

**DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT  
DIVISION OF FINANCIAL ASSISTANCE**

2020 W. El Camino Avenue, Suite 670, 95833  
P. O. Box 952054  
Sacramento, CA 94252-2054  
(916) 263-2771 / (FAX) 263-2763  
[www.hcd.ca.gov](http://www.hcd.ca.gov)



September 27, 2021

**MEMORANDUM FOR:** Gustavo F. Velasquez, Director  
California Department of Housing and Community Development

**FROM:** Geoffrey Ross, Deputy Director  
Division of Federal Financial Assistance

**SUBJECT:** State Rental Assistance Program Guidelines

The California Department of Housing and Community Development (“HCD”) is pleased to announce the release of updated State Rental Assistance Program Guidelines. These guidelines will govern HCD’s implementation of the State Rental Assistance Program and all jurisdictions that elect a block grant pursuant to California Assembly Bill No. 832 (Chapter 27, Statutes of 2021) (“AB 832”). Funding for this program is available to the State from the United States Department of the Treasury, under Section 501 of Subtitle A of Title V of Division N of the federal Consolidated Appropriations Act, 2021, and Section 3201 of Subtitle B of Title III of the federal American Rescue Plan Act of 2021 (Acts).

Through the Acts, California has already received over \$2.6 Billion and is in line to receive another \$2.6 Billion totaling about \$5.2 billion in Emergency Rental Assistance funds. Around \$2.5 Billion funding from both Acts will be given directly to the State while the remaining balance will be provided either directly to local jurisdictions with populations above 200,000, or to the state to operate programming on behalf of those jurisdictions. Pursuant to Section 501(c) of Subtitle A of Title V of Division N of the federal Consolidated Appropriations Act, 2021, and Section 3201(d) of Subtitle B of Title III of the American Rescue Plan Act, 2021, Emergency Rental Assistance Program (ERAP) funds are to be used to pay for rental arrears, prospective rental payments, utility and home energy cost arrears, utility and home energy costs, and other expenses related to housing incurred during or due, directly or indirectly, to the novel coronavirus disease (COVID-19) outbreak as to be determined by the Secretary of the United States Department of the Treasury. All rental assistance funds from the U.S. Department of the Treasury shall meet these and all additional requirements outlined in the Acts.

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California originally passed SB 91 on January 29, 2021. SB 91 created the State Rental Assistance Program and provided eligible jurisdictions with the option to accept their portion of the State allocation as a block grant. SB 91 also gave HCD the authority to create guidelines regarding the administration of the federal Emergency Rental Assistance funds consistent with the requirements of the federal law and any regulations or guidance promulgated pursuant to federal law. On June 28, 2021, California passed AB 832, which extended the state's eviction protections through September 30, 2021, and amended and restated California Law set in SB 91 to provide full assistance to eligible tenants and landlords, extended the arrears period to allow for better continuity of assistance, and required coordination with the courts that will be responsible for managing evictions after the eviction protections expire.

It is a state priority that all persons eligible for these funds receive equitable access to assistance and are served with dignity, respect, and compassion regardless of their circumstance, ability, or identity. For example, persons are eligible for rental assistance regardless of their marginalized ethnic or racial community; immigration status; criminal record; disability; gender or sexual identity; or membership in a group that has traditionally been unable to access mainstream support. HCD recognizes that those most in need of pandemic-related rental assistance are often also those for whom barriers to accessing such a program are the highest. With this in mind, HCD's guidelines seek to ensure those most in need of assistance are prioritized and served by the State Rental Assistance Program.

APPROVED:



9/27/2021

Geoffrey Ross, Deputy Director  
Department of Housing Community Development

Date



Sep 27, 2021

Zachary Olmstead, Chief Deputy Director  
Department of Housing Community Development

Date



9/27/2021

Gustavo Velasquez, Director  
Department of Housing Community Development

Date

**State Rental Assistance Program Guidelines – Emergency Rental Assistance  
(ERA) Rounds 1 and 2 Implementation**



**Gavin Newsom, Governor  
State of California**

**Lourdes M. Castro Ramírez, Secretary  
Business, Consumer Services and Housing Agency**

**Gustavo Velasquez, Director  
California Department of Housing and Community Development**

2020 W. El Camino Avenue, Suite 500 Sacramento, CA 95833

Telephone: (916) 263-2771

Website: <https://www.hcd.ca.gov/grants-funding/active-funding/erap.shtml>

Emergency Rental Assistance Program email: [erap@hcd.ca.gov](mailto:erap@hcd.ca.gov)

September 27, 2021

# State Rental Assistance Program

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## **1. Introduction and Applicability**

These guidelines (the Guidelines) apply to Large Jurisdictions that opt to receive, in a block grant based on local need and population size, a portion of the emergency rental assistance allocated to the State of California from the U.S. Department of the Treasury (U.S. Treasury). This document outlines the guidelines relative to the direct administration of these funds by the Large Jurisdictions.

The Guidelines are intended to assist the foregoing jurisdictions in implementing the legal authorities set forth below. While the Guidelines shall be binding on all Standard Agreements entered into after the Guidelines are promulgated by the Department, the Guidelines shall also help inform, as persuasive authority, the interpretation of all Standard Agreements entered into prior to Guideline promulgation. If any part of the Guidelines are in conflict with California Senate Bill No. 91 (2021-2022 Reg. Sess) (SB 91), or Assembly Bill No. 832 (2021-2022 Reg. Sess.) (AB 832), the Acts, those authorities shall prevail.

### **1.1. Authority**

On December 27, 2020, the Consolidated Appropriations Act, 2021 (Pub.L. No. 116-260) (the Act) was signed into law. Section 501 of Division N of the Act established the federal ERAP and authorized the allocation of funds to states, units of local government, tribal communities, and territories. On March 11, 2021 the American Rescue Plan Act of 2021 (Pub.L. No. 117-2) was signed into law. Section 3201 of Subtitle B of Title III of that Act added funding and expanded eligible uses to better address the need for rental assistance in impacted communities. SB 91, which became law on January 29, 2021, established the State of California's program for administering and distributing rental assistance funds. SB 91 added Chapter 17 (commencing with Section 50897) to Part 2 of Division 31 of the Health and Safety Code. AB 832, which became law on June 28, 2021, amended and added to that statutory scheme.

Health and Safety Code section 50897.1, subdivision (a)(1) authorizes the California Department of Housing and Community Development (HCD or Department as referenced herein) to administer the funds in accordance with state and federal law. Sections 50897.2 and 50897.2.1 allow localities of appropriate size and capability to receive a block grant allocation from HCD for purposes of administering local rental assistance programs. Health and Safety Code section 50897.1, subdivisions (k)(1) and (2) authorizes HCD to adopt, amend, and repeal rules, guidelines, or procedures necessary to carry out the foregoing, which is what these Guidelines are intended to do.

### **1.2. Primary Objectives**

The State Rental Assistance Program is intended to help eligible households cover rental and utilities arrears, to assist with prospective payments for rent and utilities, and to provide funding for housing stabilization services and other housing related expenses. The goal of the program is to prevent evictions and housing instability due to or during the COVID-19 pandemic. Assistance is to be directed to the primary period of the pandemic, which was declared a national emergency on March 13, 2020. The eligible period of assistance for rental arrears began on April 1, 2020. Arrears shall have been incurred on or after this date to be eligible for financial relief through block grant funds. Prospective rents and utilities

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are eligible for assistance throughout the operational period of this funding, subject to federal and state limitations.

### 1.3. Definitions

Any capitalized terms that are not defined below shall have the definitions set forth in AB 832.

“Area Median Income (AMI)”: means the published estimate of median income by metropolitan area or non-metro county that is determined by HUD, as adjusted for household size, and published annually. To qualify for government rental assistance, the household may not have a total household income greater than 80% of area median income (AMI) as adjusted for household size, in accordance with HUD-published information for the applicable area.

“Assistance”: shall mean compensation provided through a government rent assistance program for COVID-19 rent arrears incurred on or after April 1, 2020, compensation for past due utilities, and payments for prospective utility and rent assistance as defined by the statute.

“Completed Application”: means an application for which a landlord or eligible household, as applicable, has provided all the necessary contact information and documentation required for a government rental assistance program to initiate a review of the application for eligibility. The application shall be deemed incomplete if the program is unable to initiate a review of eligibility based on the information provided.

“Co-Signer or Guarantor”: a third-party person that assumes responsibility for the lease if the tenant is unable to pay rent and fees. Both Co-Signers and Guarantors are responsible for a lease if the lessee defaults, however a Co-Signer generally has the legal right to occupy the unit as a tenant while a guarantor is not able to occupy the unit.

“Co-Tenancy”: a rental arrangement where multiple individuals or discrete households share a single housing unit, either with individual leases or through a single lease or rental agreement.

“Denied”: An application will be considered denied by the government rental assistance program once the household and/or landlord have been notified in writing of one of the following:

1. The household is not eligible for government rental assistance,
2. The government rental assistance program no longer has sufficient rental assistance funds to approve the application,
3. The application for government rental assistance remains incomplete 15 days after initial submission (excluding Saturdays, Sundays, and other judicial holidays) due solely to the tenant’s failure to properly complete the portion of the application that is the responsibility of the tenant. This definition of “Denied” is relevant to the landlord’s standing to pursue an unlawful detainer action and does not preclude the tenant household from completing an application after the 15 days have lapsed. A denial, as defined here, does not

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limit or change an eligible tenant household's ability to receive rental assistance pursuant to this program.

“Eligible Household”: means a household of one or more individuals who are obligated to pay rent on a residential dwelling, and with respect to which the eligible grantee involved determines the household meets the three basic federal eligibility criteria.

1. One or more individuals within the household has
  - a. qualified for unemployment benefits; or
  - b. experienced a reduction in household income, incurred significant costs, or experienced other financial hardship due, directly or indirectly, to the novel coronavirus disease (COVID–19) outbreak, which the applicant shall attest in writing;
2. One or more individuals within the household can demonstrate a risk of experiencing homelessness or housing instability, which may include
  - a. a past due utility or rent notice or eviction notice;
  - b. unsafe or unhealthy living conditions; or
  - c. any other evidence of such risk, as determined by the eligible grantee involved; and

The household has a household income that is not more than 80 percent of the area median income for the household size. For the purposes of this program, the terms “household” and “family” are used interchangeably. Eligible households are encouraged to apply for assistance and participate in local emergency rental assistance programs regardless of citizenship or immigration status. An eligible household as defined here includes an otherwise eligible household which no longer occupies the unit. In order for the landlord to receive assistance for rental arrears due from such a household, the both the landlord and non-occupying tenant shall participate.

“Eligible Landlord” – means an owner of residential real property who rents to one or more Eligible Households for all or any part of the time period on or after April 1, 2020. Citizenship status is not relevant to eligibility. This term does not include sublessors who sublease all or a portion of their dwelling to sublessees. Eligible landlord includes all of the following or the agent of any of the following:

1. An owner of residential real property that is occupied as a primary residential unit by tenant(s).
2. An owner of a residential rental unit that is occupied as a primary residential unit by tenant(s).
3. An owner of a mobilehome park where either the units or spaces or both are occupied as primary residential units by tenant(s).
4. An owner of a mobilehome park space or lot that is provided to a tenant(s) for use as a primary residential unit.



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“ERA1” means relating to the Emergency Rental Assistance Program established by Section 501 of Subtitle A of Title V of Division N of the Consolidated Appropriations Act, 2021, Pub.L. No. 116-260 (Dec. 27, 2020).

“ERA2” means relating to the Emergency Rental Assistance Program established by Section 3201 of Subtitle B of Title III of the American Rescue Plan Act of 2021, Pub.L. No. 117-2 (March 11, 2021).

“Expenditure (Expended)”: Shall mean a full and complete liquidation of funds.

“Final Decision”: means either of the following determinations by a government rental assistance program regarding an application for rental assistance: the application is approved, or the application is denied (see “denied” above). The rental assistance program shall provide notification to the landlord and tenant once a final decision has been rendered. The Final Decision notice shall include the total amount of assistance to be paid and the time frame for which assistance is provided, as applicable. “Final Decision” does NOT include any of the following:

1. the rejection of an application as incomplete or improperly completed by a landlord or tenant;
2. Notification that an application is temporarily pending further action by the jurisdiction’s rent assistance program or by the applicant; or
3. notification that the landlord or tenant applied to the wrong jurisdiction’s rent assistance program for the property or rental debt at issue.

“Grantee”: A locality that participates in the state’s rental assistance program pursuant to Chapter 17 (commencing with Section 50897) of Part 2 of Division 31 of the Health and Safety Code.

“Household income”: is the total income of all household members above the age of 18 years old. Household income is determined by using the Department of Housing and Urban Development’s (HUD) definition of “annual income” in 24 CFR 5.609, or by using adjusted gross income as defined for purposes of reporting under Internal Revenue Service Form 1040 series for individual federal annual income tax purposes. For the purposes of this program, the terms “household” and “family” are used interchangeably.

“Large Jurisdiction”: A Locality with more than 200,000 in population that is eligible to receive funds directly from the U.S. Treasury.

“Locality”: A city, including a charter city; a county, including a charter county; or a city and county, including a charter city and county.

“Non-Participating Landlord”: a landlord that refuses, either in writing or through lack of response to multiple invitations, to participate in the program. Landlords have five (5) calendar days from transmission of the invitation to determine participation, and program operators shall make at least three (3) attempts to engage with landlords before deeming them non-participating. Tenants with non-participating landlords may receive assistance directly.

“Non-Responsive Tenant”: a tenant that is not responsive to invitations to participate in the program, or that refuses to participate in the program. Landlords with non-responsive

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tenants cannot receive assistance but may pursue eviction and debt recovery through the courts.

“Obligation (Obligated)”: Funds that have been identified for and committed to an Eligible Household or Eligible Landlord pending final application approval.

“Program”: HCD’s administration of rental assistance funds pursuant to Chapter 17 (commencing with Section 50897) of Part 2 of Division 31 of the Health and Safety Code.

“Program Implementer”: The contracted vendor or vendors selected by HCD to manage and distribute rental assistance resources pursuant to sections 50897.3 and 50897.3.1 of the Health and Safety Code.

“Self-Evicted Tenant”: means a household that has voluntarily vacated their rental unit, including units vacated in violation of a lease agreement.

“Small Jurisdiction”: A county and the incorporated cities within the county with less than 200,000 in total population that is not eligible to receive funds directly from the U.S. Treasury.

“Standard Agreement”: A legally binding agreement, between HCD and participating jurisdictions, which includes terms and conditions consistent with the requirements set forth in Chapter 17 (commencing with Section 50897) of Part 2 of Division 31 of the Health and Safety Code.

“State reservation table”: means the methodology for allocating the state’s portion of funding.

“Sublease”: a rental agreement between a primary tenant acting as a lessor and a secondary tenant acting as lessee.

## 2. Allocation Process

This section identifies the two allocation and administration options available to localities, and it includes a brief description of HCD’s direct rental assistance program.

### 2.1. HCD’s Direct Rental Assistance Program

HCD will contract with a Program Implementer to manage and distribute rental assistance directly to eligible households and landlords for Small Jurisdictions, as well as for Large Jurisdictions interested in participating in the statewide direct rental assistance program. The Program Implementer will provide, on behalf of HCD, a mobile-friendly online application process; application review and data validation; applicant verification; fraud safeguards; multi-language access; de-duplication checks; ADA accessibility; and direct deposit support for both landlord and tenant applicants. The Program Implementer and/or HCD will also leverage partnerships with non-profit service providers and local agencies to provide outreach to households without access to technology, households with language access challenges, and households that need support in completing the application process.

Large Jurisdictions that received a direct allocation from the U.S. Treasury and that elect to have their funds administered through the state-administered program will either re-direct funding to the state through the U.S. Treasury’s re-direct process for ERA1 funds or return funding to the U.S. Treasury to send to the state on their behalf for ERA2 funds. Each

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jurisdiction will sign a Standard Agreement with HCD to provide the jurisdiction with a portion of the administration funds to help support local efforts in promoting the program. That money, along with the proportionate allocation of the state reservation table, will be managed and distributed by HCD's Program Implementer on behalf of the jurisdiction.

### **2.2. Allocation of Block Grant Funds**

A locality that has a population of 500,000 or greater is eligible to receive a block grant allocation from HCD. A locality that has a population of less than 500,000 but greater than 200,000 may request an allocation of block grant funds from HCD but shall demonstrate that it has the capacity to implement the State Rental Assistance Program requirements. The ERA1 deadline to apply for an allocation of block grant funds from HCD was February 12, 2021. Subsequent provisions of AB 832 allow jurisdictions to request a change to the administrative option, subject to the approval of HCD. A locality that did not request a block grant initially could elect to do so if it meets required criteria as determined by HCD. Requests to change administrative option were due July 27, 2021. Future administrative option changes will be reviewed and considered by HCD on an as-needed basis.

Jurisdictions that request block grant funds shall commit to administering their direct federal allocation in accordance with the requirements of AB 832 and federal law. This is necessary to ensure that state and local distribution of rental assistance is conducted equitably and efficiently across jurisdiction boundaries. The statutory requirements are detailed in the Administrative Requirements section below.

Tenants that reside in and landlords that have rental housing units in Large Jurisdictions with stand-alone rental assistance programs are ineligible to receive rental assistance for those units from HCD.

As required by Section 50897.3(b)(2)(A) for ERA1 funds and Section 50897.3.1 for ERA2 funds, HCD shall administer the proportionate share of block grant funds on behalf of jurisdictions that elect to administer their direct federal allocation but do not accept the block grant award.

Rental assistance funds allocated to the state from the U.S. Treasury shall be allocated at HCD's discretion with prioritization based on factors that include a jurisdiction's unmet need, rate of application submissions, rate of attrition, and rate of expenditures.

### **2.3. Funding Availability and Application Denials**

Applicants may be denied rental assistance under the following conditions:

1. The household is not eligible for government rental assistance,
2. The government rental assistance program no longer has sufficient rental assistance funds to approve the application,
3. The application for government rental assistance remains incomplete 15 days after initial submission (excluding Saturdays, Sundays, and other judicial holidays) due solely to the tenant's failure to properly complete the portion of the application that is the responsibility of the tenant. A "denial," as provided for here, is relevant to the landlord's standing to pursue an unlawful detainer action and does not preclude the tenant household from completing an application after the 15 days have lapsed.

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Such denial does not prohibit or otherwise modify an eligible tenant household's ability to receive assistance pursuant to this program.

As tenant eviction protections are directly linked with the submittal and processing of an application, it is important that local program operators do not begin denying applications due to lack of funds prematurely. Local jurisdictions operating an emergency rental assistance program shall meet specific criteria before they may initiate denials due to insufficient rental assistance funding. It is important to not start denials due to lack of funds until it is confirmed that all state and federal resources have been encumbered.

Encumbered in this context means that the funds have been committed to a specific household for a current payment. A current payment includes any arrears identified in the specific request and any current and prospective rents requested up to the allowed three months of prospective assistance.

Local programs that have encumbered (as defined in the above paragraph) 75 percent of their total available resources, including both direct federal allocations and state block grants of both ERA1 and ERA2 funds, shall inform HCD that they are at risk of running out of funding. Upon notification, HCD will evaluate program demand statewide and available statewide resources to determine if additional funds can be allocated to the local jurisdiction to keep the local program operating. If the local program does not need additional funds, program funding will be reserved for jurisdictions that do need funding. If there are no state or federal funds remaining for allocation or re-allocation, HCD will provide a memo to all local jurisdictions, stating that they may start issuing denials due to insufficient funds upon 100 percent encumbrance (as defined above) in their respective local programs.

Local programs that begin issuing denials or that close access to the local program before informing HCD of the 75 percent encumbrance milestone, or before receiving HCD's notification of 100 percent encumbrance, will be in violation of these Guidelines, and may be subject to funding recapture.

### **3. Administrative Requirements**

The administrative requirements, cost principles, and audit requirements at 2 Code of Federal Regulations (CFR) part 200 apply to ERAP as authorized under the Acts. Compliance with certain federal laws is required of all federal fund recipients and include Civil Rights Act of 1964; Fair Housing Act; Title VIII-IX of the Civil Rights Act of 1968; Section 504 of the Rehabilitation Act of 1973; The Age Discrimination Act of 1975; and the Americans with Disabilities Act of 1990, as amended. Jurisdictions that administer their direct federal allocations shall comply with the administrative and reporting requirements set forth in the Act. Jurisdictions that administer their block grant awards shall satisfy the reporting and performance requirements set forth in the law and their agreements with HCD. Jurisdictions shall commit to tracking block grant funds separately from their federal allocation funds.

#### **3.1. Local Program Guidelines**

Jurisdictions with locally administered rental assistance programs should adopt guidelines that detail the applicants' requirements in accordance with the Acts, AB 832, this guidance,

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and any other applicable federal and state laws in connection with the assistance. Guidelines should include, at a minimum, the following:

1. Income documentation requirements and standards
2. Occupancy documentation requirements and standards
3. Requirements and standards for documentation of rental arrears
4. Non-discrimination policies and procedures
5. Duplication of benefits tracking and reporting
6. Payment procedures and documentation standards
7. Fraud prevention and misinformation policies and procedures
8. Housing stabilization services options
9. Policies and procedures for the recapture of illegitimate payments
10. Any additional prioritization or targeting as per local preference
11. Request that utility providers participating in the program provide information to households regarding low-income assistance
12. Mechanisms through which landlords, tenants, and the court may verify the status of an application for rental assistance and obtain copies of any determination of an application for rental assistance
13. Referral process for persons experiencing homelessness, using hotels and motels as permanent housing, or who are otherwise unhoused into the Continuum of Care for assessment in local rapid rehousing programs

The jurisdiction's legislative body should adopt such guidelines and make them publicly available. The jurisdiction's guidelines shall describe the local program's conformity to AB 832 and federal legal requirements related to ERAP.

### **3.2. Conformation Standards**

As provided in AB 832, jurisdictions shall commit to administer their direct federal allocation and their block grant award in accordance with the provisions in AB 832. Additionally, jurisdictions shall not add requirements to their programs that deter or prevent access. The following are examples of such requirements:

1. Requirements that intentionally or unintentionally result in discrimination against protected classes
2. Requirements relative to legal resident status
3. Requirements that condition access on driver's license, formal leases, or citizenship documentation
4. Requirements of unnecessary information, such as personally identifying information from the tenant household other than the minimal information required to validate the application and prevent fraud
5. Required accounts with a specific financial institution or other financial partners to receive funds

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6. Other related documentation requirements that HCD deems could inhibit landlord or household participation in the program

### **3.3. Compensation**

Jurisdictions shall use the compensation standards for both rental arrears and prospective payments established in AB 832. Jurisdictions may not pay less than the stated compensation, nor may they pay more. Jurisdictions may not administer rental assistance in a way that cuts inequitably against the administration of direct rental assistance by HCD or other stand-alone jurisdictions.

### **3.4. Administration Costs**

For ERA1, the Consolidated Appropriations Act, 2021 provides that not more than 10 percent of the amount paid directly from the U.S. Treasury to a Large Jurisdiction under this program may be used for administrative costs attributable to providing financial assistance and housing stability services to Eligible Households. Large Jurisdictions may use up to 8.5 percent of the ERA1 funds provided through the State Block Grant for administrative costs.

For ERA2, the American Rescue Plan Act of 2021 provides that not more than 15 percent of the amount paid directly from the U.S. Treasury to a Large Jurisdiction may be used for administrative costs. Large Jurisdictions may use up to 13.5 percent of the ERA2 funds provided through the State Block Grant for administrative costs. Examples of direct and indirect administration costs include:

1. Program marketing and outreach
2. Program administration (both jurisdiction staff time and third-party service provider costs)
3. Acquisition and/or subscription costs for technology equipment and/or services to support required reporting and activity tracking

## **4. Duplication of Benefits and Fraud Prevention**

Jurisdictions shall commit to designing and implementing program features that prevent the duplication of benefits. A duplication of benefits happens when a household receives assistance in excess of documented need. Jurisdictions that administer rental and utility assistance programs shall develop policies, procedures, and mechanisms for preventing duplication of benefits and recapturing funds that are identified as benefit duplications. Both application forms and documentation requirements should be carefully evaluated for fraud risks, and training should identify and discuss potential red flags so that reviewers can take appropriate action. Application forms should clearly state that fraud will be prosecuted to the fullest extent of the law.

Jurisdictions will also be required to track duplications of benefits for rental and utility assistance provided prior to the approval of the Acts, SB 91, and AB 832, including assistance provided with CARES Act funds, entitlement funds, HUD funds, and other state and federal funds.

## **5. Eligible Uses**

The Acts and AB 832 identify the following as eligible uses of ERAP funds: rental arrears; prospective rent payments; utilities, including arrears and prospective payments for utilities; and other expenses, as defined by the U.S. Treasury Secretary. The following section details the required prioritization of these eligible uses.

### **5.1. Eligible Housing Occupancy, Residency, and Lease Type Eligibility**

Under the Acts, the intended beneficiary of rent relief funds is the tenant household. Therefore, program eligibility is based on the tenant being or having been a renter of a residence for which rent is owed. The following are examples of documentation that can demonstrate tenant residency:

1. Lease agreement
2. Tax return or public assistance recertification letter that shows the applicant's name and rental address
3. State-issued program identification or license showing applicant's name and rental address
4. Official correspondence showing applicant's name and rental address (e.g., letter from landlord, governmental agency, financial institution, medical institution, or school)
5. Government-issued library card showing applicant's name and rental address
6. Utility statements from providers showing applicant's name and rental address

The cost of a hotel or motel room occupied by an Eligible Household may be covered using funds within the category of "Other Expenses" related to housing incurred due, directly or indirectly, to the COVID-19 outbreak provided that:

1. the household can demonstrate that it has been temporarily or permanently displaced from its primary residence or does not have a permanent residence elsewhere; and
2. the total number of months of assistance provided to the household does not exceed 12 months (plus an additional three months if necessary to ensure housing stability for the household) for households assisted with ERA1 and does not exceed 18 months with ERA2 fund, though in no event should any household receive more than 18 months of assistance total between both funding sources; and
3. documentation of the hotel or motel stay is provided and the other applicable requirements provided in the statute are met.

The cost of the hotel or motel stay would not include expenses incidental to the charge for the room. Jurisdictions covering the cost of such hotel/motel stays shall develop policies and procedures as part of their overall guidelines detailing under what circumstances they would provide assistance to cover such stays. The cost of the hotel or motel shall be reasonable. If a household is eligible to receive rental assistance for hotel/motel stays from an existing program with narrower eligibility criteria, such as the HUD Emergency Solutions Grant program or FEMA Public Assistance, such programs should be utilized prior to providing similar assistance under ERAP. Households seeking assistance for hotel or

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motel housing or that otherwise indicate they are unhoused or currently experiencing homelessness should be referred to the local Continuum of Care for assessment through the Coordinated Entry System and evaluated for eligibility in the Continuum of Care's rapid rehousing program.

Eligible Households living in manufactured housing (e.g., mobilehomes) can receive assistance as well. Rental payments for either the manufactured home and/or the parcel of land the manufactured home occupies are eligible for financial assistance under ERAP. This includes manufactured housing on both single-family parcels and in mobilehome parks. Households renting manufactured housing and/or the parcel of land the manufactured home occupies may also receive assistance for utilities and other expenses related to housing.

Jurisdictions shall include in their guidelines the process and criteria required to identify eligibility for non-single occupancy or non-traditional rental relationships. These include eligibility criteria relating to Co-Tenancies, Co-Signers, Subleases, and Self-Evicted Tenants or other scenarios where a potentially eligible household has vacated the unit with unpaid rental debt.

### **5.2. Co-Tenancy**

Co-Tenants who operate as individual households with unrelated incomes, budgets, and obligations will be treated as separate households for purposes of assistance. In addition to meeting the program eligibility criteria, Co-Tenancy households shall provide all of the following information:

1. Documentation of household size (e.g., tax returns, other subsidy program documentation).
2. The Co-Tenancy agreement that clearly identifies who is responsible for which household costs. (It is preferable that this agreement be in writing and signed by all Co-Tenants – it does not have to be from the same time as the lease, but it should identify current household cost splits.)
3. Documentation of respective rental and utilities arrears, and certification of respective inability to make current and prospective rent and utilities payments.

A Co-Tenant applicant that can document separate income and costs should be treated like an individual household and should be qualified based on the household income limits of the documented household size without including the Co-Tenants or their income in the application.

### **5.3. Co-Signer**

If an applicant has a Co-Signer, but is not part of the Co-Signer's household, then the applicant can be treated as a stand-alone household without reference to the Co-Signer's income. Such applicants shall provide documentation to support their claim that they are not part of the Co-Signer's household. This documentation can include but is not limited to:

1. Tax returns identifying the applicant household as separate from the Co-Signer's household (applicant shall not be declared as a dependent on the Co-Signer's tax return), or



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2. Applicant household participates in a public assistance program that verifies eligibility through household income – such as CalFresh or WIC, or
3. Affidavit from the applicant household indicating that the Co-Signer is an outside party that has agreed to take responsibility for the rent and is not part of the applicant's immediate household.

An applicant will be eligible for assistance if they (i) can demonstrate that they do not have a household relationship with their Co-Signer; and (ii) meet the program criteria for income by household size.

### **5.4. Sublease**

Households who hold a sublease may apply for and receive rental assistance if they meet both of the following criteria:

1. They have an agreement with the primary leaseholder tenant that clearly identifies who is responsible for which household costs. (It is preferable that this agreement be in writing and signed by the sublessor and the sublessee.)
2. They can document that their portion of the rent is in arrears, or they can certify that they are unable to make current or prospective rent payments.

The subleasing household shall indicate they sublease their unit from a tenant and do not have a direct lease with the property owner in the application. Approved assistance funds are payable to the tenant households. Assuming the household is otherwise eligible, the program operator is not required to contact the landlord (in this case the property owner) to participate in the program. Approved assistance will be payable to the subtenant households at 100 percent. Total duration of allowable assistance remains consistent with federal guidelines for ERA 1 and ERA 2 fund use. Subtenants have 15 days from receipt of funds to make payment to the sublessor. Sublessors whose failure to pay the property landlord results in an eviction of the subtenant may be found in violation of the program terms and conditions and may be subject to funding recapture and potential prosecution.

### **5.5. Self-Evicted Tenants**

Households who have self-evicted or otherwise voluntarily vacated their rental units with outstanding rental debt may apply and receive rental assistance related to the previous unit. Tenant households shall indicate they no longer live at the unit where assistance is being requested in the application. Households seeking assistance for both a currently occupied unit and a prior vacated unit shall clearly identify each unit on their application and may be required to submit a separate application for each unit.

Funding for self-evicted households requires participation by both the tenant and the tenant's prior landlord. Landlords will not be able to receive rental arrears without a participating qualified tenant household, and tenants will not be able to receive rental arrears for a vacated unit without a participating landlord. Payments shall be made directly to the tenant's prior landlord. Tenants who have self-evicted are eligible for 100 percent of their past due rent incurred between April 1, 2020 and September 30, 2021, to be paid directly to the participating landlord. No prospective assistance is allowed to be paid for prior rental units that the tenant departed. Total duration of allowable assistance remains consistent with federal guidelines for ERA 1 and ERA 2 fund use.

## **5.6. Households in Subsidized Housing**

An Eligible Household that occupies a federally subsidized rental unit may receive assistance provided that the ERAP funds are not applied to costs that have been or will be reimbursed under any other federal assistance program. If an Eligible Household's income has been reduced due to or during COVID-19 since the last income verification, the Eligible Household should request an interim income recertification.

## **6. Rent and Utilities Assistance**

Jurisdictions shall commit to prioritizing rental arrears first and may commit to prioritizing utility arrears and prospective rent and utility payments after arrears have been cleared. Jurisdictions may elect to apply these priorities on a household-by-household basis (assisting each household with arrears prior to addressing current or prospective costs) or on a community-wide basis (assisting with all arrears in the community prior to addressing current or prospective costs). Jurisdictions are also encouraged to explore alternative funding sources such as Community Development Block Grant (CDBG), CDBG-Corona Virus (CV) funds, and Emergency Solutions Grant Corona Virus (ESG-CV) funds to best identify a path to provide other housing stabilization assistance, such as housing counseling, relocation, rapid rehousing, eviction representation, utility assistance, and other eligible assistance that does not duplicate rental assistance.

Jurisdictions are required to observe these priorities when administering their direct federal allocation and their block grant award.

### **6.1. Priorities for Providing Assistance**

Rental assistance is the first priority for assistance in the State Rental Assistance Program and jurisdictions are encouraged to target at least 70 percent of their total rental assistance allocation to rental assistance. If all qualifying applications for rental assistance can be satisfied under this 70 percent threshold, the jurisdiction may allocate block grant funds to utility assistance. The jurisdiction administering block grant funds retains the latitude to decide whether a deviation from the suggested threshold is appropriate given its local conditions and program requests. Jurisdictions may elect to address rental assistance and utility assistance at the same time provided rents are prioritized ahead of utilities.

#### ***a. Rental Arrears - Priority 1***

Funding shall be prioritized for rental arrears incurred on or after April 1, 2020. Rental assistance (including both direct federal allocations and block grant awards) may be used to pay 100 percent of an Eligible Household's rental arrears accumulated on or after April 1, 2020. ERA1 assistance is limited to 12 months (plus an additional three months if necessary to support housing stability for the household, subject to the availability of funds). ERA2 assistance is limited to 18 months. In no event shall the aggregate amount of ERA1 and ERA2 assistance to an Eligible Household exceed 18 months.

"Rental debt" includes rent, fees, interest, or any other financial obligation under a lease for use and occupancy of the leased premises but does not include liability for torts or damage to the property beyond ordinary wear and tear. For example, if the unit's rent includes a monthly pet fee or includes the cost of utilities, those fees will be included in the Eligible Household's rental debt. Fees that are the result of tenant damage to the unit are not

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eligible for relief through the program and should not be counted as eligible rental debt. Consistent with Civil Code section 1942.9 a landlord shall not assess fees for the late payment of that COVID-19 rental debt. At this time, only rental debt accrued on or after April 1, 2020, is eligible for rental arrears assistance.

### ***b. Prospective Rent Payments – Priority 2***

If a jurisdiction has administered payments for rental arrears in accordance with priorities established in the Acts and AB 832, then the jurisdiction may elect to make current and/or prospective payments for rents. Assistance provided for rent that is due for payment but not yet in arrears is “current.” Assistance provided for future months’ rent that is not yet due is “prospective.” For purposes of this document, the term “prospective” shall refer to both current and future payments.

Assistance to an Eligible Household for prospective rent payments shall not exceed 100 percent of that household’s documented monthly rent costs, respectively. ERA1 assistance for prospective rent payments is limited to three months, although additional months may be available if (i) funding remains available; and (ii) an application for additional assistance is submitted. ERA2 assistance for prospective rent payments is limited to 18 months. In no event shall the aggregate amount of ERA1 and ERA2 assistance to an Eligible Household exceed 18 months.

Jurisdictions may provide concurrent assistance for prospective rent payments and rent and utility arrears (as applicable). An Eligible Household with qualifying rental arrears (rental debt accumulated on or after April 1, 2020) may not receive assistance for prospective rent payments until the arrears have been fully paid and/or forgiven. Jurisdictions are encouraged to address arrears for as many Eligible Households as possible before awarding funds to households requesting prospective rent only.

Applicants requesting assistance for prospective payments shall recertify every three months by providing current information regarding income, household size, rent and utilities costs, etc. Jurisdictions may approve and pay current and prospective assistance for up to three months at a time. Jurisdictions that pay rents for future months shall establish procedures for confirming that the Eligible Household remains in the covered property, and for recapturing assistance if the household’s eligibility changes (e.g., leaving the covered property). Jurisdictions should use the same income eligibility evaluation process established in their initial application eligibility review for applicant recertifications. See Section 8.6 Income Documentation below for information on establishing income eligibility.

### ***c. Utilities – Priority 3***

Eligible Households may apply for assistance for qualifying utility arrears and/or prospective utility costs incurred on or after April 1, 2020.

Utility expenses are those separately stated charges related to the occupancy of rental property, including electricity, gas, water and sewer, trash removal, and energy costs, such as fuel oil. Local, municipal, investor-owned, and other utility provider types are eligible to participate. Charges for any utilities included in the rental price shall be included in the rental debt and prospective rent categories. All separately billed charges for utilities and home energy shall be listed in the application and payment procedures apart from the rent. Utility costs that are billed on a prorated basis to individual units from a master meter

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account in a multi-family residential building shall be categorized as utilities, provided they are billed separate and apart from the rental price.

ERA1 assistance is limited to 12 months (plus an additional three months if necessary to support housing stability for the household, subject to the availability of funds). ERA2 assistance is limited to 18 months. In no event shall the aggregate amount of ERA1 and ERA2 assistance to an Eligible Household exceed 18 months. Utility arrears assistance is allowed for the full debt of the utility arrears incurred during the eligible period. All jurisdictions receiving federal ERAP funds should encourage utility providers to help low-income households participate in reduced-cost utility plans and identify repayment options for any remaining utility arrears incurred outside the eligible period. Jurisdictions looking to assist with prospective utilities shall develop a mechanism to assess cost reasonableness of the prospective utility request and shall include that cost reasonableness formula in their program guidelines.

Rental assistance programs may also consider coverage for Internet service costs similar to eligible utility costs. See Other Housing Expenses below for more information.

### ***d. Other Housing Expenses***

The Acts allow payments for other expenses related to rental housing. ERA1 assistance requires that such housing expenses be incurred due, directly or indirectly, to the COVID-19 outbreak. ERA2 assistance does not require a nexus between the expenses and the COVID-19 outbreak. Qualifying “expenses related to housing” include relocation expenses (including prospective relocation expenses), such as rental security deposits and rental fees, which may include application or screening fees. They can also include reasonable accrued late fees (if not included in rental or utility arrears).

Qualifying expenses can also include Internet service provided to the rental unit. Indeed, Internet service is related to housing and is in many cases vital service to renters’ access to distance learning, telework, telemedicine, and obtain government services. However, coverage of Internet costs will reduce the amount of funds available for rental assistance, so should adopt policies that govern in what circumstances they will determine that covering this cost would be appropriate.

All payments for housing-related expenses shall be supported by documentary evidence such as a bill, invoice, or evidence of payment to the provider of the service. If a housing-related expense is included in a bundle or an invoice that is not itemized (for example, internet services bundled together with telephone and cable television services) and obtaining an itemized invoice would be unduly burdensome, jurisdictions may establish and apply reasonable procedures for determining the portion of the expense that is appropriate to be covered by ERAP.

## **6.2. Housing Stabilization**

Jurisdictions may use up to 10 percent of ERA1 and ERA2 rental assistance funds to provide housing stabilization services. Stabilization services may include:

1. Case management
2. Legal support to prevent eviction
3. Tenant-landlord mediation services

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4. Housing counseling
5. Housing placement
6. Housing navigators/promoters that help households access ERAP
7. Housing-related services for survivors of domestic abuse or human trafficking
8. Specialized services for seniors or individuals with disabilities

Jurisdictions are encouraged to define and describe housing stabilization services in their program guidelines but should also consider U.S. Treasury guidance for eligibility.

Jurisdictions are encouraged to build housing stabilization support into their programs to assist households who continue to be at risk of severe housing instability or who need additional support to retain housing even with emergency rental assistance and the current tenant protections.

Jurisdictions are also encouraged to use housing stabilization resources to encourage landlord participation in the locally administered rental assistance program. Resources such as tenant-landlord mediation can help address communication challenges and provide consistent education around tenant and landlord rights.

## 7. Eligible Applicants

Both tenants and landlords (with tenant consent) may apply for assistance under ERAP, but eligibility criteria are tied to the tenant household. For a tenant to be considered an “Eligible Household” it shall meet all three eligibility criteria, namely that:

1. household income is 80 percent or less of Area Median Income; and
2. has qualified for unemployment or experienced a reduction in household income, incurred significant costs, or experienced other financial hardship during or due, directly or indirectly, to the novel coronavirus disease (COVID–19) outbreak; and
3. one or more members of the household can demonstrate a risk of experiencing homelessness or housing instability which may include a past due utility or rent notice or eviction notice, or unsafe or unhealthy living conditions.

### 7.1. Criterion a) Income Eligibility and Income Priorities

Under the Acts, the intended beneficiary of rent relief funds is the tenant household. Therefore, program eligibility is based on the tenant household’s income. “Household income” is determined by using the HUD definition of “annual income” in 24 CFR 5.609, or by using adjusted gross income as defined for purposes of reporting under Internal Revenue Service Form 1040 series for individual federal annual income tax purposes. As previously noted, for the purpose of this program, the terms “family” and “household” are used interchangeably. Only one member of the household needs to complete an application for financial assistance or join their landlord or utility provider in applying. Although one member signs and submits the application, relevant income information shall be included for all adult members of the household.

Households shall be at or below 80 percent of AMI to be eligible for funding from both the direct federal allocation and the block grant award. Priority shall be given to households that satisfy any of the following criteria:

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- i. The income of the household does not exceed 50 percent of AMI.
- ii. One or more individuals within the household are unemployed as of the date of the application for assistance and have not been employed for the 90-day period preceding such date.

Jurisdictions may elect to target their prioritization of assistance more deeply. (For example, jurisdictions may prioritize assistance under criterion i. to households at or below 30 percent AMI.) In the event that the eligible applicants have been prioritized and assisted in a given reservation pool, then jurisdictions may begin to assist households between 50 and 80 percent of AMI. Jurisdictions may continue to assist lower-income households who apply after priority criteria have been addressed.

Effective April 1, 2021, HUD updated the 2021 income limits. HCD recommends all jurisdictions receiving any ERAP funds update their programs to use the 2021 income limits<sup>1</sup>. For efficient implementation, jurisdictions should consider creating a cut-off date in their program, process all applications received before a specific date against the old income limits, and then process applications received after that date against the new limits.

### **7.2. Criterion b) Loss of Income or Financial Hardship due to COVID-19**

If one or more adult individuals within the household are unemployed as of the application date, and they have been unemployed for the 90-day period preceding such date, that household is prioritized for assistance. Households who have had reduced income, increased costs, have been unable to gain employment, or have experienced other financial instability or hardship during or due to COVID-19 are also eligible for assistance. Jurisdictions should consider using low-barrier processes to evaluate COVID-19 impacts, including self-attestations, in-application attestations, and COVID-19 distress forms when possible. Refer to section 8.8 below for verification documents that may be collected from the tenant related to unemployment or financial hardship.

### **7.3. Criterion c) Risk of homelessness or housing instability**

Housing instability is clearly indicated where there are rental arrears or an inability to pay prospective rents. Households that do not have evidence of inability to pay rents or are attesting to housing instability due to unsafe or unhealthy living conditions or a risk of homelessness to meet the requirement for housing instability can submit an unsworn declaration under penalty of perjury that they are at risk of experiencing homelessness or housing instability. Examples of documents that may be submitted in support of the written attestation include a past due utility or rent notice or eviction notice. Evidence of unsafe or unhealthy living conditions, or any other evidence of risk, may also be accepted by the jurisdiction in its reasonable discretion.

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<sup>1</sup> Refer to <https://www.huduser.gov/portal/datasets/il.html>

## **8. Application and Documentation Procedures**

### **8.1. Application Submission**

Applications may be submitted by tenants and landlords, though program eligibility is based on the tenant household. Landlords who will be providing tenant information on behalf of the tenant shall provide evidence that they have the tenant's authorization. If a property manager is applying on behalf of a landlord (i.e., the property owner), the program should require the property manager to provide evidence that they are authorized to apply on the landlord's/owner's behalf. Such evidence may include a contract or express written authorization on formal letterhead. Both the tenant and the landlord shall be notified once an application has been determined complete and once a final decision has been rendered. Payments should be made directly to the landlord whenever possible. If it is not possible to pay landlords directly, payments may be made directly to tenants.

### **8.2. Landlord non-participation**

If a landlord is unresponsive to a rental assistance application submitted by the tenant, the local program may convert the application to pay 100 percent of the rental debt to the tenant for the purpose of paying their landlord. In ERA1, jurisdictions shall make reasonable efforts to secure the participation of landlords in the program. Outreach will be considered sufficient if:

1. A request for participation is sent in writing, by mail, to the landlord, and the addressee does not respond to the request within seven (7) calendar days of the mailing;
2. The jurisdiction has made at least three (3) unsuccessful attempts by telephone, text, or e-mail over a period of five (5) calendar days to request the landlord's participation; or
3. A landlord confirms in writing during outreach that the landlord does not wish to participate.

ERA2 does not require outreach to the landlord before providing assistance directly to the tenant. Such outreach is at each jurisdiction's discretion.

If the converted application is determined to be eligible, then payment may be made directly to the tenant. See Section 9.1, Rental Assistance Payments for Eligible Households, for important information related to payment procedures. Tenants that receive payment directly shall make payment to their landlord within 15 days of receipt of funds.

### **8.3. Tenant non-participation**

If a tenant does not engage with the rental assistance program, then they are not covered by the AB 832 eviction protections and a landlord may start the eviction process. Participation in the state or local rental assistance program is necessary for tenant households to receive eviction protections that go into effect in California on October 1, 2021. (Code Civ. Proc. § 1179.11.)

#### **8.4. Applicant Identity Documentation**

Although all household members shall be listed by name on the application, proof of identity is only required for the primary applicant. Acceptable documentation for identity verification comes in several forms, including:

1. A form of government-issued identification, such as a birth certificate or driver's license
2. Foreign identification documents, such as passports, or driver IDs
3. An employment identification card from the applicant's employer
4. Certificate of marriage or license
5. Certified copy of divorce decree
6. Copy of a certified, court-ordered maintenance award (if legal) or a notarized statement declaring separation
7. Public Assistance participation documentation
8. A tax return or other tax document that includes the applicant's name

#### **8.5. Rent and Utility Arrears Documentation**

Requests for rental arrears assistance should be for the amount of rental debt that is still outstanding after adjusting it for any prior partial payments made by the tenant or another entity acting on behalf of the tenant. Requests for prospective rental assistance should identify the rent owed by period (e.g., monthly). The amount of rent due and rental debt accrued by the Eligible Household during the eligible period can be demonstrated using numerous documents, including but not limited to the following:

1. Rent amount
  - a. A current lease, signed by the applicant and the landlord or sublessor, which identifies the unit where the applicant resides and establishes the rental payment amount
  - b. Other rental agreement (e.g., month-to-month agreement, co-tenancy agreement)
  - c. In the absence of a signed lease, evidence of prior rental payments and amounts (e.g., bank statements, check stubs, or other documentation that reasonably establishes a pattern of paying rent in a certain amount)
  - d. Written attestation by the landlord
  - e. Attestation by the tenant as to unpaid rent and the monthly rent amount
2. Rent owed
  - a. Signed letter or other notice from landlord indicating time period, expected rent amount, actual rent received, and total rent amount owed
  - b. Lease agreement signed by the Eligible Household and Landlord or designee
  - c. Rent due statement/letter from the landlord or management company



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- d. 3-day notice, pay rent or quit notice, or other notice of nonpayment of rent (shall include amount of rent outstanding)
  - e. Rent roll
  - f. Other formal attempt to collect rents or notify tenants of rents due
- NOTE: Although the tenant application should contain fields to capture rent owed on a monthly basis, the landlord may show different monthly amounts owing due to the accounting method used (e.g., how partial payments are applied to back and current rent). In such instances, the local program should establish methods to verify that the total assistance requested for rental arrears matches the total rent owed as indicated or confirmed by the landlord.

All requests for utility payment should be accompanied by copies of utility or energy bills detailing the amount due or overdue and should be for the dwelling unit in which the household resides. The utility or energy bills should be in the name of a household member. Utility providers shall provide proof that the Eligible Household's utility debt is still outstanding and has not been paid through another form of assistance.

When utilities are included in the total contract rent price, landlords may not apply for separate utility and rental arrears assistance. The value of utility arrears accrued in the eligible period will be included in the Eligible Household's rental arrears for the eligible period. If utilities are not included in the total contract rent price, or if the Eligible Household receives bills for their utilities separate from their rent bill, the Eligible Household will need to apply for assistance for the qualifying utility arrears. Eligible Landlords cannot apply for payment assistance for external utilities on behalf of their eligible tenants. If tenants receive utility bills from providers that invoice for pro rata shares of master-metered usage, they should list the utility charges separate from their rent.

### **8.6. Income Documentation**

Jurisdictions are encouraged to keep documentation requirements as simple as possible, while balancing the need to capture potential duplication of benefits and address risks of fraud. Under limited circumstances permitted by the Acts, a written attestation of income from the applicant may be accepted. Examples of simple income documentation (for household members 18 years of age or older) that can be used to identify applicant eligibility include (but are not limited to):

1. 2020 household tax returns (If a household is not required to complete a tax return, then a Form W-2, a Form 1099-MISC, or other tax statements for the Eligible Household members may be substituted)
2. Pay stubs for all employed members of the household applying for benefits
  - a. Most recent paycheck stubs (consecutive: six for weekly pay, three for bi-weekly or semi-monthly pay, two for monthly pay)
3. Employer-generated salary report or letter stating current annual income
4. W-2 forms if the applicant has had the same employer for at least two years and increases can be accurately projected

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5. Social Security and Supplemental Security Income (SSI) Benefit letter signed by administrating agency or copies of checks or records from the agency stating payments
6. Documentation of current participation in any one of the below provided that the eligibility determination for such program was made on or after January 1, 2020:
  - a. Medicaid, known as Medi-Cal in California
  - b. Women, Infants, and Children (WIC) benefits
  - c. Free and Reduced Lunch participation
  - d. Supplemental Nutrition Assistance Program (SNAP), known as CalFresh in California
  - e. Food Distribution Program on Indian Reservations (FDPIR)
  - f. Temporary Assistance for Needy Families (TANF), known as CalWORKs in California
  - g. School Nutrition Programs (SNP), such as the Free and Reduced Lunch program for California families
  - h. Subsidized housing (not including housing choice, project-based, or Section 8 vouchers) that required income documentation as a condition of residency
  - i. Any state or federally funded assistance program for low-income persons or households
  - j. Any locally operated assistance program for low-income persons or households that requires household income verification and uses federal income limits

Households that confirm that they have no source of income (or have cash income only and cannot provide documentation of income or income eligibility), may complete a declaration under penalty of perjury, certifying that they have either no income or are unable to provide documentation of their income. Notice of employment termination or the expiration of unemployment benefits can be used to support affidavits of no income. However, programs should not require applicants to produce these documents unless there are indicators of fraud in connection with the application. Jurisdictions are not required to complete third-party income verifications. Jurisdictions should not require income documentation from multiple sources unless there are indicators of fraud in connection with an application.

### **8.7. Methods for Income Determination**

Jurisdictions may determine income eligibility based on either (i) the household's total income for calendar year 2020, or (ii) sufficient confirmation of the household's monthly income at the time of application, as determined by the Secretary of the Treasury.

If a local program uses a household's monthly income to determine eligibility, the program should review the monthly income information provided at the time of application and extrapolate over a 12-month period to determine whether household income exceeds 80 percent of AMI. For example, if the applicant provides income information for two months,

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the program should multiply it by six to determine the annual amount. If a household qualifies based on its current monthly income, the program shall redetermine the household's income eligibility every three months for the duration of assistance.

### **8.8. Documenting unemployment or financial hardship during or due to COVID-19**

In cases where one or more individuals within the household has qualified for unemployment, jurisdictions are encouraged to keep requirements for unemployment documentation as simple as is practicable. The following are examples of possible unemployment documentation:

1. Letters of termination
2. Last-received pay stub with employer's information
3. Evidence of application for unemployment benefits
4. Evidence of expired unemployment benefits, including unemployment benefits provided through the CARES Act
5. For self-employed persons, tax records, statements, or other documentation of loss of employment

Jurisdictions should consider whether to allow attestations or affidavits of unemployment when evaluating applications using unemployment as their eligibility criteria. Applicants who can only provide a last pay stub as proof of unemployment should be notified that their previous employer may be contacted for verification. Jurisdictions should take every reasonable precaution to identify fraudulent claims of unemployment in the application. Applicants that can provide verifiable documentation of unemployment should not be required to submit additional documentation or to comply with additional income documentation requirements.

Applicants who cannot provide documentation of unemployment should instead consider applying under the income eligibility criteria.

If an applicant claims their household experienced a reduction in household income, incurred significant costs, or experienced other financial hardships during or due, directly or indirectly, to COVID-19, the applicant shall attest in writing that the foregoing is true. Jurisdictions should consider best practices for obtaining such an attestation, whether as a part of the signed application form or a separate document. Consideration should be given to the burden for applicants and program operations when determining whether to require separate, signed affidavits beyond the primary application.

## **9. Payment Procedures**

### **9.1. Rental Assistance Payments for Eligible Households**

Under the Acts, the intended beneficiary of rent relief funds is the tenant(s) of an Eligible Household. Therefore, program eligibility is based on the applicant being or having been a renter of a residence for which rent is owed.

Arrears payments for Eligible Households shall be made as a single payment to the Eligible Landlord that satisfies all applicable criteria herein and shall be set at 100 percent of arrears accrued on or after April 1, 2020. Payment made directly to an Eligible Landlord

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shall be conditioned on the landlord's agreement to release any and all claims for nonpayment of rent owed for the specified period, including a claim for unlawful detainer made under Code of Civil Procedure section 1161, paragraphs (2) and (3).

If the Eligible Landlord refuses to participate in the program, assistance for rental arrears set at 100 percent of the Eligible Household's unpaid rental debt accumulated on or after April 1, 2020 may be paid directly to the Eligible Household as a single payment. Upon receipt of assistance, the Eligible Household shall provide the full amount of rental arrears to the landlord within 15 days of receipt of the funds, excluding Saturdays, Sundays, and judicial holidays. A member of the household shall attest under penalty of perjury that the household will comply with this requirement. If the household does not comply, the landlord may charge a late fee not to exceed the amount that the landlord may charge a tenant for one late rental payment under the terms of the lease or rental agreement. Failure to pay such a late fee shall not be grounds for an unlawful detainer action. Jurisdictions should encourage Eligible Households to use all payments of rental assistance to maintain compliance with the law and to retain eviction protections.

An Eligible Household may request rental arrears assistance for a residential unit that the applicant no longer occupies. Eligible Households that no longer occupy the residential unit in connection with a rental assistance request, and that have demonstrated rental arrears, shall be eligible for assistance. Assistance on behalf of Eligible Households for unpaid rental debt accrued at previous residential units shall be directed to participating landlords. If the landlord refuses to participate, payment may be made directly to the Eligible Household if the household provides any amount received for rental assistance to the landlord. A member of the Eligible Household shall attest under penalty of perjury that the household will comply with this requirement. Jurisdictions assisting households with unpaid rents from a vacated unit where the landlord is not participating should build sufficient fraud protections into the program to prevent misuse and mitigate risk, and they may consider setting additional limitations or restrictions. Potential restrictions include only allowing direct payment to landlords, or requiring landlord participation for eligibility consideration.

### **9.2. Utilities Assistance Payments for Eligible Households**

Payments made for utilities arrears (or prospective utilities costs) shall be made directly to the utility provider. However, if the utility provider does not agree to accept such payment after reasonable effort has been made to obtain its cooperation, payment can be made directly to the Eligible Household for remittance to the utility provider.

Jurisdictions may enter into prudent data-sharing agreements with utility providers to reduce administrative burdens, enhance program integrity, and determine household eligibility. In addition, payments for multiple households may be combined into a single "bulk" payment to a utility provider. Jurisdictions should ensure that such arrangements (1) comply with applicable privacy requirements; (2) include appropriate safeguards to ensure payments are made only for Eligible Households; and (3) are documented and reported to capture household-level specificity.

### **9.3. Payment Recapture**

If an Eligible Household should cease to occupy a unit for which prospective rents have been paid to the landlord, the landlord shall re-pay to the jurisdiction a pro-rata portion of the paid rents for the period that the unit is unoccupied by the Eligible Household.

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If an Eligible Household receives assistance directly and refuses or fails to pay the landlord within the 15-day period, the jurisdiction should pursue payment recapture.

Jurisdictions should identify the mechanism for recapturing such funds in their guidelines. If a jurisdiction has outstanding recapture and has not met the obligation deadline for the block grant award, then HCD will deduct the outstanding recapture amount from the amount of obligated block grant funds to calculate the block grant funds that will be recaptured and reallocated.

Jurisdictions with outstanding recapture as of the relevant fund expenditure deadline will be required to repay the amount of that outstanding recapture to HCD within five (5) business days of the foregoing deadline.

### **9.4. Payment Documentation**

Both Eligible Households and Eligible Landlords shall be notified of all rental assistance payments. The notification shall identify the specific dwelling unit and Eligible Household, the total amount of rental assistance, the time period for which payment is provided, and the date the payment was disbursed by the jurisdiction. The notification should also include a check number or transaction number to assist the Eligible Landlord with cross-referencing and tracking receipts and assistance for Eligible Households.

Both utility providers and Eligible Households shall be notified of all payments to utility providers. The notification shall identify the account number of the Eligible Household, the total amount of utility assistance provided, the time period for which payment is provided, the payment transaction or check identification numbers, and the date the payment was disbursed by the jurisdiction.

Jurisdictions should maintain a copy of every notification, as well as proof of delivery, for record keeping and fraud prevention purposes.

A jurisdiction that does not comply with these requirements shall be deemed ineligible to receive further block grant allocations pursuant to Section 50897.2 or 50897.2.1 of the Health and Safety Code.

### **9.5. Appeals**

Jurisdictions should develop appeal procedures for when an applicant (tenant or landlord) is contesting a denial of their own application for eligibility, rental assistance, or utility payments. Applicants may contest any determinations or denials based on program policy or calculations. However, an applicant may not challenge the application of federal law and requirements. Applicants may file an appeal, for example, if they believe there is an error with program eligibility determinations.

The Jurisdiction's appeal procedures should also specify, for example, the timeframe and number of appeals an applicant may file, the reason(s) for appeal, how appeals will be tracked and how the tenant and/or landlord will be notified of the appeal result.

## **10. Program Design and Court Coordination**

Jurisdictions shall design their program implementation to meet the minimum standards of AB 832 to allow eligible tenants to take full advantage of eviction protections, independent

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of processing financial assistance through the program. These design changes shall be implemented pursuant to AB 832.

### **10.1. Application Status**

Jurisdictions shall provide avenues, including, but not limited to, telephone or online access, through which landlords, tenants, legal representatives, and courts may do both of the following:

1. Verify the status of an application for rental assistance based upon the property address and a unique application number; and separately
2. Obtain copies of any determination relative to an application for rental assistance. A determination shall indicate all of the following:
  - a. The name of the tenant that is the subject of the application.
  - b. The address of the property that is the subject of the application.
  - c. Whether the application has been approved or denied.
  - d. Whether the application is pending further action.
  - e. If the application has been approved, then the amount of the payment that has been approved and the period and type of rental debt to which the amount corresponds.
  - f. If the application has been denied, the reason for the denial, which shall be any of the following:
    - i. The tenant is ineligible for government rental assistance.
    - ii. The government rental assistance program no longer has sufficient funds to approve the application.
    - iii. The application remained incomplete 15 days, excluding Saturdays, Sundays, and other judicial holidays, after it was initially submitted because of failure on the part of the tenant to provide required information. A denial under this clause does not prohibit or otherwise modify an eligible tenant household's ability to receive assistance pursuant to this program.

Access to status evaluations may be provided by:

1. Provisioning a call center that can provide real-time updates,
2. A program portal that provides real-time application status, including the definition of that status,
3. A report that may be requested on demand that provides real-time application status, including the definition of that status,
4. On-demand requests for previously sent notifications, confirmations, denials, or other correspondence from the program

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5. Other real-time reports or access tools, or a combination of tools that provides real-time status of applications.

All application status mechanisms shall include processes and structures that protect against the exposure of personal identifying information and sensitive personal documents, including identity documents, income documents, COVID-19 impact documents or statements, and any other tenant household information ancillary to the evaluation of program eligibility. Application status information should be limited to:

1. Confirmation of submittal of a complete or incomplete application
2. Confirmation of eligibility or ineligibility
3. Confirmation of pending, approval, denial, or Final Decision
4. Confirmation of a filed appeal to an application denial
5. Confirmation of payment, including the payment amount and date the application was approved for payment

### **10.2. Application Access**

Jurisdictions shall create a program structure that allows for the ongoing submittal of applications, regardless of the availability of funding, and that provides a platform for at-will access for tenants that does not require third party support or intervention. The application shall include enough information to complete an initial eligibility evaluation and shall clearly indicate what is required to meet the definition of a “complete” application.

Jurisdictions shall provide a means for landlords to initiate and submit an application that includes, at a minimum, the name, phone number, and, if available, email address of the tenant, the physical address of the unit, the monthly rents for the unit, and the amount of unpaid rent arrears owed. Landlord application templates shall clearly indicate what is required to submit a “complete” application.

### **10.3. Application Progress Notifications**

There are several instances where both the tenant household and the landlord shall receive notifications regarding the status of the applications in the program.

Submittal of a Complete Application: both tenant and landlord shall be notified when either party submits a complete application for assistance. This includes tenant applications that have been submitted after the 15-day window initiated by the landlord submitting a complete application as part of an eviction process.

**NOTE:** Applications with incorrect contact information for either party (tenant or landlord) will be deemed incomplete if the program is unable to initiate a review of the application for eligibility based on the information provided.

Final Decision: both tenant and landlord shall be notified whenever a Final Decision is rendered on an application. Final Decisions that constitute denials shall include the reason for the denial but shall not include personal information about the tenant household, except for the tenant’s name and the physical address of the unit, as required by law.

Appeals: both tenant and landlord shall be notified if an appeal has been filed relative to a Final Decision.

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Approval for Payment: both tenant and landlord shall be notified when an application is approved for payment. The notification shall include all required information to identify the tenant household, the rental unit, the landlord, the amount approved for payment, the period covered by the payment, and any other applicable information. Approval notices should not include personal information about the tenant household.

Delivery of Payment: both tenant and landlord shall be notified when a payment has been delivered (i.e., Automated Clearing House Network (ACH) payment directly to a bank account, or a paper check has been mailed to the applicable address). The notification shall meet the information requirements of AB 832 regarding notification standards for court proceedings.

## 11. Reporting Requirements

Jurisdictions that administer their direct federal allocations and their block grant awards shall comply with the reporting requirements set forth in the Acts, AB 832, and the interpretive guidance and guidelines issued by the U.S. Treasury and HCD, respectively.

### 11.1. Activity Reports

The U.S. Treasury requires quarterly reporting. Activity reports for the block grant award shall be submitted to HCD no less frequently than quarterly in alignment with the U.S. Treasury reporting schedule. Block grant reporting will be due five (5) business days after the close of the quarter, and it shall be submitted in a form that is acceptable to HCD.

Late reports will result in a hold on any pending advance or reimbursement payment from the block grant funds. Funds shall be held until all late reports are submitted and confirmed received. Failure to report will constitute a breach of the Standard Agreement and may result in the immediate reallocation of block grant funds.

At a minimum, in order to ensure that U.S. Treasury is able to fulfill its quarterly reporting requirements under Section 501(g) of Division N of the Act and its ongoing monitoring and oversight responsibilities, jurisdictions should anticipate the need to collect and maintain records on all of the following:

1. Address of the rental unit.
2. For landlords and utility providers, the name, address, and Social Security number, tax identification number, or DUNS number.
3. Amount and percentage of monthly rent covered by ERAP assistance.
4. Amount and percentage of separately stated utility and home energy costs covered by ERAP assistance.
5. Total amount of each type of assistance provided to each household (e.g., rent, unpaid rent, utilities and home energy costs, unpaid utilities and home energy costs, and other expenses related to housing incurred due directly or indirectly to the COVID-19 outbreak).
6. Amount of outstanding unpaid rent for each household.
7. Number of months of rental payments and number of months of utility or home energy cost payments for which ERAP assistance is provided.



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8. Household income and number of individuals in the household.
9. Gender, race, and ethnicity of the primary applicant for assistance.

Jurisdictions are also advised to collect and maintain available program activity data such as:

1. The number of eligible households that receive assistance
2. The acceptance rate of applications for assistance
3. The average amount of funding provided per Eligible Household receiving assistance
4. Household income level, with such information disaggregated for households with income that:
  - a. Does not exceed 30 percent of the AMI for the household;
  - b. Exceeds 30 percent but does not exceed 50 percent of the AMI for the household; or
  - c. Exceeds 50 percent but does not exceed 80 percent of the AMI for the household.
5. The average number of monthly rental or utility payments that were covered by the funding amount that the household received, as applicable.

### **11.2. Financial Reports**

In order to ensure that all emergency rental assistance identified in the Acts is disbursed to prevent as many evictions as possible in a time frame that protects the state funds from recapture and reallocation by the U.S. Treasury, it is critical that jurisdictions administering block grant awards comply with HCD's financial reporting requirements.

Financial reports will be required weekly, on a day and in an electronic format that is acceptable to HCD. At minimum, these weekly reports shall include the following data:

1. Total funding obligated for payment of costs for Eligible Households for the week and cumulatively
2. Total expenditures for the week and cumulatively
3. Projected obligations for the next week based on applications received and processed to-date
4. Number of tenant and landlord applications received, processed, and approved for the week and cumulatively

Failure to report will constitute a breach of the Standard Agreement and may result in the immediate reallocation of block grant funds. Jurisdictions shall establish data privacy and security requirements as required by Section 501(g)(4) of Division N of the Consolidated Appropriations Act, 2021.

Jurisdictions are responsible for reporting program funds provided to landlords under the program. Jurisdictions should prepare IRS Form 1099-G for each Eligible Landlord who receives relief under the program. To complete this form, jurisdictions shall also request an IRS Form W-9 from each participating landlord.

## **12. Method of Distribution**

The U.S. Department of the Treasury identified its methodology for allocating emergency rental assistance to entitlement jurisdictions in the Acts and in the U.S. Department of the Treasury's interpretive guidance.

### **12.1. Obligation Requirements**

All direct federal allocations and block grant awards have specific obligation and expenditure deadlines. The federal deadline for obligation of ERA1 funding is September 30, 2021. Large Jurisdictions shall obligate at least 65 percent of the direct federal allocation by this date, or they risk recapture and reallocation of the funds. The federal deadline for full expenditure of ERA1 funding is September 30, 2022.

Obligation requirements for ERA2 funds are substantially different from ERA1. ERA2 funds have been disbursed from the U.S. Treasury in tranches. As of the date of these guidelines only the first 40 percent of the total allocation has been disbursed. In order to request the remaining 60 percent of funds, a direct recipient of ERA2 funds shall show that they have obligated at least 75 percent of their first tranche of ERA2 funds. Notwithstanding the above, federal deadlines require that direct recipients of ERA2 funds shall obligate 50 percent of their total allocation of funds no later than March 31, 2022. Jurisdictions that do not meet the 50 percent obligation deadline are not eligible for reallocated ERA2 funds. Per AB 832, jurisdictions shall contractually obligate at least 75 percent of their first tranche of ERA2 block grant funds by October 31, 2021. They shall contractually obligate 50 percent of their total ERA2 block grant funds (including both the first and second tranche) by January 31, 2022.

As per the requirements of AB 832, at least 65 percent of ERA1 block grant funds shall be obligated by August 1, 2021. Program funds are considered obligated if the jurisdiction has identified completed applications for Eligible Households and reserved an appropriate level of funds to meet the needs of those Eligible Households pending final application approval. After August 1, 2021, jurisdictions that did not obligate 65 percent of their total block grant funds are required to repay to HCD any unused amount of block grant funds allocated to it. However, HCD may waive the requirement to repay those funds if the jurisdiction demonstrates, to the satisfaction of HCD, that it will contractually obligate and expend any unused block grant funds allocated to it within relevant timeframes specified in federal law. In no event will HCD recapture direct federal allocations from the U.S. Department of the Treasury, since it does not have authority to do so.

Recapture waivers will be provided at HCD's discretion and will be dependent on documentation of capacity as well as records submitted through the required reports identified in Section 11.2 above.

### **12.2. Expenditure Requirements**

All ERA1 block grant funds shall be expended by September 30, 2022. All ERA2 block grant funds shall be expended by September 30, 2025.

### **12.3. Funding Recapture**

ERA1 funds that are not obligated by the September 30, 2021 federal obligation deadline are at risk of recapture and reallocation by the U.S. Department of Treasury to states that

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have met the federal obligation requirements. To avoid having the state's federal allocations recaptured and reallocated, HCD may recapture block grant funds not in alignment with the performance and operational deadlines described in state and federal guidance.

To promote obligation and expenditure progress tracking, jurisdictions will be required to make aggregated regular progress reports against their total emergency rental assistance funds (including both direct federal allocations and state block grant funds), as detailed further in Reporting Requirements above. The purpose of the reports is to track funding obligations and expenditures statewide to help meet performance deadlines. The reports will not include HCD targets or milestones. The weekly reports will be used to identify potential problems and operational delays in locally run programs and to assist jurisdictions in implementing best practices to improve program performance, including leveraging materials and resources from HCD's direct rental assistance program targeting communications and education efforts, as well as other locally run programs.

In the event funds must be recaptured, funds identified for recapture shall be returned to HCD within five (5) business days of the written request for repayment. Funding recapture shall be documented through an amendment to the Standard Agreement. Failure to return recaptured funds will result in an immediate hold on all HCD-sponsored funding identified for that jurisdiction, including CARES Act funds, annual program funds, and state bond funds.

### **12.4. Funding Reallocation**

Recaptured funds repaid to HCD may be subject to reallocation to either HCD's direct rental assistance program, or to other jurisdictions at HCD's discretion. In reallocating these funds, HCD shall prioritize based on factors such as unmet need, rate of application submissions, rate of attrition, and rate of expenditures. The intent of the recapture is to help make sure funding is obligated and spent prior to federal deadlines.

Funding reallocation may occur based on the following:

- Option B Jurisdictions that received a state block grant are unable to meet the obligation and expenditure requirements outlined AB 832 and HCD elects to recapture a portion of the unobligated state block grant.

State block grant funds recaptured from Option B jurisdictions may be subject to reallocation to either HCD's direct rental assistance program, or to other Option B jurisdictions at HCD's discretion. The intent of the recapture is to help make sure funding is obligated and spent prior to federal deadlines. To the extent feasible, HCD will work to ensure funds are spent in the jurisdiction for which they were reserved.

Initially, HCD will seek to provide technical assistance and support to help a jurisdiction meet the obligation deadlines. If the jurisdiction is unable to demonstrate how they will meet relevant deadlines or demonstrates that the local demand is less than the allocated funds, then HCD will begin the process of recapture. Reallocations will be formalized through an amendment to the Standard Agreement.

HCD intends to consider the following in reallocation decisions:

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1. Initially, efforts will be made to expend funds using the state program within their geographic set-aside
2. If demand is less than available resources, funds can be reallocated across other geographic set-asides being served by the state program. Considerations should include:
  - a. Size of waitlists
  - b. Within the waitlists, percent of applicants at lower AMIs and located within areas disproportionately impacted by COVID-19
  - c. Rate of application submissions during the preceding three (3) months)
  - d. Rate of attrition
  - e. Rate of expenditure

### **12.4.1. Reallocation Flexibilities**

Jurisdictions that receive reallocated funds may elect to add flexibility to their administration of the funds by funding lower priority activities, such as prospective payments of rent and utilities. These added flexibilities are at the jurisdiction's discretion and are intended to help the jurisdiction fully expend the additional funds in a timely manner.

## **13. Closeout**

Closeout items shall be detailed in the Standard Agreement and shall include final reports, such as the Final Activity Report and Final Financial Report, in form and substance that is acceptable to HCD. Jurisdictions should develop closeout policies and procedures, such as closedown of call centers and/or portals and receiving from these entities all program content created to support ERAP. Federal regulations require that financial records, supporting documents, and statistical records be retained for a period of five (5) years from the date of submission of the final expenditure report.

The Treasury Office of Inspector General, the Government Accountability Office, the California State Auditor, or their authorized representatives, shall have the right of access to records (electronic and otherwise) in order to conduct audits or other investigations.