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## MEMORANDUM

February 26, 2021

TO: TRIBAL HOUSING CLIENTS

FROM: Edmund C. Goodman  
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RE: *Emergency Rental Assistance Program Update*

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On December 27, 2020, as part of the Consolidated Appropriations Act, 2021 (Pub. L. No. 116-260, Division N § 501, Dec. 27, 2020) (the “Act”), Congress passed and the President signed an updated COVID-19 relief package that included \$25 billion for an Emergency Rental Assistance Program (ERA Program). The funds are provided directly to States, U.S. Territories, local governments, and Indian Tribes. Tribes received an \$800 million set-aside from this fund to assist eligible households who are facing eviction due to unpaid rents and utilities. While the allocation of tribal funding was determined by the annual IHBG formula operated by the U.S. Department of Housing and Urban Development (HUD), the ERA Program itself is overseen by the U.S. Treasury Department (Treasury).

On January 19, 2021, Treasury published an initial set of FAQs to serve as guidance for the ERA Program. Tribes, as well as other housing providers, had a number of questions and criticisms regarding that first iteration of FAQs, and urged the new Administration to update and clarify them. On February 22, 2021, Treasury published a revised set of FAQs that are intended to replace and supersede the prior version. We understand that Treasury developed the updated FAQs in consultation with HUD, and they do provide for the additional flexibility and clarification requested by Tribes and other stakeholders. The updated FAQs are attached to this memo and are also available by clicking [here](#).

### Updated Treasury FAQs Summary

Below is a summary of the main points of the Updated FAQs.

- Treasury clarified that in addition to the eligibility requirements laid out in the statute, only households obligated to pay rent on a residential dwelling are eligible to receive financial assistance or housing stability services under the ERA Program.
- To be eligible for the ERA Program, households must have an income at or below 80 percent of the median income for the area (AMI) in which the household is

located. The FAQs clarify that Grantees may choose between using HUD's definition of "annual income" in 24 CFR 5.6091 and using adjusted gross income as defined for purposes of reporting under Internal Revenue Service Form 1040 series for individual federal annual income tax purposes. The FAQs also provide some additional guidance on the methods for and documentation of income determination.

- The FAQs provide that the AMI for a household will be based on the local area median income (usually that is the county-level data) rather than the national area median income, as provided by the definition at 42 U.S.C. 1437a(b)(2). The AMI for a household will be the same as the income limits for families available under the heading for "Access Individual Median Family Income Areas" at <https://www.huduser.gov/portal/datasets/il.html>.
- Grantees may be flexible as to the particular form of documentation that the Grantees require from households proving eligibility. Grantees may allow households to submit photocopies or digital photographs of documents, e-mails, or attestations from employers, landlords, caseworkers, or others with knowledge of the household's circumstances. This is a significant change and provides more flexibility than the original FAQs.
- Grantees must require all applications to include an attestation from the applicant that all information included is correct and complete. Grantees must specify in their policies and procedures the circumstances under which they will accept written attestations from the applicant without further documentation to determine any aspect of eligibility or the amount of assistance. This, too, is a significant change and provides more flexibility than the original FAQs. Additionally, the Grantees must have in place reasonable validation or fraud-prevention procedures to prevent abuse.
- Grantees may allow self-attestation by applicants to prove that one or more members of their household qualified for unemployment benefits, experienced a reduction in income, incurred significant costs, or experienced other financial hardship due to COVID-19. Additionally, under certain limited circumstances described in the FAQs, Grantees may rely on a written attestation from the applicant without further documentation of household income. Again, this change provides more flexibility and lessens the administrative burden on grantees and program participants.
- If an applicant is unable to provide adequate documentation of the amount of rent that they owe, Grantees may also allow written attestation from an applicant to support an assistance payment up to a monthly maximum of 100% of the greater of the Fair Market Rent or the Small Area Fair Market Rent for the applicant's area of residence. Grantees may only provide such assistance for three months at a time.

- The Act allows ERA funds to be used for “other expenses related to housing incurred due, directly or indirectly, to” the COVID-19 outbreak. The FAQs clarify that “other expenses” include relocation expenses and rental fees (if a household has been temporarily or permanently displaced due to the COVID-19 outbreak); reasonable accrued late fees (if not included in rental or utility arrears and if incurred due to COVID-19); and home internet costs to engage in distance learning, telework, and telemedicine and obtain government services. The addition of internet services was requested by tribes and other housing programs; the interesting thing here is that they were not added to the definition of “utilities,” but rather classified as other services.
- Treasury has reduced the timeframe from 21 days to as little as 10 days after outreach to landlords before programs can provide financial assistance directly to tenants when landlords refuse to participate in the program. This is a beneficial change for grantees.
- Grantees may rely on self-attestation by an applicant attesting that the ERA assistance will not duplicate any other assistance that the applicant is receiving.
- Tribes and TDHEs may provide assistance to tribal members living outside tribal lands and to non-tribal members living on tribal lands.
- Grantees may provide assistance to a renter household with respect to utilities or energy costs without also covering rent. However, ERA assistance may not be provided to homeowners to cover their mortgage, utility, or energy costs.
- Grantees may use ERA payments to make subawards to other entities, including non-profit organizations and local governments, to administer ERA programs on behalf of the grantees
- The ERA Program allows for up to 10 percent of the funds received by a grantee to be used for housing stability services related to the COVID-19 outbreak. The FAQs clarify that housing stability services related to the COVID-19 outbreak may include: housing counseling, fair housing counseling, case management related to housing stability, housing related services for survivors of domestic abuse or human trafficking, attorney’s fees related to eviction proceedings, and specialized services for individuals with disabilities or seniors that supports their ability to access or maintain housing.

### ***Conclusion***

We will continue to update you as Treasury releases additional guidance and FAQs on the ERA Program. If you have any questions about the ERA Program, please do not hesitate to contact Ed Clay Goodman ([egoodman@hobbsstrauss.com](mailto:egoodman@hobbsstrauss.com) or 503-242-1745).