



FEDERAL FUNDING TO SUPPORT STATE/LOCAL TENANT RIGHT TO COUNSEL EFFORTS

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Since 2017, ten cities and three states¹ have enacted the right to counsel for tenants facing eviction, and [eight additional states](#) introduced legislation in 2021 to establish such a right to counsel at the state level. However, while the movement is surging, some lawmakers hesitate to move forward without knowing how to fund it. The federal response to COVID-19 provides states and localities with a broad array of new federal funding that can contribute to right-to-counsel laws for multiple years, long enough for the right to become institutionalized and easier to support financially in the future. **The time is now to use available federal funds to enact a right to counsel for tenants facing eviction in order to protect families, advance race equity, and bring housing stability to millions of families.** For more information on the rationale for doing this, please see our [2-pager on using ERAP for legal services \(PDF\)](#) as well as our article in *The Appeal*, [Federal Funding Charts the Path for Local Right-to-Counsel Efforts](#). See also the [joint letter from HUD, Treasury, and the Attorney General's Office](#) urging the use of federal funds to establish a right to counsel.

The table below outlines the parameters of the federal funding available to states and local governments, *but each program should be reviewed for full details, uses, and restrictions*. We also encourage you to review:

- Justice in Government's [Funding Matrix: American Rescue Plan Act of 2021 \(ARP\) Programs that can Support Civil Access to Justice](#) (Updated April 9, 2021)
- The NCCRC's list of [legal aid programs that have used federal funds to expand tenant legal representation](#)
- NCCRC, NHLP, and NLIHC webinar: [Federal Funding for Tenant Right to Counsel](#) (April 13, 2021)
- Karlee M. Naylor, Anna C. deDufour, and Karen A. Lash, [Civil Legal Aid Funding in the Time of COVID-19](#), *Management Information Exchange Journal* (Summer 2020)
- [NCSHA Administration of the Federal Emergency Rental Assistance Program: Considerations for State Agencies](#) (March 12, 2021)
- [NCSHA Emergency Rental Assistance Program Comparison](#) (a side-by-side of ERAP 1 and ERAP 2)

¹Cities: [New York City, NY](#); [San Francisco, CA](#); [Boulder, CO](#); [Newark, NJ](#); [Cleveland, OH](#); [Philadelphia, PA](#); [Baltimore, MD](#), [Seattle, WA](#), [Louisville, KY](#), and [Denver, CO](#). States: [Connecticut](#), [Washington](#), and [Maryland](#).

Program and Funding Source	Amount	Deadline ²	Allowable Use for Legal Services	Additional Notes and Resources
<p>Coronavirus Relief Fund (CRF)</p> <p>Located in: CARES Act</p>	<p>\$150 billion (view the specific allocations to state and local governments)</p> <p>Administered by the U.S. Department of the Treasury</p>	<p>May only be used to cover costs incurred between March 1, 2021 and Dec. 31, 2021 (Consolidated Appropriations Act of 2021 extended original deadline of Dec. 31, 2020)</p>	<p>Payments can cover <i>only</i> those costs that are:</p> <ol style="list-style-type: none"> 1. necessary expenditures incurred due to the public health emergency with respect to COVID-19; 2. not accounted for in the most recently approved government budget as of the date of enactment of this section; and 3. incurred between March 1, 2020 and December 31, 2021. <p>The U.S. Department of the Treasury's Guidance provides non-exclusive examples of eligible expenditures, and it includes “Any other COVID–19-related expenses reasonably necessary to the function of government that satisfy the Fund’s eligibility criteria.” Dozens of jurisdictions have used CRF funding for legal services.</p>	<p>National Conference of State Legislatures, Map of State Actions on CRF Funds</p>
<p>Community Development Block Grant (CDBG-CV)</p> <p>Located in: CARES Act</p>	<p>\$5 billion to states, metropolitan cities, urban counties, and insular areas (view the specific allocations)</p> <p>Administered by HUD, Office of Community Planning and Development (CPD)</p>	<p>A grantee must expend all funds within a 6-year Period of Performance³</p> <p>80% of the funds must be spent by the end of year 3</p>	<p>70% of a grant must be expended for activities that benefit low- and moderate-income persons by providing housing, a permanent job, a public service, or access to new or improved infrastructure. 30% can be used to eliminate slum or blighted conditions, or to address another urgent need for which there is no other funding.</p> <p>According to Chapter 2 of HUD’s Guide to National Objectives and Eligible Activities for State CDBG Programs, one eligible use of CDBG funds is “Legal services (including ... landlord/tenant matters)”. Additionally, a number of jurisdictions have used CDBG-CV funding for tenant representation / right to counsel.</p>	<p>HUD's Notice of CDBG-CV Program Rules, Waivers, and Alternative Requirements</p> <p>HUD’s CDBG-CV Notice FAQs</p>

² Unless noted otherwise, the “deadline” is the date through which the funds provided to the grantee remain available or by when they must be expended.

³ [HUD's Notice of CDBG-CV Program Rules, Waivers, and Alternative Requirements](#), III.B.7 (addressing Period of Performance).

Program and Funding Source	Amount	Deadline ²	Allowable Use for Legal Services	Additional Notes and Resources
<p>Emergency Solutions Grants Program (ESG-CV)</p> <p>Located in: CARES Act</p>	<p>\$3.96 billion (view the specific allocations to state and local governments)</p> <p>Administered by HUD, Office of Community Planning and Development (CPD)</p>	<p>All funds awarded must be expended for eligible activity costs by Sept. 30, 2022</p>	<p>Funds are to be used to prevent, prepare for, and respond⁴ to COVID-19 among individuals and families who are homeless or receiving homeless assistance and to support additional homeless assistance and homelessness prevention activities to mitigate the impacts created by coronavirus.</p> <p>“Legal services” are one of the eligible activities listed in HUD’s Notice CPD-20-08. Such services are limited to those services necessary to help program participants obtain housing or keep a program participant from losing housing where they currently reside.</p> <p>Some jurisdictions have used ESG-CV funding for tenant representation / right to counsel.</p>	<p>HUD Office of Community Planning and Development’s Homeless Emergency Solutions Grants (ESG) Covid-19 Grantee Guidance</p>
<p>Emergency Rental Assistance Program (ERAP 1)</p> <p>Located in: Consolidated Appropriations Act of 2021</p>	<p>\$25 billion for eligible units of government (view the specific allocations)</p> <p>Administered by the U.S. Department of the Treasury</p>	<p>Funds provided to grantee remain available until Sept. 30, 2022 (extended from original deadline of Dec. 31, 2021 by American Rescue Plan Act)</p> <p>The deadline for recapture⁵ and the start of reallocation⁶ (Sept. 30, 2021) was not extended</p>	<p>Not more than 10 percent of funds may be used to provide eligible households with case management and other services related to COVID-19, as defined by the Secretary, intended to help keep households stably housed.</p> <p>In its August 25 Frequently Asked Questions document, Treasury states that for purposes of both ERA 1 and ERA 2, “housing stability” includes “legal services or attorney’s fees related to eviction proceedings and maintaining housing stability.” Moreover, in a June 24 Fact Sheet related to supporting housing stability, the Treasury Department notes that “Treasury is highlighting ‘promising practices’ inspired by successes achieved in the field, including ... legal services to prevent evictions and housing instability.” And a joint letter from HUD, Treasury, and the Attorney General’s Office urges</p>	<p>“Eligible household” is defined in the Act as:</p> <ul style="list-style-type: none"> - a household of 1 or more individuals obligated to pay residential rent, 1 or more of whom qualified for unemployment OR experienced a reduction in household income, incurred significant costs, or experienced other financial hardship due, directly or indirectly, to COVID-19, - that 1 or more individuals within the household can demonstrate a risk of experiencing homelessness or housing instability, and - the household has a total income that is not more than 80 percent of the AMI for the household.

⁴ “Prevent,” “prepare for,” and “respond to” are individually defined in [HUD’s Notice CPD-20-08 \(I\)\(B\)\(2\)\(f\)](#).

⁵ “Recapture” is not defined by statute, but is taken to mean recoupment by Treasury for purposes of reallocation.

⁶ “Allocation” is not defined by statute, but is taken to mean the specific amount of funding designated for a particular jurisdiction.

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			<p>the use of federal funds such as ERAP to establish a right to counsel.</p> <p>Jurisdictions have been paid⁷ their ERA 1 allocations. Treasury released reallocation guidance and an accompanying letter detailing the process for recapturing excess ERA 1 funds paid but not obligated.⁸ Treasury is measuring performance against 90% of a jurisdiction’s ERA allocation, and if the jurisdiction has spent less than 30% of that 90%, the amount between the jurisdiction’s total spending and 30% is subject to recapture. The 30% threshold will increase 5% each month.</p> <p>Some jurisdictions have used ERAP funding for tenant representation / right to counsel.</p>	
<p>Emergency Rental Assistance Program (ERAP 2)</p> <p>Located in: American Rescue Plan Act of 2021 (ARP)</p>	<p>\$21.55 billion (view the specific allocations; allocations subject to change post March 31, 2022)</p>	<p>2025⁹</p>	<p>Not more than 10 percent of funds may be used to provide case management and other services intended to help keep households stably housed.</p>	<p>“Eligible household” is a household of 1 or more individuals who are obligated to pay rent on a residential dwelling and:</p> <ul style="list-style-type: none"> - 1 or more individuals within the household has qualified for unemployment benefits or experienced a reduction in household income, incurred significant costs, or

⁷ “Paid” is not defined by statute, but is taken to mean allocated funds have been sent to and received by an eligible grantee.

⁸ “Obligated” is not defined by statute, but is taken to mean committed for a statutorily authorized purpose. Moreover, Treasury’s [Interim Rule on the Fiscal Recovery Funds](#) defines “obligated” as “an order placed for property and services and entering into contracts, subawards, and similar transactions that require payment”, and such a definition should apply to ERA funds as well because the Interim Rule further explains, “Section 602(c)(1) and section 603(c)(1) require that payments from the Fiscal Recovery Funds be used only to cover costs incurred by the State, territory, Tribal government, or local government by December 31, 2024. Similarly, the CARES Act provided that payments from the CRF be used to cover costs incurred by December 31, 2021. (171) The definition of ‘incurred’ does not have a clear meaning. With respect to the CARES Act, on the understanding that the CRF was intended to be used to meet relatively short-term needs, Treasury interpreted this requirement to mean that, for a cost to be considered to have been incurred, performance of the service or delivery of the goods acquired must occur by December 31, 2021. In contrast, the ARPA, passed at a different stage of the COVID-19 public health emergency, was intended to provide more general fiscal relief over a broader timeline. In addition, the ARPA expressly permits the use of Fiscal Recovery Funds for improvements to water, sewer, and broadband infrastructure, which entail a longer timeframe. In recognition of this, Treasury is interpreting the requirement in section 602 and section 603 that costs be incurred by December 31, 2024, to require only that recipients have obligated the Fiscal Recovery Funds by such date. The interim final rule adopts a definition of ‘obligation’ that is based on the definition used for purposes of the Uniform Guidance, which will allow for uniform administration of this requirement and is a definition with which most recipients will be familiar.”

⁹ According to the [Congressional Research Service](#), “Funding provided through P.L. 117-2 is available until September 30, 2025.”

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	Administered by U.S. Department of the Treasury		<p>Unlike ERAP 1, ERAP 2 does not explicitly limit housing stability services to “eligible” households.¹⁰ Also, Treasury’s August 25 guidance says ERAP 2 housing stability services “do not have to be related to the COVID-19 outbreak”, and that housing stability services include “attorney’s fees related to eviction proceedings and maintaining housing stability.” Moreover, Treasury’s June 24 Fact Sheet stated that “Treasury is highlighting ‘promising practices’ inspired by successes achieved in the field, including ... legal services to prevent evictions and housing instability.” And a joint letter from HUD, Treasury, and the Attorney General’s Office urges the use of federal funds such as ERAP to establish a right to counsel.</p> <p>Under § 3201(c)(1), Treasury paid¹¹ each eligible grantee at least 40% of their total allocation¹² within 60 days of enactment. Pursuant to § 3201(c)(2), Treasury must establish a procedure for subsequent payments to grantees that have obligated¹³ at least 75% of paid funds, and Treasury has already released supplemental ERAP 2 funds to high-</p>	<p>experienced other financial hardship during or due¹⁴, directly or indirectly, to COVID-19,</p> <ul style="list-style-type: none"> - 1 or more individuals within the household can demonstrate a risk of experiencing homelessness or housing instability; and - the household is a low-income family (as such term is defined in section 3(b) of the United States Housing Act of 1937 (42 U.S.C. 1437a(b))).

¹⁰ Additionally, the Congressional Research Service’s [Emergency Rental Assistance through the Coronavirus Relief Fund](#) document specifies that ERAP 2 financial assistance to tenants “does not require that the expenses be related to the COVID-19 outbreak”, likely because a financial loss “during or due ... to COVID-19” qualifies under ERAP 2.

¹¹ “Paid” is not defined by statute, but is taken to mean allocated funds have been sent to and received by an eligible grantee.

¹² “Allocation” is not defined by statute, but is taken to mean the specific amount of funding designated for a particular jurisdiction.

¹³ “Obligated” is not defined by statute, but is taken to mean committed for a statutorily authorized purpose. Moreover, Treasury’s [Interim Rule on the Fiscal Recovery Funds](#) defines “obligated” as “an order placed for property and services and entering into contracts, subawards, and similar transactions that require payment”, and such a definition should apply to ERA funds as well because the Interim Rule further explains, “Section 602(c)(1) and section 603(c)(1) require that payments from the Fiscal Recovery Funds be used only to cover costs incurred by the State, territory, Tribal government, or local government by December 31, 2024. Similarly, the CARES Act provided that payments from the CRF be used to cover costs incurred by December 31, 2021. (171) The definition of “incurred” does not have a clear meaning. With respect to the CARES Act, on the understanding that the CRF was intended to be used to meet relatively short-term needs, Treasury interpreted this requirement to mean that, for a cost to be considered to have been incurred, performance of the service or delivery of the goods acquired must occur by December 31, 2021. In contrast, the ARPA, passed at a different stage of the COVID-19 public health emergency, was intended to provide more general fiscal relief over a broader timeline. In addition, the ARPA expressly permits the use of Fiscal Recovery Funds for improvements to water, sewer, and broadband infrastructure, which entail a longer timeframe. In recognition of this, Treasury is interpreting the requirement in section 602 and section 603 that costs be incurred by December 31, 2024, to require only that recipients have obligated the Fiscal Recovery Funds by such date. The interim final rule adopts a definition of ‘obligation’ that is based on the definition used for purposes of the Uniform Guidance, which will allow for uniform administration of this requirement and is a definition with which most recipients will be familiar.”

¹⁴ ERAP 2 is different than ERAP 1 in defining eligibility as a loss “during or due” to Covid, not merely “due” to Covid.

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			<p>performing jurisdictions. Per § 3201 (e), starting on March 31, 2022, Treasury will reallocate unpaid ERA 2 funds to grantees that have obligated at least 50% of their ERA 2 allocation.</p> <p>Additionally, § 3201(d)(1)(D) provides if at least 75% of ERAP 2 funds have been obligated by Oct. 1, 2022, the rest can be used for eviction prevention purposes, as defined by the Secretary, serving very low-income families.</p> <p>Some jurisdictions have used ERAP funding for tenant representation / right to counsel.</p>	
<p>Coronavirus State and Local Fiscal Recovery Funds (FRF)</p> <p>Located in: American Rescue Plan Act of 2021 (ARP)</p>	<p>\$350 billion, inc. \$195 billion for states and \$130 billion for units of local gov't (view the allocations for states, counties, and cities).</p> <p>Administered by the U.S. Department of the Treasury</p>	<p>Grantees shall use funds to cover costs incurred by Dec. 31, 2024</p>	<p>Funds can be used to “respond to COVID-19 or its negative economic impacts through assistance to households ... and nonprofits ...”. Treasury’s FRF guidance states “legal aid to prevent eviction or homelessness” is an eligible service. And a joint letter from HUD, Treasury, and the Attorney General’s Office urges using federal funds such as FRF for right to counsel.</p> <p>“Incurred” has been interpreted to mean “obligated”.¹⁵</p> <p>Funds can be transferred to non-profits.</p> <p>Some jurisdictions have used FRF funding for tenant representation / right to counsel.</p>	<p>National Conference of State Legislatures' Summary of ARP</p> <p>50% of the funds are to be delivered no later than the date of enactment; and the remainder no earlier than 1 year after enactment.</p>

¹⁵ Treasury’s [Interim Rule on the Fiscal Recovery Funds](#) explains, “Section 602(c)(1) and section 603(c)(1) require that payments from the Fiscal Recovery Funds be used only to cover costs incurred by the State, territory, Tribal government, or local government by December 31, 2024. Similarly, the CARES Act provided that payments from the CRF be used to cover costs incurred by December 31, 2021. (171) The definition of ‘incurred’ does not have a clear meaning. With respect to the CARES Act, on the understanding that the CRF was intended to be used to meet relatively short-term needs, Treasury interpreted this requirement to mean that, for a cost to be considered to have been incurred, performance of the service or delivery of the goods acquired must occur by December 31, 2021. In contrast, the ARPA, passed at a different stage of the COVID-19 public health emergency, was intended to provide more general fiscal relief over a broader timeline. In addition, the ARPA expressly permits the use of Fiscal Recovery Funds for improvements to water, sewer, and broadband infrastructure, which entail a longer timeframe. In recognition of this, Treasury is interpreting the requirement in section 602 and section 603 that costs be incurred by December 31, 2024, to require only that recipients have obligated the Fiscal Recovery Funds by such date. The interim final rule adopts a definition of ‘obligation’ that is based on the definition used for purposes of the Uniform Guidance, which will allow for uniform administration of this requirement and is a definition with which most recipients will be familiar.”