



May 11, 2021

Geoffrey Ross
Deputy Director, Financial Assistance--Federal Programs
Department of Housing and Community Development
2020 West El Camino Ave.
Sacramento, CA 95833

RE: Necessary Improvements to Emergency Rental Assistance Program

Dear Mr. Ross,

Thank you for your ongoing engagement with us regarding challenges with the Emergency Rental Assistance Program (ERAP). Legal services attorneys, community partners, and applicants around the state continue to bring to our attention serious problems with the ERAP application process that are preventing low-income tenants from accessing needed assistance. In addition, the current absence of comprehensive data regarding ERAP applications is hampering the ability of advocates to identify additional issues and propose solutions. From the limited data we have seen thus far, however, the pace at which applications are being completed and relief is reaching tenants and landlords is concerning.

With California set to receive additional federal rental assistance through the American Rescue Plan Act, as well as with Governor Newsom's welcome proposal this week to use federal relief funds to address 100% of rental and utility arrears and 100% of prospective rent for eligible tenants, we want to work collaboratively with you and your team to address issues that are creating challenges with distributing the funds so that the vulnerable low-income renters who are the intended beneficiaries of this program receive the assistance they need to maintain stable housing. Delays in distributing assistance will lead to displacement and eviction, which this program is intended to prevent.

We have identified two key areas of recommendations:

- Simplify the application process and remove other barriers to applying.
- Provide comprehensive access to data and accountability.

As the state continues to refine ERAP, we ask that you consider the following recommendations:

Remove Unnecessary Barriers to Participation

1. Simplify Documentation Requirements

Documentation barriers--both the types and the amount of documentation required--are making it impossible for many qualifying tenants to complete the application process. A recent study of 15



different emergency rental assistance programs, including two from California (San Diego and Napa City), found that gathering the necessary documents required to apply was extremely difficult and resulted in qualifying tenants abandoning the application altogether.¹ Some tenants may give up before even starting when they see the lengthy list of documents on the Housing is Key website that “may” be required.

The barriers created by extensive documentation requirements are exacerbated by the digital divide that many low-income tenants face. More than 1 in 10 people in California do not have a desktop, laptop, or other computing device at home and access is particularly limited for people who are low income (22%), residents of rural areas (19%), Black (20%), and Latino (20%).² This barrier is preventing eligible applicants from completing the application process, or in some cases even being aware that assistance is available. HCD has encouraged applicants with technology barriers to seek assistance with the application by contacting organizations in the local partner network. However, these organizations report that tenants often have to come in for two or three appointments to complete the lengthy application. This is particularly a barrier in rural areas where the nearest local partner may be many miles away, further increasing the likelihood that the tenant will not complete the application.

To eliminate the barriers created by extensive documentation requirements, we recommend that tenants have the option to self-certify COVID-19 hardship to align with U.S. Department of Treasury guidance, which explicitly encourages grantees to allow self-attestation in order to reach the most vulnerable populations.³ Studies have found that by using self-attestation or self-certification, programs can serve more households in need, as was the case in San Francisco and in King County, Washington.^{4 5} We also recommend modifying documentation requirements to

¹ Claudia Aiken, Vincent Reina, Julia Verbrugge, Andrew Aurand, Rebecca Yae, Ingrid Gould Ellen, Tyler Haupt, *Learning from Emergency Rental Assistance Programs: Lessons from Fifteen Case Studies*, NYU Furman Center, the Housing Initiative at Penn, and the National Low Income Housing Coalition, at <https://nlihc.org/sites/default/files/ERA-Programs-Case-Study.pdf>

² Niu Gao and Joseph Hayes, *California’s Digital Divide*, Public Policy Institute of California (February 2021) at <https://www.ppic.org/publication/californias-digital-divide/>

³ U.S. Department of Treasury, *U.S. Department of Treasury: Emergency Rental Assistance Frequently Asked Questions*, (Revised March 26, 2021), at https://home.treasury.gov/system/files/136/ERA-Frequently-Asked-Questions_Pub-3-16-21.pdf; See also U.S. Department of Treasury, *U.S. Department of Treasury: Emergency Rental Assistance Frequently Asked Questions*, (Revised May 7, 2021) p. 2 at

<https://home.treasury.gov/system/files/136/ERA2FAQs%205-6-21.pdf> (The updated FAQ encourages grantees to allow self-attestation form of documentation).

⁴ Ingrid Gould Ellen, Brittany Mazzurco Muscato, Claudia Aiken, Vincent Reina, Andrew Aurand Rebecca Yae, *Advancing Racial Equity in Emergency Rental Assistance Programs*, NYU Furman Center, the Housing Initiative at Penn, and the National Low Income Housing Coalition, at [https://furmancenter.org/files/Advancing Racial Equity in Emergency Rental Assistance Programs - Final.pdf](https://furmancenter.org/files/Advancing-Racial-Equity-in-Emergency-Rental-Assistance-Programs-Final.pdf); <https://nlihc.org/sites/default/files/Washington-State-Emergency-Rental-Assistance-Case-Study..pdf> pg. 2

⁵ Rebecca Yae and Neetu Nair, *Emergency Rental Assistance Case Study: Washington State Department of Commerce’s Eviction Rent Assistance Program*, National Low Income Housing Coalition, at <https://nlihc.org/sites/default/files/Washington-State-Emergency-Rental-Assistance-Case-Study..pdf>. (The study found that the State of Washington allowed tenants to use self-certification documentation. Grantees of the program found that providing the attestation ensured the ease of the process.)



make them less burdensome and more accessible to tenants, eliminating any documents that are not necessary to comply with federal requirements.

2. Remove Barriers for LEP applicants

The ERAP application is inaccessible for those who have limited English proficiency, effectively excluding a large number of tenants who would otherwise qualify for the program. This is born out by the limited data we have seen thus far about ERAP, which shows a disproportionate number of successful applications from English-speaking tenants. For example, the ERAP website is available in English and Spanish only.⁶ While the program website encourages tenants to reach out to call centers in several other languages, the full website is not available in other languages unless the applicant chooses to use Google translate, which has various problems including frequent mistranslation. Printable applications and the sample application are also solely in English, requiring a translator to assist with the application.

Rather than requiring tenants to navigate a website in a language they do not speak to decipher how to reach a call center or access assistance from a local partner organization, we recommend that the website and application be professionally translated into multiple languages commonly spoken by low-income tenants in California. The failure to translate these resources violates the state's obligations under Title VI of the federal Civil Rights Act and Government Code Section 11135.

3. Remove Unnecessary Tenant Certifications

The application discourages tenants from applying by requiring certifications that they cannot or should not make. These certifications are not mandated by federal rules or SB 91 and should be eliminated. For example, the application requires tenants to certify that "there are no material violations of the lease." Leases frequently contain illegal or unenforceable provisions with which the tenant has no obligation to comply. Nonetheless, the application requires a tenant to certify that they are complying with a lease provision they are rightfully not complying with, leaving them to make what is essentially a legal determination that the certification is true despite their non-compliance with a provision of the lease. Afraid of being tripped up, they may choose not to make the certification, wrongfully believing they cannot do so.

The application also states that tenants shall "maintain and ensure all other household members maintain all other tenant obligations under the lease not covered under the agreement." Again, a literal reading of this may discourage the tenant from making the certification even though legally they are in compliance. For example, a lease may prohibit the tenant from adding additional occupants, but a tenant who has become disabled due to COVID-19 and requires a family member to provide in-home care would be entitled to a reasonable accommodation allowing an additional occupant in spite of the lease provision. A tenant in this situation could be confused by the certification requirement regarding lease violations. Tenants should not be

⁶ www.housingiskey.com



required to have in-depth knowledge of fair housing and landlord-tenant law to successfully complete the ERAP application. In addition, this language is unfairly one-sided because the application does not require landlords to certify that they are complying with the lease agreement or maintaining the unit in accordance with habitability standards. In fact, our partners report that many landlords are failing to maintain rental units during the COVID-19 pandemic. We recommend that this certification language be removed from the application.

4. Streamline Application Process for Tenants Receiving Public Assistance

The application instructions suggest that households that receive public assistance such as MediCal can "streamline" the process, but when tenants indicate that they receive public assistance, they are told that they must fill out the entire online application and there is no streamlining. Applicants are forced to complete a full application when documentation of receipt of public benefits should establish identity and income eligibility, allowing the tenant to avoid uploading multiple documents. We recommend that public benefits recipients be able to complete a simplified application.

5. Ensure All Eligible Tenants Can Apply

In Kern County and Sacramento, tenants with Housing Choice Vouchers (Section 8) are unlawfully barred from applying for ERAP funds if they have been unable to recertify with their public housing authority (PHA). In addition, some PHAs are explicitly declaring that tenants with subsidies are ineligible for ERAP funds. For example, the San Diego Housing Commission website states under eligibility criteria: "Household does not currently receive any rental subsidies." San Diego households that receive rental subsidies can only apply for help with their past-due utilities, with assistance dependent on funding availability.⁷ The City of Chula Vista uses similar exclusionary language by stating "households must not receive any other forms of rental subsidy such as Section 8 or other rental assistance programs, rapid rehousing assistance, or rental assistance from non-profit agencies."⁸ In previous conversations, HCD has suggested it will withhold funds until the applicant can recertify with the PHA. Tenants should be able to apply for assistance regardless of whether they were able to recertify with their housing authority. We recommend that HCD work directly with PHAs to ensure that ERAP funds are made available to all eligible households. While PHAs should be encouraged to facilitate recertification as promptly as possible, their failure to do so should not block tenants from accessing assistance. Any other rule would violate federal guidelines and lead to eligible tenants facing eviction.

In addition, HCD has indicated that all individuals living in one home will be counted as one household for income calculation purposes. This policy has a severe adverse impact on BIPOC and low-income communities where multiple households sharing one home is a common occurrence, born of economic necessity or cultural identity. This policy also runs contrary to

⁷ <https://www.sdhc.org/housing-opportunities/help-with-your-rent/covid-19-rental-assistance/>

⁸ <https://www.chulavistaerap.com/?locale=en>



household rules of other public benefit programs, which allow individuals to designate which people living in their home are part of their household (e.g., see CalFresh Household definition at 7 C.F.R. § 273.1(a); MPP § 63-402.1). HCD's policy also creates a barrier because it is not possible for tenants living in shared housing to get all of the other residents to complete a single application, which would require sharing private and sensitive financial and other information among unrelated tenants. We recommend that this policy be revised.

6. Improve Data and Accountability

To allow for stakeholders to identify additional issues and recommend solutions to improve program outcomes, HCD must make comprehensive and detailed data publicly available. Data should be available by gender, age, race/ethnicity (as required by Treasury⁹), and primary language spoken for each geographic area. Data, including identifying information for landlords, is critical to ensure that landlords are not discriminating between tenants or cooperating with some tenant applications but not others. We recommend that HCD also release data regarding the number of applications completed where the landlord received assistance on behalf of an eligible tenant, the number of applications completed where the tenant received assistance, denied applications and the basis for denials, and the number of incomplete applications.

7. Expedite Assistance to Eligible Households to Protect Families From Eviction.

The most recent data indicate that there is a significant delay in providing funds to tenants with completed applications, whether or not the landlord is cooperating. Every day of delay makes it more likely that tenants will be displaced, through informal and formal eviction, or because of landlord harassment. Many tenants who are behind on their rent are so afraid of the consequences of nonpayment that they simply move out, even when they have no other place to go. Alternatively, tenants may incur other high-interest debt to pay the rent even when they are eligible for rental assistance, debt that cannot easily be extinguished and that will have negative long-term consequences on their financial stability. It is imperative that funds be provided without delay to avoid these harms and to make these funds an effective tool to prevent eviction and homelessness.

We strongly urge you to adopt these recommendations to ensure that all eligible households receive assistance and remain housed. We look forward to your continued partnership in addressing, identifying, and solving these concerns.

⁹ U.S. Department of Treasury, *U.S. Department of Treasury: Emergency Rental Assistance Frequently Asked Questions*, (Revised May 7, 2021) p. 8 at <https://home.treasury.gov/system/files/136/ERA2FAQs%205-6-21.pdf>



Sincerely,

A handwritten signature in black ink, appearing to read "Tina Rosales", with a long horizontal line extending to the right.

Tina Rosales,
Western Center on Law & Poverty

A handwritten signature in black ink, appearing to read "Brian Augusta", written in a cursive style.

Brian Augusta,
CRLA Foundation

CC: Jason Elliot, Senior Counselor, Governor Gavin Newsom
Ronda Paschal, Deputy Legislative Secretary, Governor Gavin Newsom
Lynn von Koch-Liebert, Deputy Secretary for Housing and Consumer Services,
Business, Consumer Services, and Housing Agency
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