



National Housing Law Project
Emergency Rental Assistance Principles and Recommendations
June 9, 2020

States and localities are using CARES Act funds to create new emergency rental assistance programs and fund existing ones. The House has proposed additional funding for rental assistance in the next economic stimulus package, the HEROES Act (HR 6800, Sec. 110201). Emergency rental assistance coupled with an eviction moratorium and other policies that protect tenants can help address the landslide of evictions predicted as a result of COVID-19 and the economic downturn.

Below is a list of key principles that can be applied broadly to the administration of rental assistance programs on a federal, state, or local level. The application of the principles will depend on the relative need within the community as well as the underlying state and local tenant protections.

Following the principles are NHLP's federal policy recommendations to address short and longer term emergency rental assistance needs. We focus on three main sources of proposed funding: ESG, emergency vouchers, and HOME.

Key Principles

- Rental Assistance funding is imperative to avoid widespread homelessness.
- Rental Assistance funding must target extremely low-income families and communities of color.
- The amount and term of assistance should be based on need.
- There is no one-size-fits-all policy or funding mechanism. Programs must be funded and structured to meet the needs of tenants that require short and longer-term assistance.
- A strategy for reasonable repayment plans when tenants are in arrears is critical. How repayment plans are structured will depend on many factors including whether emergency rental assistance is sufficient to cover arrearages in full.
- Local programs should not have the discretion to restrict program eligibility beyond what is included in federal law (i.e. landlords that serve undocumented immigrants, people with a criminal history, etc. should be eligible to receive funds).
- Any program funding provided directly or indirectly to housing providers must require landlords to comply with basic tenant protections such as good cause for eviction and limits on future rent increases for at least the term of the assistance and preferably for longer.
- Programs must require procedural protections for tenants such as notice requirements prior to terminating rental assistance.
- Rental assistance programs must provide for a clear and reasonable transition over time from assisted to unassisted status.

- Programs should not require tenants to prove imminent eviction because of the number of state and local eviction moratoriums that currently apply as well as the federal eviction moratorium.
- Oversight of the distribution of rental assistance funding is imperative to make sure that it's distributed in a racially equitable fashion.
- Rental assistance alone is not enough. Rental assistance programs must be coordinated with local legal aid and tenants' rights organizations, employment services, and others.

The above principles will play out differently in various policy contexts. Below, we apply these principles to existing federal policy proposals for funding emergency rental assistance and offer recommendations to policy makers. The concepts and language we suggest can be applied to state and local policies as well.

Funding Emergency Rental Assistance Through Emergency Solutions Grants

Short-term emergency rental assistance must be made available to people unable to pay their rent during the crisis. This need is distinguished from people who are unable to pay rent both during and after the crisis, who likely require longer-term rental assistance (although some people may transition from the first group to the second).

The Emergency Solutions Grant (ESG) funding for homeless prevention can be used to pay for emergency rental assistance. ESG provides an existing infrastructure to funnel assistance to the local level and to tenants. Additionally, many states and localities are already working on creating new programs or increasing capacity of existing programs by implementing the CARES Act.

However, Congress must place conditions on acceptance of funds in order to ensure that all tenants' housing security is protected and that bad actors do not abuse the program. Because ESG currently contains few restrictions or protections on any rental assistance provided, federal minimum standards are especially needed to ensure fairness and prevent abuse.

If Congress chooses to fund ESG for this purpose, or provide substantial emergency rental assistance through other means, it should include the following programmatic standards. We bolded NHLP's policy priorities regarding the Senate version of the HEROES Act and include specific legislative recommendations and in some cases, suggested language, below.

- **Opportunity for adequate public notice and comment on recipients' plan/program for use of the ESG funds. The minimum notice period should be 14 days.**
 - *Currently the HEROES Act contains a 5 day comment period which is insufficient for meaningful public comment.*
- **Programmatic minimum standards**
 - Tenant Eligibility: All income-eligible tenants should be otherwise eligible for the assistance.
 - **Income targeting:** Grantees must strongly target extremely and very- low-income families for assistance. 70% of the funds should be reserved for families living at 50% AMI or less.
 - *The HEROES Act must be strengthened to target very poor families. Most of the funds are appropriately targeted to tenants with incomes less than 50% AMI (70% of funds), with at least 40% of funds to those less than 30% AMI. However, up to 30% of the funding, intended for tenants between 50% and 80% AMI, can be diverted to households up to <120% AMI, since there are no required standards or procedures.*

- *NHLP recommendation: for any use above 80% AMI, insert standard requiring showing that others eligible have been adequately served and requirement to obtain HUD clearance. (This was in earlier draft of House bill.)*
 - **Amount of Assistance:** Assistance should be authorized for rent arrears, utilities, and moving costs. If there are sufficient funds to serve all eligible tenants, rental assistance should be used to pay for full rent arrears at the time of application. If there are insufficient funds to cover all eligible tenants, at a maximum, tenants may be required to pay up to 25% of their income toward rent, with assistance covering the balance.
 - *The HEROES Act has no program standards for determining amount or use of rental assistance for each tenant (e.g., arrearages, total limits, duration or tenant contributions).*
 - *Recommendation: Require coverage of arrearages up to 6 months of rent or require assistance to run as long as needed, up to 12 months.**
 - **Procedural Protections:** The program should have basic procedural protections for tenants in writing, such as the right to adequate written notice and a hearing prior to assistance expiring or being terminated. Applicants should also have the right to appeal a denial of assistance.
 - *Recommendation:* Require every state or local recipient or subgrantee in its plan to establish clear and enforceable standards for tenant eligibility reasonably related to the goal of alleviating eligible tenant economic hardship, and notice and fair hearing requirements for applicants and tenants on all decisions re eligibility, reduction or termination of benefits.*
 - **Transitioning to longer term assistance:** If the tenant is unable to pay rent following the end of the assistance period, there must be a mechanism to extend assistance and/or move to a longer-term assistance program. This can be achieved through required coordination with the local housing authority and ideally through the federal provision of emergency vouchers.
 - **Transparency:** Although state and local grantees are typically subject to state public records acts, nonprofit subgrantees may not be.
 - *The HEROES Act contains no guarantee of transparency.*
 - *Recommendation: Require that any subgrantee of funds is made subject to state transparency laws.*
 - **Landlords must be required to accept rental assistance as rent tender.**
 - *The HEROES Act does not require that landlords accept the assistance.*
 - *Recommendation: Add language e.g., "Such assistance shall be accepted as payment on tenant accounts by owners of residential rental property."*
- **Programmatic tenant protections (Grantees must require the following of landlords)**
 - Good cause eviction protections for a period following the receipt of funds and/or minimum written 12-month lease after initial acceptance of rental assistance.
 - A prohibition on charging tenant late fees or other excessive fees.
 - *The HEROES Act contains no standards establishing minimum conditions on landlords who accept the assistance (e.g., minimum lease terms, security of tenure, or rent increases). Admittedly, this presents especially difficult issues if landlords retain substantial bargaining leverage on whether to participate.*
 - *Recommendations:**
 - *Minimum written lease term after initial acceptance (e.g., 12 months) could effectively suffice as term of good cause eviction, since eviction would have to be for breach of lease during that term.*

- *Alternative could be to require good cause during term of assistance, and for a defined period (e.g., 6 months) thereafter.*
- *5% Rent increase limitation during term (and for limited period thereafter).*
- These protections must be privately enforceable by applicants and tenants.
- Funding must be conditioned on outreach and coordination with local legal services

Funding Emergency Rental Assistance Through Vouchers

Longer-term assistance will be required for households who will be unable to pay their rent moving forward due to unemployment or illness. Some of these families were able to pay rent during the crisis and others were not. In either case, payment of arrears is insufficient; a longer term solution is needed.

Emergency vouchers are an excellent solution for this group. Vouchers are tied to a tenant, not the landlord. An emergency voucher program could be modeled after HUD's Disaster Voucher Program (DVP) with the following additions/revisions:

- Funding priority should be given to agencies that are currently issuing turnover vouchers. This will act as an incentive for agencies to maximize federal resources.
- Priority should also be given to agencies who have large increases in per-unit HAP expenditures (PHAs that are spending more money on rents), which means they are doing the right thing by recertifying tenants and also running efficient programs.
- PHAs should be explicitly prohibited from restricting porting with use of these vouchers.
- A certain percentage of emergency vouchers must be set aside for rural areas.
- If a time limit is placed on the vouchers, it must be no less than five years. With a time limit, there should also be programmatic standards to transition people off of the vouchers if still accessing assistance after five year limit.

Funding Emergency Rental Assistance Through HOME

Supplemental HOME funding could also be made available to private LIHTC landlords and others who serve low-income families, but on certain conditions.

- Funds must first be used to eliminate back rent owed by renters.
- Owners must agree to no evictions for nonpayment of rent, no eviction notices, no late fees or penalties for 6 months after the emergency declaration ends. Owners must provide a 30-day notice of eviction to tenants. Back rent accumulated during this period cannot be used as the basis for a future eviction.
- In exchange for these funds, LIHTC owners must agree to waive the right to a qualified contract and take other steps to ensure preservation at the end of the affordable use restriction.
- In exchange for these funds, the owner must also agree to accept vouchers.
- Eligibility must be limited to only those units that meet the HOME standards – below the lower of FMR or below 30% of 65% AMI.
- There needs to be a claw back provision for noncompliance.

*Sample ESG Legislative Text for HEROES Act Amendments

Tenant contribution:

(e) Determination of Amount of Assistance. Rental assistance provided with amounts made available under subsection (a) shall be determined based on the family or individual's income at the time of application. The participant will be required to pay not more than 25 percent of their monthly income towards rent.

Standards establishing minimum conditions on landlords (lease term, eviction and rent increase protections):

(g)(1) Owners of dwelling units receiving assistance shall have a written lease agreement with the tenant, which shall limit termination of the tenancy to serious or repeated breach of lease during the period of assistance and for at least [6] months thereafter, and shall prohibit rent increases of more than 5% during this period.

Tenant eligibility, term and amount of assistance, and basic procedural protections:

(h) Eligibility and Termination of Rental Assistance.--

(1) An applicant's eligibility shall be determined in accordance with standards adopted pursuant to subsections (b) and (c) and this program.

(2) Rental assistance shall continue until the earlier of--

(A) the participant's income increases to a level sufficient to pay the rent without assistance;

(B) the tenant moves from the rental unit; or

(C) the grantee provides written advance notice of at least 90 days to the participant that program funding will be exhausted.

(3) Procedural protections for applicants and participants -- Any denial, reduction or termination of assistance shall be preceded by prompt written notice to the participant, including a brief statement of the grounds for the decision and the supporting facts, the right to present written and oral objections, an informal hearing before a disinterested party, and a prompt written notice of the final decision sufficient to enable judicial review. Any such notices and procedures shall be appropriate for the language and disability needs of the participant.