



September 10, 2021

The Honorable Maxine Waters
Chairwoman
Committee on Financial Services
Washington, DC 20515

The Honorable Patrick McHenry
Ranking Member
Committee on Financial Services
Washington, DC 20515

Dear Chairwoman Waters and Ranking Member McHenry:

The undersigned national associations represent for-profit and non-profit owners, operators, developers, lenders and property managers and housing cooperatives involved in the provision of rental housing, both affordable and conventional. As the Committee discusses the importance of rental assistance at a hearing entitled, “Protecting Renters During the Pandemic: Reviewing Reforms to Expedite Emergency Rental Assistance,” we continue to offer our support for policies that accelerate the distribution of federal funds to renters and housing providers in need.

We are writing to urge the Administration and Congress to immediately implement improvements to the Emergency Rental Assistance Program (ERAP) that can accelerate the distribution of federal funds to renters and housing providers in need.

While many jurisdictions have begun to successfully increase their ERAP disbursement, too many others are fraught with significant application processing and payment delivery delays. These are largely attributable to grantees’ self-imposed fraud prevention measures, mandates that deter housing provider participation, misapplication of statutory requirements and lack of engagement from certain eligible residents.

Changes are needed to maximize the reach of ERAP funds to renters and housing providers and to ensure greater consistency across programs, especially in areas of overlapping coverage. Without action to improve disbursement of ERAP and increased participation in the program, renters are faced with further uncertainty and a mounting debt cliff, while rental property owners move closer to foreclosure, bankruptcy, or a forced sale of the property—putting the overall stability of the rental housing sector and broader real estate market in peril.

We applaud this Committee’s focus on reforming the program and appreciate that H.R. 5196, the “Expediting Assistance to Renters and Landlords Act of 2021,” and H.R. 3913, the “Renter Protection Act of 2021,” begin to address many of our concerns. Although we agree that changes are needed to maximize the reach of ERAP funds to renters and housing providers and to ensure greater consistency across programs, we encourage the Committee to focus on efforts to break

down barriers that unnecessarily complicate getting program funds into the hands of struggling renters and housing providers—rather than implementing further roadblocks or unnecessary rules changes that could unintentionally slow disbursement of ERAP.

We appreciate that H.R. 5196, the “Expediting Assistance to Renters and Landlords Act of 2021,” begins to address several of our concerns raised in our [August 18 letter](#). However, we have concerns about several of the specific provisions in the bill that could complicate getting funds into the hands of struggling renters and housing providers and could be counter-productive in speeding disbursement of ERAP. Of particular concern to the real estate industry is the bill’s inclusion of a 4-month eviction moratorium upon acceptance of ERAP funds and requiring that housing providers cancel a resident’s outstanding balance/debt in its entirety upon receiving some ERAP payments, even if the amount received is less than what is owed. These types of programmatic barriers are why many property owners, especially small and mid-sized owner have opted to not participate in ERAP, and this is what we must avoid imposing once again.

We suggest the following modifications to ERAP to facilitate expedited processing and distribution of rental assistance payments:

1. Align ERAP income restrictions with the eligibility requirements of the previous federal Eviction Moratorium.

Under the previous Centers for Disease Control and Prevention (CDC) Order, an individual earning up to \$99,000 in annual income, or if filing jointly, \$198,000, qualified for eviction protections. Under the statutory ERAP requirements, priority for rental assistance is given to renters earning up to 50 percent and below of area median income (AMI), with renters earning up to 80 percent also qualifying for rental assistance. However, our members report that some administering entities are not allowing renters who earn up to 80 percent of AMI to apply. The delta between those who qualify for CDC Order protection and those eligible for rental assistance at 80 percent of AMI is significant.

2. Direct grantees to allow housing providers to apply on behalf of residents and establish a safe harbor for those attempting to obtain documentation from uncommunicative residents to support those applications.

Despite explicit acknowledgment within ERAP that a rental housing provider may apply for assistance on behalf of their residents, some jurisdictions have erected barriers to this. Further, some residents are entirely uncommunicative and will not provide required information or take necessary action to move applications forward. H.R. 5196 takes positive steps forward in allowing housing providers to apply on behalf of non-communicative tenants; however, the legislation includes several worrisome provisions that would deter housing provider participation or unnecessarily delay payment, such as mandating rent cancellation if any amount of ERAP funding is received even if it does not satisfy the outstanding amount owed; or placing a lesser priority on the processing of landlord only applications for ERAP.

There should be no barriers to applying for or receiving ERAP for housing providers who, in good faith, attempt to collect required information from residents and apply on their behalf. The safe harbor should be for those who have notified their residents of their intent to apply for assistance if they cannot obtain consent. Documentation of unpaid back rent or submission of a previous CDC eviction order declaration of COVID-impact should suffice to move these applications forward.

- 3. Prioritize arrearages and remove 18-month limit.** Renters and property owners that have been hard hit by the pandemic receive the greatest benefit from having current rent due paid and rent arrearages paid. Similar to the language included in H.R. 3913, we believe Congress should require grantees to address any and all rental arrearages for households in need before any future payments of rent or other services are made in order to keep families stably housed. Additionally, similar to the language included in H.R. 5196 and given the current state of the pandemic and prolonged economic uncertainty faced by millions of renters, we believe the current 18-month limitation on assistance should be removed to avoid interfering with grantees ability to provide critical rental arrearage and future rental assistance to those in need.
- 4. Allow ERAP to reimburse rental property owners even if the renter has moved and prohibit program requirements that force housing providers to return payments when residents move out.**

Since the beginning of the pandemic, rental property owners have been encumbered with providing housing without payment. The previous CDC Orders made it clear that individuals were not relieved of their obligation to pay rent. However, ERAP administrators have prevented housing providers from obtaining rental assistance on behalf of residents who terminated their lease early or abandoned their unit, leaving housing providers without a mechanism to obtain relief. Once the Order expired, these renters will now face the prospect of eviction due to nonpayment of rent. Furthermore, renters who leave housing providers with unpaid balances are taken to collections, affecting their credit and housing choice in the future.

In order to avoid this, rental property owners should be allowed to apply for ERAP to cover rent arrears even after a renter has moved or if the renter has a judgment entered against them. In the same vein, housing providers should not be required by ERAP administrators to return rental assistance payments that pay for outstanding balances if the resident moves out.

Housing providers must be made whole from debts that renters leave behind. These funds are critical for housing providers to continue managing property operations and maintaining the housing for their residents overall. H.R. 5196 takes positive steps to assist in this area but includes worrisome provisions that prohibit property owners from securing ERAP for vacant units if it's empty because of an eviction, which is a challenge where the action was necessary for issues outside of non-payment of rent, like criminal activity/jeopardizing other residents, etc. or where the eviction was processed in a jurisdiction that allowed it. Both instances leave the property owner with unrecoverable debt, while still facing their own financial obligations and pushing them to the brink. This causes significant harm to overall viability of a property and threatens the long-term affordability of rental housing.

- 5. Require residents to demonstrate eligibility for rental assistance through an affidavit or self-attestation.**

For those who participate in the program, a certification or affidavit of need should be sufficient. The income verification process is time consuming for both the renter applying for assistance as well as the agency tasked with deploying the rental assistance. Currently, there is no consistency among state and local governments to allow for "self-attestations"

or declarations of income. Some agencies allow for self-attestations while other agencies only allow for income self-attestation as a last resort. This inconsistent process by housing agencies significantly slows the application process. H.R. 5196 takes positive steps to assist in this area.

6. Clarify that renter eligibility is not contingent on having a COVID-19 diagnosis.

There continues to be misconceptions among renters that they or an immediate family member need to prove a COVID-19 diagnosis to qualify for rental assistance. Some grantees' renter eligibility information and application processes perpetuate this misnomer. The Treasury's FAQs state: "While grantees relying on clause (ii) in ERA1 must show financial hardship "due, directly or indirectly, to" COVID-19, grantees in ERA2 are also permitted to rely on financial hardship "during" the pandemic," however grantees must make clear that renter eligibility is only contingent on financial impact during the pandemic. H.R. 5196 takes positive steps to assist in this area.

7. Require state and local grantees to facilitate bulk processing of applications and payments.

While Treasury's most recent guidance does encourage grantees to obtain information in bulk from housing providers regarding eligible residents and to engage in bundling assistance payments, few, if any, program administrators have implemented these processes. Bulk processing will help streamline the process. It is imperative that bulk processing be required for grantees.

8. Avoid the imposition of program requirement or proscriptions unrelated to payment of outstanding or future rental assistance.

These include: prohibiting a housing provider from applying on behalf of the resident; imposing additional eviction restrictions—particularly those that interrupt the eviction process without certainty of resident eligibility for rent relief and those that inhibit eviction actions despite continued nonpayment of rent or compliance with payment plan terms; requiring waiver of late fees; imposing rent freezes; and requiring that owners provide sensitive financial information to residents such as W-9 forms that may include social security numbers (i.e. social security numbers routinely serve as tax identification numbers for smaller landlords). While H.R. 5196 attempts to remove many barriers preventing housing provider and renter participation in ERAP, several included provisions mirror programmatic barriers we have seen ERAP grantees impose at the state and local levels that have deterred participation and slowed disbursement of these critical relief funds. While well-intentioned, many of these requirements will ultimately harm the very population of vulnerable renters that this Committee is trying to help.

9. Provide Technical Assistance and Technology Solutions to Aide Struggling Grantees.

Despite Congressional and Administration efforts, some jurisdictions continue to struggle to get ERAP funds to renters and property owners in need. We believe that funds should be allocated to Treasury to provide technical assistance, information and technology solutions to grantees who have been unable to efficiently disburse rental assistance. H.R. 5196 takes positive steps to assist in this area.

10. Enhance ERAP Outreach.

We support additional outreach by federal, state and local governments to increase awareness of ERAP eligibility amongst renters and rental property owners. These efforts, carried out by mail, social media and public relations campaigns will complement the work of the multifamily industry in promoting ERAP and its work in assisting renters in need applying for help. H.R. 5196 takes positive steps to assist in this area.

The COVID-19 pandemic has placed an unprecedented strain on renters, individual housing providers and the rental housing industry. For rental property owners who rely on rent revenue as their primary source of income, mounting rent losses, in many cases exceeding tens of thousands of dollars, place them in an untenable and unsustainable position. These same owners have not benefited from relief of their own financial obligations, including their mortgage, insurance, and property tax payments, and they are still required to meet all their obligations to provide stable and safe housing for their residents.

Together, our members serve millions of renters in communities large and small across the country every day. Throughout the pandemic, we have worked to both help our residents resolve their hardships and to advance policies to provide renters with essential resources to meet their housing needs. We are committed to working in partnership with policymakers to ensure that ERAP is a success.

Efforts to break down barriers that unnecessarily complicate getting program funds into the hands of struggling renters and housing providers—rather than implementing further roadblocks or unnecessary rules changes that could unintentionally slow disbursement of ERAP is the direction Congress must take. By making the above reforms, the Administration and Congress can address the underlying financial distress faced by renters, ensure they're able to remain stable in their housing for the remainder of the pandemic and prevent continued disruption and instability in the rental housing market.

Sincerely,
CCIM Institute
Council for Affordable and Rural Housing
Institute of Real Estate Management
Manufactured Housing Institute
Mortgage Bankers Association
National Apartment Association
National Association of Home Builders
National Association of Housing Cooperatives
National Association of REALTORS®
National Leased Housing Association
National Multifamily Housing Council

cc: U.S. House Committee on Financial Services
U.S. Senate Committee on Banking, Housing, and Urban Affairs
House and Senate Leadership
The Honorable Marcia Fudge
The Honorable Janet Yellen