

Emergency Rental Assistance Programs & Other Tools to Prevent Evictions of Older Adult Tenants

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National Housing Law Project

The National Housing Law Project was founded in 1968 as a support center to assist newly formed legal services organizations. We continue to play that role, providing technical assistance and training to legal aid attorneys and co-counseling on key litigation. We now also operate more broadly, working with organizers and other advocacy and service organizations to achieve our mission of advancing housing justice for low-income people and underserved communities. From our earliest days, we took the lessons that we learned from our partners in the field and advocated for policy change in Washington D.C. and in state capitals. Policy advocacy and impact litigation are key components of our work and are always grounded in the lessons we learn from partners and from the Housing Justice Network, an active network of over 1,700 legal services attorneys.

Introduction

The COVID-19 pandemic has increased housing instability for many older adult tenants. This Chapter Summary provides an overview of the different tools available to prevent evictions of older adults as the pandemic winds down, including temporary state and local eviction protections and the federal government's COVID-19 Emergency Rental Assistance Program (ERAP).

Key Lessons

1. **The COVID-19 pandemic has had serious impacts on older adult tenants.** For a number of reasons, older adult tenants are facing increased housing instability due to the pandemic.
2. **Pandemic-related eviction protections are in flux and do not provide comprehensive or long-term protection to tenants at risk of eviction.** The federal government and some state and local governments have provided emergency protections against evictions, but most of those protections are limited in scope and will expire in the coming months. It is critical to maintain regular contact with local legal services providers to get the latest updates.
3. **Even after pandemic-related eviction protections expire, there are still other eviction-prevention tools available.** Various laws and regulations, including notice requirements, just cause protections, reasonable accommodation requirements, and fair housing laws may help delay or prevent an eviction. Repayment plans should also be considered, and for tenants in certain federally-subsidized housing programs, income recertification is also available.
4. **Rent relief programs, including the federal Emergency Rental Assistance Program, are available for eligible tenants throughout the country.** Funds are available to cover rent arrears, utility arrears, some prospective payments, and certain other housing related expenses. Eligibility factors include income, COVID-related hardship, and risk of housing instability or homelessness. These programs are administered by states, local jurisdictions, and other agencies.
5. **Older adults face barriers to accessing rent relief programs that program administrators need to address.**

Impact of the Pandemic on Older Adult Tenants

Even before the pandemic, many older adults already struggled with housing instability due to high rent burdens, lack of affordable housing, fixed incomes, and health care costs. The economic downturn and need for sheltering at home during the pandemic adversely affected many low-income older adults' finances. The pandemic has had disproportionate adverse impacts on older Black, Latinx, and immigrant households.

In addition, older adults are at much greater health risk if they need to move, double up, enter or remain in a nursing home, or if they become homeless, especially where vaccination rates remain low. Older adults experiencing homelessness also face greatly increased risks of serious illness or death if they remain unsheltered or in congregate shelter.

Temporary Pandemic-Related Eviction Protections

Many households lost income and/or saw their expenses rise as a result of the pandemic and therefore could not afford to keep paying rent. Current estimates of outstanding rent arrears range from \$25 to \$100 billion.

In an effort to prevent wide-scale evictions, particularly as case numbers were surging, federal, state, and local governments have taken a series of actions, including prohibiting evictions in certain situations. State and local eviction protections vary widely,¹ and many have already expired, but the federal order issued in September 2020 by the Centers for Disease Control and Prevention (CDC) remains in effect through July 31, 2021.² The CDC's order protects tenants from eviction if they present a signed declaration to their landlords attesting to the following five essential criteria:

1. They have used best efforts to obtain all available government assistance for housing;
2. They meet an income limit (\$99,000 in 2021 income, \$198,000 if married & filing jointly); or received a federal stimulus check; or are not required to report income to the IRS in 2020;
3. They are unable to pay full rent due to substantial loss of household income or extraordinary medical expenses;
4. They are making best efforts to pay partial rent (as close to full as circumstances permit); and
5. They would likely to become homeless or have to live in "close quarters" if evicted.³

The CDC has made a [declaration form](#) available in multiple languages for this purpose.

In addition, the federal CARES Act requires the landlord of any "covered dwelling" to give 30 days' notice in writing before commencing an eviction lawsuit.⁴ A "covered dwelling" is a property that has a federally-backed mortgage or that participates in one of the federal rental programs, such as Housing Choice Vouchers, Low-Income Housing Tax Credits, or Rural Development housing.

These pandemic-related eviction protections change frequently, vary widely, and can be complicated to apply to a given tenant's situation. Those working with tenants who are at risk of eviction should contact their local legal aid programs for the most current information and guidance.⁵

¹ Information about state and local eviction protections is available at the [Eviction Lab](#) website.

² The CDC order, entitled "Temporary Halt in Residential Evictions to Prevent the Further Spread of COVID-19", has been extended four times. The final extension was issued on June 24, 2021. See [cdc.gov/coronavirus/2019-ncov/more/pdf/CDC-Eviction-Extension-Order-Final-06242021.pdf](https://www.cdc.gov/coronavirus/2019-ncov/more/pdf/CDC-Eviction-Extension-Order-Final-06242021.pdf).

³ *Id.* at 1-2.

⁴ Coronavirus Aid, Relief, and Economic Security Act, Public Law 116-136, Section 4024(c).

⁵ For local legal aid programs, see [OAA Title III-B Legal Assistance Providers](#) and [Legal Services Corporation Providers](#).

Other Tools for Preventing Evictions

Even after the pandemic-related protections discussed above expire, there are still several other tools available to prevent, or at least delay, evictions. These include standard eviction defenses, such as:

- Defects in required notices or service of notice;
- Just cause protections;
- Reasonable accommodations for disabilities;⁶
- Fair housing laws;⁷ and
- VAWA (Violence Against Women Act) protections.⁸

Other important eviction-prevention tools include rent repayment agreements and, for tenants in certain federally-subsidized housing programs, income recertification.⁹ A repayment agreement is a contract between tenant and landlord that allows a tenant to resume making regular monthly rent payments and repay their rent arrears over time. Income recertification is a process of recalculating a tenant's income when there has been a significant change in the household's financial situation and the rent is supposed to be a set percentage of the tenant's income.

PRACTICE TIP

If you are helping a tenant who wants to enter into a repayment agreement with the landlord, make sure to have the tenant consult with a legal aid attorney before signing anything. Tenants need to watch out for repayment agreements that include broad waivers of the tenant's rights or unaffordable monthly payments. Ideally, a repayment agreement will allow for adjustments to the payment schedule in case the tenant experiences a further loss of income while the agreement is in effect.

Rent Relief Programs

The federal government has appropriated billions of dollars for rent relief. The CARES Act created the Coronavirus Relief Fund (CRF) and added funding to the Community Development Block Grant (CDBG), the Emergency Solutions Grants Program (ESG), and other funding streams that could be used for rent relief. Subsequent legislation created the Emergency Rental Assistance Program (ERAP), in which the U.S. Treasury Department provides funds to state, local, and tribal governments to administer rent relief or subgrant to other agencies for distribution. In addition, some state and local programs and private foundations have also set up rental assistance programs.

⁶ See, e.g., 42 U.S.C.A. §§3601, et seq (West, Westlaw through P.L. 110-311 (excluding P.L. 110-234, 110-246, 110-289, and 110-301) approved 8-12-08); 42 U.S.C.A. §§ 12131, et seq (West, Westlaw through P.L. 110-311 (excluding P.L. 110-234, 110-246, 110-289, and 110-301) approved 8-12-08); 29 U.S.C.A. §794 (West, Westlaw through P.L. 110-311 (excluding P.L. 110-234, 110-246, 110-289, and 110-301) approved 8-12-08).

⁷ See, e.g., 42 U.S.C. §§ 3601-3619.

⁸ [VAWA Know Your Rights brochure](#).

⁹ See [PHA Guide to Preventing Homelessness after the Eviction Moratorium Expires](#), at 3.

The Emergency Rental Assistance Program (ERAP)

ERAP funds were appropriated in two tranches: the 2021 Appropriations Act included \$25 billion, and the American Rescue Plan Act included an additional \$21.55 billion. The first tranche is referred to as “ERA 1” and the second as “ERA 2.” Most of the relevant rules are the same for funds coming from both tranches, but there are a few differences noted below.

ERAP funds may be used to cover a total of up to 18 months’ worth of rent, utilities, and other housing expenses incurred after March 13, 2020. ERAP funds are generally paid directly to the landlord or utility provider, but they may be paid to the tenant if a landlord declines participation. For ERA 2 funds, program administrators are required to allow tenants to apply directly if the landlord refuses to participate and are permitted to set up systems for tenants to apply without involving the landlord at all.

The basic ERAP eligibility criteria are:

- The household must be obligated to pay rent on a residential dwelling;
- At least one member of the household qualifies for unemployment or has experienced a COVID-19-related financial hardship;
- A member of the household can demonstrate risk of homelessness or housing instability; and
- The household’s income is at or below 80% of area median (AMI).

State and local grantees have discretion to impose additional criteria, including prioritizing lower-income or more vulnerable categories of tenants, such as older adults. There are no federal requirements regarding immigration status. If you encounter an ERAP program that is excluding people based on immigration status, please contact the [National Housing Law Project](#) for assistance.

While many assume that older adults generally rely on fixed incomes and therefore have not experienced pandemic-related financial hardship, in fact there are many situations in which an older adult would qualify for ERAP. For example, many older adults were working pre-pandemic and lost income when the economy shut down. Others have faced increased expenses for food due to the closure of meal programs or had to pay for the delivery of food and medicine that they were able to pick up themselves before the pandemic. Some older adults live in multi-generational households in which one or more family members experienced a loss of income due to the effects of the pandemic.

PRACTICE TIP

If you are working with an older adult who fell behind on rent during the pandemic, be sure to explore all aspects of their household finances to determine whether they have experienced a qualifying hardship.

Note that residents of your state’s residential care facilities (RCFs) may be eligible for ERAP, depending on state law.¹⁰

Barriers to Access for Older Adults

In many jurisdictions, ERAP funds have not reached many of the most vulnerable tenants, including older adults. Many older adult tenants do not know that rental assistance is available or how to access it. Immigrant and LEP households face language obstacles, and many older adults are not able to access or navigate online application systems. There are steps that program administrators can take to make these programs more accessible, but it often takes advocacy from the community to make the necessary changes happen.

¹⁰ See, for example: California’s BCSHA FAQ on Emergency Rental Assistance for ARF/RCFE Residents: drive.google.com/file/d/10_Hb2x66oF6wbbFISf4-RAyMvKhjbhW/view?usp=sharing.

How to Find Local Rental Assistance Programs

It can be confusing to try to figure out which rental assistance programs are active in a given location. In some places, there may be overlapping programs administered by different jurisdictions or agencies, and the different programs may not be well-coordinated.

CASE EXAMPLE

A tenant in Jacksonville, FL, who was 10 months behind on his rent, went online to find out about rental assistance programs in his area. He located a program administered by the County and called to apply, but he was told the deadline for applications had already passed. However, the state of Florida runs its own program with ERAP funds that is still open for applications, and the state program is open to tenants in jurisdictions with their own local programs. Unfortunately, the local and state programs had not coordinated, so it took the tenant several days before he discovered that he was still eligible for assistance.

To find all ERAP-funded programs in your area, it is best to check the [U.S. Treasury Department's database](#). To locate other state and local rental assistance programs, consult the [State and Local Rental Assistance Directory](#) maintained by the National Low Income Housing Coalition.

Conclusion

Although many key pandemic-related eviction protection measures will be expiring soon, there are a number of other tools available to help prevent evictions of older adults.

Additional Resources

- Lisa Sitkin: lsitkin@nhlp.org
- Consumer Financial Protection Bureau: [“Help for Renters” Resource](#)
- U.S. Treasury Department: [Emergency Rental Assistance Program](#)
- U.S. Department of Housing and Urban Development: [Eviction Prevention and Stability Toolkit](#)
- Alliance for Housing Justice: [COVID-19 Resources](#)
- National Housing Law Project: [COVID-19 Resources](#)
- National Center on Law & Elder Rights: [Rental Properties & Eviction Resources](#)
- National Low-Income Housing Coalition: [Best Practices for State and Local Emergency Rental Assistance Programs](#)

Case consultation assistance is available for attorneys and professionals seeking more information to help older adults. Contact NCLER at ConsultNCLER@acl.hhs.gov.

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