ChangeLab Solutions

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Policy Primer: Emergency Rental Assistance

Introduction

Communities across the United States face a variety of pressing challenges related to the safety, stability, and affordability of housing. For the past year, ChangeLab Solutions has been working with local governments and housing advocates in eight communities across the country as part of the Housing Solutions Collaborative, a peer-learning cohort focused on building capacity and partnerships to advance housing equity. Although no two communities are the same, the technical assistance provided to our partners revealed common needs and areas of interest. This memo is one of five in a series that provides a high-level overview of strategies and policies that the cohort explored together: using tax incentives to spur affordable housing, developlng best practices for establishing and expanding local emergency rental assistance, adopting anti-displacement policies to protect tenants, supporting affordable housing production, and adopting strategies to address housing-specific racial inequities. The memos highlight equitable solutions to housing challenges local jurisdictions and communities face throughout the United States.

Housing Challenge: Housing Instability & Evictions

As many sources have documented, the United States was experiencing a housing crisis long before the COVID-19 pandemic. The pandemic exacerbated the crisis, with lower-income individuals and Black, Indigenous, and people of color affected the most.[1] Given the numerous economic and health impacts that housing instability, including evictions, can have on individuals and communities, and the disproportionate burden and effect of evictions on population groups experiencing marginalization and inequities, one key to improving health outcomes is to increase housing stability through efforts like eviction prevention and diversion.[2]

The Policy: Emergency Rental & Utility Assistance

Emergency rental and utility assistance (ERA) programs seek to prevent evictions in the short term by providing individuals, typically in lower-income households, with a cash benefit to help them cover past-due rent or utility expenses due to financial hardship because of an emergency, such as the COVID-19 pandemic. While ERA programs existed to a small degree before the pandemic, federal COVID-19 relief funding distributed to state and local governments resulted in the proliferation of ERA programs nationwide.[3] Federal law sets baseline eligibility and reporting requirements for these programs when using federal funds, but states and localities have flexibility in designing the administration of their programs under these laws and may have additional flexibility if they also have other funding.[4]

Health Benefits of ERA & Housing Stability

Studies show that rental assistance can improve health outcomes.[5] Evidence demonstrates that ERA specifically is an integral tool for localities working to improve housing stability and prevent evictions.[6] However, while ERA is a key tool for eviction prevention, research has shown that it can be more effective in accomplishing a locality's goals of improving overall housing stability when it is integrated with broader eviction prevention, diversion, and housing stability programs that use additional housing stabilization tools, such as alternative dispute resolution, legal assistance, and housing and financial counseling.[7] Investing in housing security and eviction prevention programs reaps long-term financial benefits that touch many sectors. For every $1 invested in eviction prevention, $4 in social benefit is generated[8] in the form of improved educational outcomes, lower health care usage, and decreased use of homeless shelters.

The National Low Income Housing Coalition (NLIHC) has researched ERA extensively and has resources that may be useful to readers.[9] Several of their reports are cited below.

Equity Considerations

While many considerations go into the design of a successful ERA program, highlighted here are five ways to better incorporate equity so that programs more effectively reach Black, Indigenous, and people of color and lower-income populations most in need: (1) defining and using equity metrics that can survive judicial review, (2) building equity into evaluation and eligibility considerations, (3) simplifying the application process, (4) choosing the appropriate recipient party, and (5) partnering with community-based organizations (CBOs).

Defining Equity Metrics

Equity considerations should be central to the processes, delivery, and evaluation of housing-related services and collaborations. Some communities issue statements or pass policies to help memorialize and publicize the importance of reducing the differences in housing-related outcomes, such as differences in eviction rates among subsets of their population,[10] while keeping in mind that such statements must comply with federal and state equal protection requirements. For more information about legal limits on the use of race in government decision making, see ChangeLab's policy primer Incorporating Racial Equity into Housing Policy.

However, regardless of whether a community issues a public statement or commitment to equity, service providers can embed practices and policies with actions that lead to more equitable outcomes. Research from NLIHC and the Center for Law and Social Policy provides several strategies for improving equitable outcomes in compliance with limitations stemming from equal protection requirements.[11] For example, localities can use point-based evaluation criteria that assign points to an application based on several characteristics—for example:

- Tiered Income—for example, more points for households with 30 percent area median income [AMI) than 80 percent
- Prioritized geographic locations (e.g., based on share of renters, rate of severely cost-burdened households, rate of eviction, number of eviction filings, unemployment rate)
- Length of the applicant's unemployment

- Children in the home
- Household size
- Length of delinquency

As another example, Oregon Housing and Community Services used Urban Institute's Emergency Rental Assistance Priority Index[12] to prioritize applications for individuals in census tracts at the highest risk of housing instability.[13]

Eligibility Requirements

Under federal law, households earning up to 80 percent AMI are eligible for federal ERA funds, although assistance must be prioritized to households earning up to 50 percent AMI.[14] However, following federal guidelines may not target eligibility appropriately within a given jurisdiction. Although localities must follow the prioritization of 50 percent AMI households when they use federal funds, localities may be able to more equitably tailor eligibility and availability of ERA funds based on local conditions, either through flexibility in the federal guidelines[15] or by using other sources of funding.

For example, federal guidelines do not limit ERA payments to rental or utility arrears and allow localities to make some payments that cover prospective costs.[16] However, NLIHC recommends limiting ERA eligibility to households that are both below a certain percentage of AMI and have accumulation, or expected accumulation, of back rent and utilities.[17] Many additional considerations can help set income-based eligibility. When an ERA program is underfunded compared to demand, setting the income limit to 30 percent AMI may be beneficial to prioritize people with very low incomes and those with the highest need. However, if there is a surplus of available funds, setting the income limit to the maximum 80 percent AMI for federal funds makes sense to broaden reach. With rapid inflation and fluctuating incomes during the pandemic, setting the income limit to as low as 30 percent AMI could exclude a large share of families experiencing housing insecurity.

Other parameters that have been used to establish eligibility for ERA programs include immigration status or citizenship and whether the household has an eviction notice. Using eligibility parameters has pros and cons, depending on the goals of the community that uses them. Immigration status comes with prohibitive documentation burdens that deter some communities' most impacted populations from applying. Eviction notices indicate a clear high-need situation, yet by the time an eviction process has begun, residents are dealing with a proceeding that has long-term, sometimes permanent effects on their record and their ability to obtain future housing. While setting additional parameters for eligibility can help differentiate among potential beneficiaries, the costs may outweigh the benefits if they deter individual households from applying for relief or create unnecessary burdens to administering agencies that delay the distribution of funds.

Communities could also identify priorities (beyond those embedded within eligibility requirements) that enable them to respond flexibly as program demand shifts—such as prioritizing neighborhoods based on metrics described above, like unemployment rates or rates of job loss, even if unemployment is not a requirement for ERA eligibility.

Simplifying Applications

Many households, especially lower-income households or households with limited English proficiency, may struggle to complete lengthy ERA applications that require a lot of documentation. Localities may be able to achieve better equity in the distribution of ERA funds by simplifying the application process, allowing more of these households in need to access benefits.

Simplification of the application process also has many benefits to ERA recipients and staff alike, including reduced administrative burden and faster distribution of funds. A simplified application should include simple, easy-to-understand language, be available in multiple languages, and allow for self-attestation and fact-specific proxies or categorical eligibility.

It is easy for program staff to overlook how jargon and references to technical forms can infiltrate materials and guidance on their services. Simplifying and explaining application materials in easy-to-access places (e.g., brochures, handouts, websites) can reduce the immediate barriers created by intimidating or confusing information. People with limited English proficiency are more likely to experience poverty and need assistance, making it important for localities to provide application materials and guidance in commonly spoken languages and obtain translation services when needed.

From the community perspective, fact-specific proxies, categorical eligibility, and self-attestation may also simplify the application process. Fact-specific proxies, or categorical eligibility, are practices by which an applicant's income eligibility is established using statistical data (such as average household income within the census tract) or by eligibility for other income-based social programs (e.g., TANF, SNAP, SSI). Households meeting these criteria should by definition meet ERA eligibility requirements.[18]

As an example, the Kentucky Housing Corporation increased distribution of ERA funds by 87 percent (from $9,784,364 in September 2021 to $18,296,443 in October 2021) through the use of fact-specific proxies.[19] Self-attestation allows households to self-report their household income without the need for additional documentation. This table provides additional explanation of how changes to ERA application requirements may benefit communities.

Use language / requirements like . . .	Instead of . . .	Explanation
Clear requests, with examples, of required immigration information or omitting this if not required by the funding source	Immigration number	The term *immigration number* is vague and could mean, for example, an I-94 number, visa number, or alien registration number.
Fact-specific proxies,[20] categorical eligibility, or self- attestation of income or financial hardship	Proof of all income	Proof of income can be difficult for people with low incomes. Many hold multiple jobs and may rely on informal work to supplement their income. Informal income can be critically important to low-income persons when it provides a nominal increase in income without triggering a loss of needed social benefits.[21] Requiring applicants to track down records for small amounts across multiple employers with varying record-keeping practices can be prohibitive to ERA applications.

Use language / requirements like . . .	Instead of . . .	Explanation
Self-verification of landlord/tenant relationship and rent owed, available in the applicant's primary language	Documentation for lease, rent ledger, receipts	Rent ledgers are rarely used today, and tenants rarely receive a receipt from landlords. Lease requirements often exclude month-to-month renters.

Choice of Recipient

When localities require funds to be paid directly to landlords, some households have been excluded from ERA programs because their landlords refuse to participate. Allowing for direct-to-tenant payments in the alternative may allow localities to distribute funds more equitably to these households in need.

Many ERA programs make payments directly to landlords to impose conditions or restrictions that reduce evictions and improve tenant safety, such as requiring landlords to forgive past-due rent, waive late fees, or accept partial payment from tenants. Other conditions ERA programs may place on landlords accessing ERA funds include restricting landlords' ability to pursue eviction proceedings. However, these conditions can also deter landlords from participating in the program.[22] This means tenants who would otherwise qualify for assistance may not receive the funds they need to stay in their homes. One option to overcome low landlord participation is to provide ERA payments directly to tenants. Programs that used direct-to-tenant payments spent a greater share of their allocated funds.[23] Programs should promote the direct-to-tenant alternative so that eligible tenants are aware of all options and do not assume that they are ineligible due to an uncooperative landlord.

Programs may direct payment to landlords for fear of fraud,[24] especially given documented fraud with pandemic unemployment benefits. However, evidence shows that very little fraud has occurred in ERA programs.[25] When using direct-to-tenant payments, localities can also use tenant-friendly methods of fraud prevention, such as this acknowledgment form used in Cameron County, Texas, by which tenants promise to use direct-to-tenant payments to pay their rent.[26]

Partnerships with CBOs

Residents may lack knowledge of local programs and how to apply, may need additional support navigating housing and ERA programs, and may distrust or fear government. Partnering with community-based organizations (CBOs) such as nonprofits that serve local residents can help these households more equitably access ERA.

Partnerships and coordination can streamline services, provide greater support for those interacting with the housing system, and influence further funding. A one-stop housing resource, created by a coalition of providers, could standardize requirements across services, automatically connect or refer applicants to other services, and diversify funding opportunities to increase flexibility and achieve overlapping goals.

Businesses, health systems,[27] academic institutions, child care services,[28] court and criminal legal system entities,[29] and other local players may all be valuable stakeholders and supporters of a coordinated housing security program. CBOs already embedded in communities are obvious choices, as experts in their issue areas and with established relationships among target groups. CBOs have extensive experience with outreach to populations that are more likely to be housing insecure, such as underserved demographic groups, people with disabilities, people with mental health and substance use disorders, and survivors of domestic violence. Research shows that programs partnering with CBOs for application intake and payment processing had higher rates of correct, completed application, served a higher proportion of eligible households, spent a higher proportion of funds, and reduced administrative burden and processing times.[30] As federal funding tends to have the most stringent eligibility criteria, programs partnering with CBOs and using local or philanthropic funding were able to serve two and a half times more households than other programs.[31]

Beyond Federal Funding

Most ERA programs have relied on federal funding—namely, ERA1 under the Consolidated Appropriations Act of 2021 and ERA2 under the American Rescue Plan Act of 2021.[32] While ERA1 funds were originally set to expire on September 30, 2022[33] and ERA2 funds to expire on September 30, 2025, over 56 percent of total ERA funds had been spent by March 2022, indicating many local governments will run out of funds long before they expire.[34] In fact, some statewide programs, such as those in New Jersey, New York, Oregon, Texas, and Washington, DC, have already stopped accepting applications because they have run out of federal funding.[35]

ERA is both highly cost-effective and highly needed by affected communities. Localities may be able to sustain ERA programs through other funds such as state and local fiscal recovery funds,[36] CDBG funds,[37] grants,[38] housing trust funds,[39] and, in limited circumstances, health care funding like Medicaid could be used to support housing initiatives like rental assistance.[40]

Legal Considerations

In addition to other considerations, programs using federal funds must comply with all statutory and regulatory requirements associated with those funding sources.[41] These include the eligibility requirements of limiting eligibility to households earning 80 percent AMI or less, while prioritizing households earning 50 percent AMI or less.[42] These also include reporting requirements, such as providing quarterly data on the number of households served by ERA and their household income, as well as a 10 percent spending limit on “administrative expenses and housing stability services” related to ERA.[43]

Due Process

Governments have been challenged by both landlords and tenants alike because of due process issues related to ERA programs. For example, New York State courts are conflicted as to whether an automatic stay of eviction proceedings during the pendency of ERA applications violates landlords’ rights to judicial hearing.[44] In California, advocates representing low-income tenants challenged the state’s ERA program for violating due process rights by failing to provide reasons for denials and failing to interpret services and translate documents.[45] While due process challenges have primarily occurred at the state level so far, localities must also comply with due process, and local ERA policy decisions may be informed by the challenges that states have faced.

Citizenship & Immigration Status

The two primary sources of immigration-related restrictions on federal housing programs are the Housing and Community Development Act (section 214) and the Personal Responsibility and Work Opportunity Reconciliation Act.[46] Advocates argue that noncitizens are eligible for ERA under these laws, and at least one district court held that the City of Phoenix could not exclude certain immigrants from its ERA program.[47] A similar issue has been litigated with respect to COVID-related education funds. The US Department of Education originally issued guidance attempting to limit eligibility for these funds based on immigration status according to the Congressional Research Service.[48] Courts were split on this issue; however, the Department of Education issued new regulations and guidance in 2021 clarifying that all students were eligible for funds regardless of immigration status.[49] While the Treasury Department has not issued guidance on noncitizen eligibility for ERA programs,[50] the status of COVID-related education funds suggests that noncitizens may also be eligible for COVID-related housing funds. If using state or local funds, state law may also affect eligibility requirements involving citizenship or immigration status.

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