

Memorandum



TO: Economic Transformation, Stabilization & Workforce Development Advisory Commission
FROM: Cheryl Cohen, Division Administrator, Commerce
DATE: September 7, 2021
SUBJECT: Emergency Rental Assistance *UPDATE

Overview: The Montana Emergency Rental Assistance Program (ERA1) launched April 5, 2021. The Centers for Disease Control and Prevention imposed a nationwide temporary federal moratorium on residential evictions for nonpayment of rent on September 4, 2020. This temporary moratorium expired on July 31, 2021. A [new order](#) was issued to last from August 3 through October 3, 2021. On August 27, the Supreme Court issued an opinion blocking this temporary eviction ban, citing that the ban exceeded the CDC's authority and did not have proper legal basis. On August 25, Treasury released updated guidance providing expanded flexibility to encourage expedited distribution of ERA funds to prevent residential evictions. This memo provides an update to the commission on the ERA1 program and gives opportunity to give recommendations on use of funds in light of expanded federal guidance.

Allocation Request and Deadlines: Montana House Bill 632 Section 14(1) includes \$152,400,000 for ERA (ARPA Section 3201), and Section 14(3) of HB 632 permits the Economic Transformation, Stabilization, and Workforce Development Advisory Commission the opportunity to provide recommendations to the Department of Commerce for the use of these funds. The Consolidated Appropriations Act (CAA) passed in December 2020 also included \$200,000,000 to the state of Montana for ERA, which was allocated to the Department of Commerce under HB 3 and HB 630. CAA ERA funds are known as ERA1, and ARPA ERA funds are known as ERA2.

- Funding under ERA1 is available until September 30, 2022. The ERA1 law requires Treasury, beginning September 30, 2021, to reallocate unobligated ERA1 funding that the Secretary determines to be excess to other grantees that have met or exceeded the 65% obligation threshold at that time. There is no requirement that Treasury claw back all unobligated funds, only the amount they determine to be excess. Not hitting the 65% threshold does not necessarily mean grantees will lose funding, but does mean a grantee is not eligible to receive re-obligated funds from other grantees. All grantees are encouraged to maximize the flexibility Treasury provided in the August 25 guidance. It is our understanding that Treasury is likely to take into consideration a grantee's policies in those respects when making this decision.
- Funding under ERA2 is available until September 30, 2025.

Eligibility: The program serves Montanans whose gross household income does not exceed 80 percent of the Area Median Income and who meet the following conditions:

- One or more individuals in the household has qualified for unemployment benefits or experienced a reduction in household income, incurred significant costs, or experienced other financial hardship due directly or indirectly to the COVID-19 emergency

And

One or more individuals in the household can demonstrate a risk of experiencing homelessness or housing instability which may include:

- A past due rent notice or eviction notice
- A past due utility or utility shut-off notice
- Unsafe or unhealthy living conditions

The program currently provides the following assistance:

1. Rent and past due rent up to \$2,200/month
2. Utilities and past due utilities for home energy costs up to \$300/month
3. Internet flat \$50/month

Application and Verification: Link to the online application, income eligibility tool and program FAQs are available at HOUSING.MT.GOV. [Montana Emergency Rental Assistance Program webpage](#). Program information is incorporated at ARPA.MT.GOV.

Equity: The program targets low-income Montanans at risk of homelessness and housing instability and engages in proactive marketing efforts to target rural Montanans and underserved populations.

Performance Metrics:

Application Processing April 5 to September 2, 2021

	# of Applications	Percent
Total Submitted	5,534	100%
Total Approved / Paid	3,387	61%
Total Under Review	781	14%
Total Ineligible / Duplicate	1,366	25%

2020 – 2021 COVID19 Emergency Housing Assistance Programs

	2021 ERA1 Program (April 5 to Sept 2- 21 weeks)	2020 CARES Program (May 7 to Dec 31 - 34 weeks)
Total Funds Awarded	\$18,201,164	\$8,423,345
Total Households Assisted	3,387	2,483
Avg Assistance per HH	\$5,373	\$3,392

Summary of expanded and clarified federal regulations:

- Applicant self-certification of risk of experiencing homelessness or housing instability if other documentation is not immediately available. [Treasury FAQ 3](#)
- Applicant self-attestation alone for income eligibility. [Treasury FAQ 4](#)
- Provide assistance directly to eligible household if landlord does not respond to reasonable outreach attempts or refuses to participate in program. Per [Treasury FAQ 12](#) *“In cases where a landlord or utility provider does not participate in the program, the only way to achieve the statutory purpose is to provide assistance directly to the eligible household.”*
- Fund rental arrears after an otherwise eligible household vacates a unit to prevent further collection efforts that may create barriers to accessing new housing. [Treasury FAQ 40](#)
- Provide incentive payment equal to one month’s rent to landlords who enter into leases with “hard-to-house” eligibility households, such as those experiencing homelessness, exiting corrections, evicted within preceding 12 months, or aging out of foster care. [Treasury FAQ 41](#)
- Ability to enter into written agreement with a nonprofit organization to establish payment fund for sole purpose of delivering assistance units ERA funds while a household’s application remains in process. [Treasury FAQ 42](#)

Self-certification of housing instability:

Montana’s program currently requires evidence such as a late rent or eviction notice, late utility bill or utility shut-off notice or certification to unsafe or unhealthy living conditions.

- Proposal: Program could expand options for self-certification of housing instability or risk of homelessness, to extend permitted by Treasury guidance.

Self-attestation of income:

Montana’s program currently requires documentation of income such as 2020 tax returns or two months source documentation like paystubs.

- Proposal: Program could expand options for self-certification of income for those in emergency situations. However, all applicants will be required to produce evidence of income eligibility within 30 days or be discontinued from the program with a requirement to pay back previously awarded funds.

Protocol for awarding rental assistance to eligible households directly:

On July 29, we made a state policy decision to pause issuing any rental payments directly to the renter. From April 5 to August 2, rental assistance was paid directly to 185 renters for total of \$782,864. To date, we’ve logged a total of 5 landlords who have contacted us to inquire as to whether their renter was awarded assistance directly. Our current procedure is that if a landlord directs us in writing to pay the renter directly, and we confirm via phone call, rental payments are made directly to the renter. However, we now have at least one case of a landlord refusing to participate. Under current state policy, we are not able to issue rental assistance for the otherwise eligible household. To achieve the statutory purpose, Treasury guidance indicates assistance must be provided to the eligible household.

Reasonable outreach per Treasury guidance includes at least 3 attempts by phone or email over a five calendar day period.

- Proposal: Program staff will outreach landlord at least 3 times over 5 calendar days by email and phone, including at least 1 attempt by phone. If landlord does not respond, or response indicates refusal to participate in the program, issue rent payments directly to the eligible household. Pros include alignment with federal regulation and assisting eligible households. Cons include risk of renters not using funds for their eligible purpose.

Funding rental arrears after unit is vacated:

Montana’s program has already exercised some of this flexibility.

- Proposal: Recommend program continues current practice, and further considers paying collection agencies directly if rental arrears were already submitted to collections. Pros includes supporting landlords in situations where renters have already vacated and helping renters overcome future barriers to housing access. Cons include administrative adjustments for paying multiple landlords and collective agency payees, which may necessitate manual warrant requests outside our currently designed online application and payment system.

Expanding Use of Funds for Eligible Purposes:

Up to 10% (\$20 million) of ERA1 funds can be used for a combination of housing stability services and administrative costs. Commerce has budgeted up to 3% (\$6 million) for administrative costs, leaving up to \$14 million for housing stability services. Services must enable eligible households to maintain or obtain housing, including but not limited to:

- housing navigators to help households access ERA programs or find housing
 - case management related to housing stability
 - eviction prevention and diversion programs
 - mediation between landlords and tenants
 - legal services or attorney’s fees related to eviction proceedings and maintaining housing stability
- Proposal
 1. Finalize and execute MOU with DPHHS to shift ERA funds for eligible housing stabilization services, including housing navigation and case management.
 2. Establish partnerships with courts and providers of legal services for an eviction diversion program, as encouraged in [Treasury FAQ 36](#). Details of eviction diversion programs and examples partnerships established around the county are highlighted [here](#).

This is a final copy of the memo.