



February 8, 2021

UPDATE #32

Financial Relief For Landlords (Finally!!)

Friends:

After nearly a year, the federal government has finally enacted a program that should address the needs of most landlords and tenants. In previous updates, I discussed the newly enacted Emergency Rental Assistance Program (“ERAP”). Here is the latest information.

Funding

The amount of money made available under ERAP is staggering:

Total Tennessee allocation:	\$456,682,774.50
<i>Eligible local governments</i>	
Knox County	\$ 14,152,916.70
Memphis City	\$ 19,592,445.70
Nashville-Davidson Metropolitan Government	\$ 20,888,561.90
Rutherford County	\$ 9,999,302.40
Shelby County	\$ 8,609,267.40
Remainder of the state	\$383,440,280.40

Please note, Knox County expects to ultimately receive nearly \$30 million from ERAP.

Eligibility

An “eligible household” is defined as a renter household in which at least one or more individuals meets the following criteria:

1. Qualifies for unemployment or has experienced a reduction in household income, incurred significant costs, or experienced a financial hardship due to COVID-19;
2. Demonstrates a risk of experiencing homelessness or housing instability; and
3. Has a household income at or below 80 percent of the area median.

Dwight E. Tarwater¹
 Thomas A. Bickers¹
 John W. Elder^{1 2 3}
 Michael J. King^{1 4}
 Taylor A. Williams¹
 Catherine W. Anglin¹
 Lindsey M. Collins¹
 Kendell M. Garrett¹
 Thomas H. Jarvis¹
 Kelsey C. Osborne^{1 5}
 Kathryn V. Haaquist¹

Donald F. Paine
(1939 - 2013)

¹ Licensed in Tennessee

² Licensed in Illinois

³ Licensed in New York

⁴ Licensed in North Carolina

⁵ Licensed in Texas

Rental assistance provided to an eligible household should not be duplicative of any other federally funded rental assistance provided to such household.

Eligible households that include an individual who has been unemployed for the 90 days prior to the application for assistance and households with income at or below 50 percent of the area median are to be prioritized for assistance.

Household income is determined as either the household's total income for calendar year 2020 or the household's monthly income at the time of application. For household incomes determined using the latter method, income eligibility must be redetermined every 3 months.

Additional Guidance

Knox County's Community Development Office will distribute funds for properties located in Knox County. The Tennessee Housing Development Agency ("THDA") will distribute funding for the remaining counties in East Tennessee.

Last week I spoke with Jenny Holden, director of Community Development for Knox County. She believes the program will be up and running in Knox County and the remainder of the state in early March. Based on those discussions, I can provide some initial guidance:

- Tenants may qualify for the program based on (1) reduction in income, (2) job loss or (3) incurring "significant" expenses or experiencing a "financial hardship" due to Covid.
- Tenants who have been unemployed for the 90 days prior to their application for assistance and households with income at or below 50 percent of the area median are to be prioritized for assistance.
- Landlords can submit applications for assistance on behalf of their residents provided they have received written consent from the tenant. In Knox County, Ms. Holden believes if landlords submit groups of applications on behalf of tenants that will assist in streamlining the process.
- For tenants that qualify for the program based upon their income in 2020, they may be eligible for rental assistance going back as far as March 13, 2020. In addition, these tenants will not need to requalify for assistance for the rest of 2021. If these tenants continue to show demonstrated need, they will receive assistance on a going forward basis until the end of 2021.
- For tenants who apply for the program based on their monthly income at the time of the application, there will be a two month "lookback." If the tenant qualifies on this basis, the tenant can receive assistance for the immediate two months preceding their application. They will need to "re-qualify" for the program every three months thereafter.

- The purpose of the funding is to prevent homelessness. That means: (1) Tenants will be required to show notices from the Landlord where they have been placed in default. If you have not previously done so, you should send lease termination notices to tenants who are in default for nonpayment now. (2) Landlords cannot receive funds for tenants who have already vacated, even if the reason the tenant vacated is due to nonpayment.
- Landlords who receive the funds will be required to dismiss any pending eviction actions. Given that the program is intended to prevent homelessness, I believe if the landlord wants the funds, the landlord will be required to dismiss the pending eviction against the tenant regardless of whether the eviction is based on conduct.
- Landlords will also be required to agree that they will not initiate eviction proceedings based on nonpayment going forward. At this time, the time period for which the landlord must commit not to evict is unclear, but it is likely the commitment will be required so long as the tenant continues to qualify for the program. The commitment will not apply to evictions based on conduct.
- Tenants who received rental assistance under the CARES Act may also qualify for funding under ERAP provided the assistance is for rent that was not paid for by CARES Act funds.

I recommend that you begin letting tenants know about this program NOW. While local websites are not currently up and running, you can begin by providing this link to tenants:

<https://home.treasury.gov/policy-issues/cares/emergency-rental-assistance-program>

In addition, please encourage your tenants who may qualify for this program to file their 2020 tax returns as soon as possible. The tenant can more easily establish a reduction in income through a comparison of their 2019 and 2020 tax returns.

I anticipate receiving more detailed information in the coming weeks. I will provide you more updates as I receive it.

Very Truly Yours,

Mike

Michael J. King