

Rental Assistance Program: Good News for Tenants and Possibly Landlords

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The recently enacted \$2.3 trillion Consolidated Appropriations Act, 2021 (the Act), which combined a \$900 billion coronavirus relief bill as part of a larger \$1.4 trillion omnibus spending and appropriations bill for the 2021 federal fiscal year, contains key provisions that directly impact the hard-hit real estate industry. In particular, Section 501 of Subtitle A of Title V of Division N of the Act establishes the "Emergency Rental Assistance program" (ERA), which appropriates \$25 billion through the U.S. Department of the Treasury (Treasury) to provide eligible households with direct financial housing assistance. The enactment of the ERA provides landlords, tenants, borrowers, potential buyers, financial institutions and small businesses with a necessary lifeline to weather the ongoing economic fallout from the COVID-19 pandemic.

From the \$25 billion designated for rental assistance, \$800 million is reserved for tribal communities and \$400 million is reserved for U.S. territories, with the remaining funds to be distributed to state and local governments (grantees) within 30 days of enactment. Under the ERA, fund allocations will be based on a state's population, with all states, and the District of Columbia, receiving at least \$200 million. Local jurisdictions with populations of 200,000 or more may also apply directly to the Treasury for assistance, which would be reduced from the amount granted to the state in which the jurisdiction is located.

Under the Act, grantees will use the emergency funds to provide eligible households with: (i) direct financial assistance, including but not limited to, future rent, rental arrears, overdue utility payments and other expenses related to housing incurred due, directly or indirectly, to COVID-19, or (ii) housing stability services, such as case management services. Renters may collect up to 12 months of financial assistance but up to 15 months in certain circumstances. If an eligible household owes past due rent, funds for future rent payments can only be made if assistance is first provided to reduce rental arrearages. Future rent assistance is limited to three-month increments, after which a subsequent application must be submitted for additional funds. Eligible households may submit an application for assistance.

Of utmost relevance to commercial real estate stakeholders, both landlords and property owners may apply for such financial assistance on their tenants' behalf, provided they obtain permission from the tenant beforehand in the form of a signature on the application (electronic signatures are sufficient). In most cases, the funds will be paid directly to the landlord or utility company. Payments made on behalf of eligible households will not be considered taxable income.

In order to qualify for such rental assistance, an "eligible household" must meet the following criteria: (1) has at least one household member who qualifies for unemployment or has experienced a financial hardship related to COVID-19; (2) has at least one household member who can show a risk of experiencing homelessness or housing instability; and (3) has a household income that is below 80% of the area median income (AMI) (which, it should be noted, differs based on the county and household size). Financial assistance will be prioritized for renters with household incomes at or below 50% of the AMI and renter households where one or more members has been unemployed for at least 90 days before the submission date of the application.

To determine a household's income, all grantees must consider either the household's total income for 2020 or its monthly income at the time of applying for the financial assistance. However, when using the monthly income method, income eligibility must be re-determined every three months. Households that receive certain other forms of housing assistance are ineligible to receive this

assistance.

Funds provided to grantees will expire on December 31, 2021. Starting on September 30, 2021, the Treasury will begin to recapture unspent funds from grantees and reallocate such funds to grantees who have obligated at least 65% of their original allocation. Grantees receiving a reallocation may be approved for a 90-day extension through March 31, 2021 at the discretion of the Secretary of the Treasury.

The ERA is a step in the direction of providing additional needed liquidity to the real estate industry in the current economic climate. However, individuals and entities in need of mortgage assistance are notably left out of the program. We will continue to provide updates on developments related to the ERA and the Act.

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