

U.S. Department of the Treasury
Emergency Rental Assistance Under the Consolidated Appropriations Act, 2021
Reallocation Guidance

October 4, 2021

I. Overview

Section 501 of Division N of the Consolidated Appropriations Act, 2021 appropriated \$25 billion for the delivery of emergency rental assistance (ERA) to eligible households suffering unemployment or other financial hardship due to the novel coronavirus pandemic. The Department of the Treasury allocated these funds to states, the District of Columbia, U.S. territories, Indian tribes, Tribally designated housing entities (TDHEs), the Department of Hawaiian Homelands, and units of local government (Grantees).

Congress later appropriated an additional \$21,550,000,000 for ERA under the American Rescue Plan Act of 2021. Treasury refers to ERA under the Consolidated Appropriations Act, 2021, as “ERA1” and ERA under the American Rescue Plan Act of 2021 as “ERA2.” This guidance is focused on ERA1, and addresses ERA2 only to the extent relevant to the reallocation of ERA1 funds. Treasury will publish guidance for the reallocation of ERA2 funds, which will not begin until March 31, 2022, at a later date.

The Consolidated Appropriations Act, 2021 requires Treasury to begin reallocating “excess” ERA1 funds on September 30, 2021. Treasury’s objective in reallocations is to ensure ERA funds remain available to Grantees in accordance with their jurisdictional needs and demonstrated capacity to deliver assistance while the ERA appropriations remain available.

This guidance sets forth the procedures for the ERA1 reallocation process. It describes how Grantees that have obligated insufficient funds as of September 30, 2021 will be required to submit a Performance Improvement Plan and how excess funds will be identified based on the Grantee’s expenditures. It further describes timelines and mitigating factors related to the recapture of excess funds. This guidance also describes a voluntary reallocation process through which a Grantee may request that Treasury reallocate its funds to another Grantee. It also clarifies that Treasury will not recapture funds from Indian Tribes, TDHEs or U.S. territories prior to April 2022.

II. Obligations and Excess Funds

The ERA1 statute requires Treasury to identify “excess funds” for reallocation from amounts Grantees have “not obligated” from their initial ERA1 allocations. Specifically, the statute provides that beginning on September 30, 2021, Treasury must recapture excess funds, as determined by the Secretary, not obligated by a grantee for eligible ERA1 purposes, and Treasury must reallocate those funds to Grantees that, at the time of the reallocation, have obligated at least 65% of their initial ERA1 allocation. The amount of any reallocation is based on demonstrated need within a Grantee’s jurisdiction, as determined by Treasury.

Consistent with these requirements, Treasury has developed the following policies and procedures for identifying the excess funds that will be available for reallocation.

A. Obligating ERA Funds

Treasury will not recapture funds that a grantee has obligated. Treasury will consider funds to be obligated if they meet any of the following conditions:

- The funds have actually been spent providing financial assistance and housing stability services under ERA for eligible households;
- The funds are needed to pay for assistance promised in a commitment letter issued to induce a landlord to enter a rental agreement with an eligible household under Treasury's ERA FAQ #35; or
- Subject to the conditions described below concerning subrecipients, the Grantee has, as part of the Grantee's ERA program administration, entered into a binding agreement or funding commitment requiring the Grantee to disburse the funds to a third party for eligible ERA1 purposes (a Contractual Obligation).

A Contractual Obligation will include situations in which (i) assistance has been approved for an eligible household but the payment to the landlord or utility provider has not yet been disbursed, or (ii) assistance has been approved but not yet disbursed under a bulk payment arrangement with a large landlord or utility provider under Treasury's ERA FAQ #38.

Funds may not be deemed to be under a Contractual Obligation for more than 12 months. Treasury will consider any funds under a Contractual Obligation (subject to this 12-month limit) or any funds covered by a commitment letter issued to an eligible household to remain obligated for 30 days after the termination of the relevant agreement, funding commitment, or commitment letter. Funds not expended or re-obligated within the 30-day period will be considered de-obligated and potentially subject to reallocation in accordance with this guidance. In addition, under the ERA1 statute (as amended), Grantees must obligate all funds from their initial allocations by September 30, 2022.

Grantees are encouraged to partner with local nonprofit organizations and governmental agencies to expedite the obligation process and delivery of assistance to eligible households. However, Grantees may not use subrecipient agreements with these entities to avoid meeting the statutory obligation deadlines, and funds will not be considered obligated based solely on the fact they are subject to an agreement that provides for another entity to administer assistance on the Grantee's behalf. Funds paid or payable by a Grantee under a subrecipient agreement, and that have not been expended by the subrecipient for permissible purposes, will be considered obligated only to the extent that such funds (i) represent the subrecipient's permissible compensation for ERA1-related responsibilities, in accordance with Treasury's ERA FAQ #21; or (ii) will be used to pay obligations under binding agreements or funding commitments that would constitute Contractual Obligations if entered into by the Grantee directly.

The ERA1 statute provides that Grantees may use up to 10% of their allocations for administrative costs attributable to providing financial assistance and housing stability services. For reallocation purposes, Treasury will consider 10% of each Grantee's initial allocation as having been obligated for administrative costs regardless of the Grantee's actual expenditures, commitments, or obligations.

Grantees will be required to submit a certification indicating the amount of funds they have obligated through September 30, 2021 (an Obligated Funds Certification). Grantees that have obligated less than 65% of their allocations, or that do not provide an Obligated Funds Certification, will be required to submit for Treasury's approval a program self-assessment and improvement plan, as described in Section II.C.2, in a form provided by Treasury (a Program Improvement Plan), no later than November 15, 2021.

B. Identifying Excess Funds

Treasury will rely on the following factors for identifying excess funds. Each factor will be applied separately. If Treasury identifies excess funds based on multiple factors, the amount to be reallocated from the Grantee will equal the aggregate total. Treasury will not identify excess funds from allocations to Indian Tribes, TDHEs or U.S. territories prior to April 2022.

Treasury will notify a Grantee in writing upon determining that any part of its allocation constitutes excess funds and will provide instructions for the funds' return. Excess funds must be returned within 10 days of receiving such notice.

1. Insufficient Expenditure Ratio

In addition to evaluating the amount of ERA1 funding obligated by a Grantee as of September 30, 2021, Treasury will also evaluate a Grantee's "Expenditure Ratio" as of September 30, 2021 and approximately every two months thereafter. A Grantee's Expenditure Ratio will be calculated as (i) the Grantee's total expenditure of ERA1 funds on assistance to eligible households divided by (ii) an amount equal to 90% of the Grantee's total ERA1 allocations as of the date of the assessment.¹ The Grantee's total assistance expenditures will be determined based on the Grantee's interim report to Treasury for the first quarter of 2021 and each subsequent monthly report. Grantees will be required to continue providing monthly reports at least through March 31, 2022. If funds are recaptured from a Grantee, the denominator of the Expenditure Ratio will be adjusted accordingly. The "First Assessment" means Treasury's assessment of a Grantee's performance and Expenditure Ratio based on the reporting data through September 30, 2021.

A Grantee whose Expenditure Ratio is below 30% for the First Assessment will be considered to have excess funds. Beginning with the 30% threshold established for September 2021, the minimum Expenditure Ratio will increase by 5% each calendar month (and, as indicated above, assessments will occur approximately every two months).

¹ This allowance reflects the ERA1 statute's requirement that at least 90% of a grantee's allocation be spent on assistance to eligible households, with the remainder to be used for administrative costs.

For each Grantee whose Expenditure Ratio is below the then-applicable minimum threshold at the time of an assessment, Treasury will calculate the Grantee's amount of excess funds as the difference between (i) the amount of expenditures needed for the Grantee to achieve the minimum Expenditure Ratio applicable to that assessment and (ii) the Grantee's reported total assistance expenditures. As a result, the amount subject to recapture will be less for Grantees whose Expenditure Ratios are closer to the minimum.

2. Failure to Make Required Submissions

As described elsewhere in this guidance, a Grantee will be required to submit a Program Improvement Plan if the Grantee does not certify that the Grantee has obligated sufficient ERA1 funding as of September 30, 2021, and the Grantee may submit a Program Improvement Plan to mitigate an excess funds determination that results from an insufficient Expenditure Ratio on September 30, 2021. A Grantee that submits a Program Improvement Plan will be required to deliver a report within 60 days after the date of Treasury's approval of the Program Improvement Plan confirming that actions have been taken to implement the policy and administrative improvements identified in the Program Improvement Plan.

A Grantee that is required to submit a Program Improvement Plan but does not do so by November 15, 2021 will be determined to have excess funds in an amount equal to 10% of the Grantee's initial allocation. A Grantee that submits a Program Improvement Plan but does not submit the required report confirming progress in implementing the actions identified in the Performance Improvement Plan in a timely manner may be determined to have excess funds in an amount equal to 10% of the Grantee's allocation at that time (taking into account any previous reallocations).

3. Unobligated Funds at Final Assessment

Treasury will conduct a final assessment of each grantee's Expenditure Ratio based on data reported through March 31, 2022. At that time, any unobligated ERA1 funds may be determined to be excess funds.

C. Mitigating Factors for Excess Funds.

If a Grantee is subject to an excess funds determination based on the criteria described above, the Grantee may request that Treasury reduce or not make the determination based on any of the following three criteria.

1. First Assessment Mitigation

Treasury will not make a determination of excess funds based on an insufficient Expenditure Ratio for the First Assessment if the Grantee submits by November 15, 2021 a certification signed by an authorized official of the Grantee that confirms that either (i) the Grantee has obligated at least 65% of its allocation or (ii) the Grantee's Expenditure Ratio is at least 30%.

2. Developing a Program Improvement Plan

As indicated in Section II.A, Grantees that have obligated less than 65% of their allocations, or that do not provide an Obligated Funds Certification, will be required to submit for Treasury's approval a program self-assessment and improvement plan. Further, with respect to the First Assessment, a Grantee may request that Treasury reduce an excess funds determination if the Grantee submits a Program Improvement Plan as described below no later than November 15, 2021. If Treasury approves such a Program Improvement Plan, any reduction in the excess funds determination will not exceed the amount of total assistance expenditures required for the Grantee's Expenditure Ratio to equal 15%.

The Program Improvement Plan will identify (i) policies and practices recommended by Treasury that the Grantee has already implemented, such as the use of self-attestations to confirm applicant income eligibility; eviction diversion partnerships; and engaging providers of culturally and linguistically relevant housing stability services; (ii) whether the Grantee has adopted any policies or practices that Treasury has discouraged; (iii) key obstacles to delivering ERA assistance to eligible households in the Grantee's jurisdiction; (iv) actions that the Grantee will take to improve program performance; and (v) a projection of the Grantee's ERA1 expenditures over the following four months. Treasury will approve a Grantee's Program Improvement Plan if it is complete and identifies actions for improvement that relate to adopting policies and practices recommended by Treasury, ceasing policies and practices Treasury has discouraged, or otherwise adequately addresses the key obstacles identified by the Grantee in the Program Improvement Plan.

3. Exigent Circumstances

Treasury may also reduce or not make an excess funds determination if Treasury determines that the amount of excess funds was the result of exigent circumstances, such as a natural disaster.

III. Distributing Reallocated Funds

A. Requesting Reallocated Funds

Treasury will begin accepting requests from Grantees for reallocated funds, on a form to be published by Treasury, on October 15, 2021. As the ERA1 statute requires, reallocated funds will only be available to Grantees that have obligated at least 65% of their own initial ERA1 allocations. Each funding request will be required to indicate the amount requested and confirm the need for such funds in the Grantee's jurisdiction.

B. Allocation of Reallocated Funds

Periodically, Treasury will determine if there are sufficient funding requests from Grantees serving jurisdictions with demonstrated needs to warrant the disbursement of reallocated funds. Treasury will evaluate each request for reallocated funds based on the requesting Grantee's demonstrated capacity to meet and exceed the minimum Expenditure Ratios, and other indications of ERA need in the Grantee's jurisdiction. The amount of any reallocation to a

Grantee will be determined by Treasury, in its discretion, based on its assessment of these factors.

In the event Grantees request more reallocated funds than are available for distribution, each Grantee's share (Relative Share) will be calculated by (i) determining the aggregate amount of reallocated funds approved by Treasury based on its evaluation of the requests as described above; (ii) dividing the Grantee's approved amount by this aggregate total; and (iii) multiplying the total amount available for distribution by the resulting percentage. In addition, Treasury may limit a Grantee's eligibility for reallocated funds as a percentage of its initial allocation if appropriate to enable an equitable distribution of the available excess funds based on demonstrated needs among requesting Grantees. Treasury may establish a different limit for each category of Grantee (state, locality, Tribe, TDHE, or U.S. territory), but would apply the relevant limit uniformly among Grantees within a category.

Grantees may be required to amend their existing ERA1 program agreements as a condition to receiving reallocated ERA1 funds. These amendments will ensure the program agreements are consistent with the Grantee's augmented allocation amount and reflect the terms and conditions described in this guidance.

C. Reallocation Priorities

When feasible and consistent with jurisdictional needs, Treasury intends to reallocate excess funds that are recaptured from a Grantee to another Grantee in the same state. When appropriate, after such an intrastate reallocation, a Grantee's excess funds will be reallocated to Grantees in other states.

In addition, Treasury may prioritize the reallocation of funding to Grantees that are likely to expend all their remaining ERA1 and ERA2 allocations promptly.

D. Extended Statutory Deadline

Grantees are prohibited from obligating any funds from their initial allocations after the statutory deadline of September 30, 2022. Grantees may, however, request an extension through December 29, 2022 to continue obligating funds received through reallocation. The funding request form described in Section III.A. will enable such extension requests.

IV. Voluntary Reallocation

Beginning September 30, 2021, Grantees may request the transfer of some or all of their allocations to another Grantee that (i) administers an ERA1 program in the same state, territory, or Tribal area and (ii) has obligated or spent at least 65% of its own allocation by the time of transfer. Grantees may request Treasury's assistance in identifying a permissible transferee.

To complete a voluntary reallocation, the transferor and transferee Grantees will generally be required to submit a written agreement signed by authorized officials, together with documents meeting the following requirements:

- The transferee must provide evidence of demonstrated need in its jurisdiction for the funds to be transferred. This requirement may be satisfied by (i) Treasury’s confirmation that the transferee has spent or obligated at least 65% of its own allocation and (ii) a description of the transferee’s need for the funds, attested to by the transferee’s authorized official.
- Both the transferor and transferee Grantees must agree to comply with administrative requirements applicable to the transfer of federal funds between and among Grantees, including the completion and submission of certain documents that Treasury will provide.
- The transferor must acknowledge and agree in writing that the transferred amount will be deemed to be excess funds and disclaim any further right, title, or interest therein.
- Both the transferor and transferee Grantees must attest to their compliance with all applicable ERA1 requirements under applicable law, guidance, or the Grantee’s funding agreement.

Upon approval, Treasury will provide the transferor and transferee Grantees with instructions for completing the necessary fund transfers. Treasury may determine not to approve a voluntary reallocation request if it appears that the proposed reallocation may (i) increase the risk that the funds would be recaptured; (ii) leave a Grantee with insufficient funds to meet the needs in its jurisdiction; or (iii) otherwise undermine the purposes of reallocation.

V. Use of Funds for Administrative Expenses and Housing Stability Services

A Grantee may spend up to 10% of its initial ERA1 allocation for administrative expenses only if the Grantee obligates at least 30% of its initial allocation for the provision of financial assistance and housing stability services on behalf of eligible households by September 30, 2022. If a Grantee has obligated less than 30% of its initial allocation providing financial assistance and housing stability services as of September 30, 2022, Treasury will presume that the Grantee’s administrative expenses were not attributable to such services – and therefore were not permissible uses of ERA1 funds – to the extent that the administrative expenses exceed 10% of the Grantee’s allocation after deducting amounts recaptured or reallocated as excess funds, unless the Grantee can demonstrate that those costs are related to the delivery of the program.