

U.S. Department of the Treasury
Emergency Rental Assistance Under the American Rescue Plan Act of 2021 (ERA2)
Reallocation Guidance

Updated ~~June 28, 2022~~ November 15, 2022

I. Overview

In the American Rescue Plan Act of 2021, Congress appropriated \$21,550,000,000 for the delivery of emergency rental assistance, utility assistance, and housing stability services to eligible households experiencing financial hardship during the novel coronavirus pandemic. This appropriation came after the passage of Section 501 of Division N of the Consolidated Appropriations Act, 2021, which appropriated \$25 billion for similar purposes. Treasury refers to Emergency Rental Assistance (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 ERA2 and addresses ERA1 only to the extent relevant to the reallocation of ERA2 funds. Treasury published guidance on the reallocation of ERA1 funds on October 4, 2021.¹

On May 7, 2021, Treasury announced its initial allocation of ERA2 funds to states, the District of Columbia, U.S. territories, and units of local government (Grantees) and shortly thereafter, made available to each Grantee 40% of its total initial ERA2 allocation. The American Rescue Plan Act of 2021 requires Treasury to begin reallocating ERA2 funds not yet paid to eligible Grantees on March 31, 2022. As with ERA1 reallocation, Treasury’s objective in ERA2 reallocation is to ensure ERA funds are available to Grantees in accordance with their jurisdictional needs and demonstrated capacity to deliver assistance. This guidance sets forth the procedures for the ERA2 reallocation process.

II. Determining Funds Available for Reallocation

The ERA2 statute requires Treasury to identify funds for reallocation from amounts allocated to eligible Grantees, but not yet paid out to them. Specifically, the statute provides that beginning on March 31, 2022, Treasury must “reallocate funds allocated to eligible grantees ... but not yet paid,” according to a procedure established by Treasury. Under the statute, to be eligible to receive reallocated funds, a Grantee must have obligated² at least 50% of its total initial ERA2 allocation.

Consistent with these requirements, Treasury has established the following procedures for identifying the funds that will be available for reallocation (“excess funds”). Treasury will notify a Grantee in writing upon determining that any part of its allocation constitutes excess funds.

ERA2 funds paid to a Grantee. As required by the ERA2 statute, ERA2 funds that have been paid to a Grantee are not subject to involuntary reallocation and will not be considered excess funds. Further, pursuant to statutory requirements, the first tranche of funds made available to

¹ <https://home.treasury.gov/system/files/136/ERA-Reallocation-Guidance.pdf>

² To determine whether a Grantee has obligated ERA2 funds, Treasury will rely on the same criteria applied to ERA1 funds and set forth in the ERA1 Reallocation Guidance published on October 4, 2021.

Grantees, comprising 40% each Grantee's initial ERA2 allocation, cannot be voluntarily or involuntarily reallocated.

U.S. territories. Treasury will not identify excess funds from allocations to U.S. territories prior to December 31, 2022.

Undrawn first tranche. For any Grantee that does not draw its first tranche of ERA2 funds, comprising 40% of its initial ERA2 allocation, by April 30, 2022, Treasury may deem all undrawn funds exceeding 40% of the Grantee's initial ERA2 allocation to be excess funds subject to reallocation.³

ERA2 Expenditure Ratio. Treasury will periodically determine a Grantee's "ERA2 Expenditure Ratio," which will be calculated as (i) the sum of the Grantee's total expenditure of ERA2 funds on assistance to eligible households and eligible costs for housing stability services (for purposes of the Quarter 3 and Quarter 4 assessments) divided by (ii) an amount equal to 75% (for purposes of the Quarter 1 and 2 Assessments, described below) or 85% (for subsequent assessments) of the Grantee's total ERA2 allocations, ~~including adjusted for~~ any amounts reallocated ~~to or~~ from the Grantee, as of the date ~~of the assessment~~ the excess funds determinations are approved by Treasury. The 75% and 85% allowances both reflect the ERA2 statute's limitation that a maximum of 15% of the total amount of ERA2 funds paid to a Grantee may be used for administrative costs, and the 75% allowance also reflects the ability under the statute for Grantees to use up to 10% of their ERA2 funds to provide housing stability services. Treasury encourages Grantees to use ERA2 funds for such housing stability services.

Excess funds. As noted above, excess funds are funds that Treasury determines are available for reallocation. For each Grantee whose ERA2 Expenditure Ratio is below the then-applicable minimum threshold at the time of the assessment. Treasury will calculate the Grantee's excess funds as the difference between (i) the amount of expenditures needed for the Grantee to achieve the then-applicable minimum threshold at the time of that assessment and (ii) the Grantee's reported total assistance expenditures (i.e., the numerator of the ERA2 Expenditure Ratio calculation). As a result, the amount subject to reallocation will be less for Grantees whose Expenditure Ratios are closer to the minimum threshold.

Exigent circumstances. Treasury may reduce or decline to 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.

Periodic assessments. Treasury will calculate Grantees' ERA2 Expenditure Ratios to assess Grantees' excess funds several times, as described below.

Quarterly reports. Notwithstanding anything in this guidance to the contrary, if a Grantee fails to submit a required quarterly report by the applicable deadline, without having received an extension from Treasury, Treasury may deem all undrawn funds exceeding 40% of the Grantee's initial ERA2 allocation to be excess funds subject to reallocation.

³ Any such undrawn funds determined to be excess funds subject to reallocation will be reallocated in portions across multiple rounds of reallocation.

1. Quarter 1 Assessment

A Grantee whose ERA2 Expenditure Ratio is below 20% for the Quarter 1 Assessment (as of March 31, 2022) will be considered to have excess funds in an amount equal to the difference between (i) the amount of expenditures needed for the Grantee to achieve an Expenditure Ratio of 20% and (ii) and the Grantee's reported total assistance expenditures.

For the Quarter 1 Assessment, Grantees will have an opportunity to avoid reallocation. If a Grantee meets the minimum ERA2 Expenditure Ratio based on reported data as of April 30, 2022, Treasury will not reallocate the Grantee's funds based on the Quarter 1 Assessment. However, if a Grantee does not meet the 20% threshold as of April 30, 2022, Treasury will calculate the Grantee's excess funds based on data as of March 31, 2022.

In addition, if a Grantee has voluntarily reallocated over 25% of its initial ERA1 allocation by March 31, 2022, Treasury will not reallocate the Grantee's ERA2 funds in the Quarter 1 Assessment.⁴

2. Quarter 2 and Quarter 3 Assessments

A Grantee whose ERA2 Expenditure Ratio is below 40% in the Quarter 2 Assessment (as of June 30, 2022) or below 60% in the Quarter 3 Assessment (as of September 30, 2022) will be considered to have excess funds in an amount equal to the difference between (i) the amount of expenditures needed for the Grantee to achieve the then-applicable minimum Expenditure Ratio (i.e., 40% for the Quarter 2 Assessment and 60% for the Quarter 3 Assessment) and (ii) and the Grantee's reported total assistance expenditures.

3. Final Undrawn Funds Assessment

Treasury may determine any ERA2 funds that are undrawn as of December 31, 2022 to be excess funds subject to reallocation (with the exception of the first tranche of funds made available to Grantees, which comprise 40% each Grantee's initial ERA2 allocation and are not subject to reallocation).

III. Distributing Reallocated Funds

A. Requesting Reallocated Funds

Treasury will begin accepting requests from Grantees for reallocated funds after March 31, 2022 on a form to be published by Treasury. As the ERA2 statute requires, reallocated funds will be available only to Grantees that have obligated at least 50% of their own initial ERA2 allocations

⁴ Under the ERA1 statute, reallocation could not begin prior to September 30, 2021. As a result, for any Grantee that engaged in voluntary reallocation on or after September 30, 2021, Treasury will consider the amounts of any sub-grant agreements entered into with one or more other Grantees in the same state prior to that date to count towards this 25% threshold.

(regardless of any reallocation of funds). 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 applicable minimum Expenditure Ratio, 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 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, or U.S. territory), but would apply the relevant limit uniformly among Grantees within a category.

Grantees may be required to amend their existing ERA2 program agreements as a condition of receiving reallocated ERA2 funds. These amendments will ensure the program agreement is consistent with the Grantee's augmented allocation amount and reflects the terms and conditions described in this guidance.

C. Reallocation Priorities

When feasible and consistent with jurisdictional needs, Treasury intends to reallocate excess funds 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.

Treasury also intends to prioritize Grantees that have expended non-ERA funds, including State and Local Fiscal Recovery Funds, for rental or utility assistance substantially similar to eligible uses under ERA1 or ERA2 since the enactment of the ERA1 statute on December 27, 2020, in an amount exceeding 20% of their initial ERA2 allocation. For example, a grantee that surpasses this threshold using State and Local Fiscal Recovery Funds to provide for rental and utility assistance may be prioritized. To receive this prioritization, a Grantee must submit to Treasury, in a form determined by Treasury, a certification of, among other things, the amount of non-ERA

funding expended on ERA-eligible uses, the sources of these expenditures, and the number of households served. Treasury intends to implement this prioritization beginning with the reallocation based on the Quarter 2 Assessment.

IV. Voluntary Reallocation

A Grantee may request the transfer to other Grantees of up to 60% of its initial ERA2 allocation. The transferee Grantees must (i) administer an ERA2 program in the same state or territory as the transferor and (ii) have obligated or spent at least 50% of their own initial ERA2 allocations by the time of transfer. A Grantee may request Treasury's assistance in identifying permissible transferees.

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 50% of its own initial 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 ERA2 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 reallocated by Treasury under this guidance; (ii) leave a Grantee with insufficient funds to meet the needs in its jurisdiction; or (iii) otherwise undermine the purposes of reallocation.

A Grantee may also request the transfer of up to 60% of its initial ERA2 allocation, without designating any specific Grantee as transferee. Treasury, in its discretion, will determine and carry out the reallocation of these funds to Grantees based on an assessment of the factors set forth in Section III of this guidance and in a manner consistent with this Section IV.

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

The ERA2 statute permits Grantees to use up to 15% of the total amount of ERA2 funds paid to the Grantee for certain administrative costs. In addition, under the statute, a Grantee may use up to 10% of the ERA2 funds it has received to provide case management and other services intended to help keep households stably housed. In accordance with the statutory requirements, these 15% and 10% limits are based on the total amount of ERA2 funds paid to each Grantee as of the relevant date, not the total amount of ERA2 funds allocated to the Grantee.