assistance

Eligible households may receive up to 12 months of assistance, plus an additional three months of assistance if funding is available and eligible recipients determine the extra months are needed to ensure continued housing stability. Payment of existing housing arrears that may result in eviction are to be prioritized, and assistance must be provided to reduce an eligible household's arrears prior to providing assistance for future rent payments. Once a household's rental arrears are reduced, eligible recipients may only commit to funding future assistance up to three months at a time.

Household Applications

Applications for rental assistance may be submitted to eligible recipients by:

- Member of a household; or

- Landlords on behalf of an eligible household. If a landlord submits on behalf of a tenant, the landlord must notify the tenant and obtain the tenant's consent.

Provision of Assistance

Eligible recipients will make payments directly to landlords and utilities on behalf of eligible households. If a landlord or utility provider chooses not to participate in the program, eligible recipients will provide assistance directly to the household.

Duplication of Benefits

Eligible recipients must ensure households are not receiving rental assistance under any other federal program.

Record Keeping/Reporting Requirements

Eligible recipients are required to collect and make available the following information to the U.S. Department of the Treasury or the Office of Inspector General upon request:

- Gender, race and ethnicity of the primary applicant
- The number of eligible households that receive assistance
- The acceptance rate of applicants for assistance
- The types of assistance (rent, utilities, etc.) provided to each household
- The average amount of funding provided per household
- The income levels of households receiving assistance by the following categories:
 - 30 percent or less of area mean income;
 - Between 30 and 50 percent of area mean income; and
 - Between 50 and 80 percent of area mean income.
- The average number of monthly rental or utility payments that each household received

Proper oversight will be key to ensure that this benefit is properly provided to the eligible subrecipients in a manner that is compliant with all applicable rules and mitigates risks to the state and local government recipients.

For more information please contact [Wendy Huff Ellard](#), [Chris Bomhoff](#), or any member of [Baker Donelson's Disaster Recovery Group](#).