



# County of San Mateo

## Inter-Departmental Correspondence

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**Department:** HUMAN SERVICES AGENCY

**File #:** 21-109

Board Meeting Date: 2/9/2021

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**Special Notice / Hearing:** None  
**Vote Required:** Majority

**To:** Honorable Board of Supervisors

**From:** Ken Cole, Director of Human Services Agency

**Subject:** County Participation in Statewide Emergency Rental Assistance Program Under SB 91 for Eligible Households Impacted by COVID-19

**RECOMMENDATION:**

Adopt a resolution:

- A) Authorizing and directing the County Manager, or designee(s), to transfer \$22,449,673.40 to the State Department of Housing and Community Development ("HCD"), which is ninety-eight and a half percent (98.5%) of the \$22,791,546.60 received directly by the County from the United States Treasury Department as the County's allocation under the Consolidated Appropriations Act of 2021 (Public Law 116-260), for administration and disbursement of emergency rental assistance on behalf of eligible households in the County impacted by COVID-19 under the Statewide Emergency Rental Assistance Program established under Senate Bill 91 ("State ERAP"); and
- B) Authorizing HCD to retain on behalf of the County \$24,529,226.48, which is the County's share of the federal emergency rental assistance allocation to the State of California that is reserved for and allocated to the County, for administration and disbursement of emergency rental assistance on behalf of eligible households in the County under the State ERAP; and
- C) Authorizing the County Manager, or designees(s), acting in consultation with the County Counsel, to negotiate and execute, on behalf of the County, appropriate agreements with the State, execute other forms and documents required by the State, and take any and all other actions necessary for the County to participate in the State ERAP, as implemented by HCD; and
- D) Authorizing and directing the County Manager, or designee(s), acting in consultation with the County Counsel, to negotiate and execute, on behalf of the County, appropriate agreements with the County's Core Service Agencies, other local non-profit organizations and/or other entities for the provision of technical assistance, education and outreach, and other services to

facilitate HCD's administration and disbursement of emergency rental assistance on behalf of eligible households in the County under the State ERAP; and

- E) Authorizing the disbursement of the remaining one and a half percent (1.5%) in funds received by the County as its direct allocation from the United States Treasury Department under the Consolidated Appropriations Act of 2021 (Public Law 116-260), which amount equals \$341,873.20, and/or other funds as determined by the County Manager, to the County's Core Service Agencies, other local non-profit organizations and/or other entities for payment of administrative fees to provide technical assistance, education and outreach and other services to facilitate HCD's administration and disbursement of emergency rental assistance on behalf of eligible households in the County under the State ERAP.

## **BACKGROUND:**

### **A. Federal Emergency Rental Assistance Program**

The Consolidated Appropriations Act of 2021 (Public Law 116-260) was signed into law on December 27, 2020. This law allocates federal funds to assist in the recovery from the economic impacts of the COVID-19 pandemic, including \$25 billion for the Emergency Rental Assistance Program administered by the U.S. Treasury Department ("Federal ERAP"). The Department of the Treasury has allocated Federal ERAP funds to each state, the District of Columbia, and the U.S. territories, based on population. Cities and counties with more than 200,000 residents, like San Mateo County, were eligible to receive a direct allocation of Federal ERAP funds. On January 21, 2021, the County received its direct allocation in the amount of \$22,791,546.60.

Under the Federal ERAP, ninety percent (90%) of the funds must be used to assist eligible households with (a) rent and rental arrears, (b) utilities and utility arrears, and (c) other expenses related to housing incurred, directly or indirectly, due to the COVID-19 pandemic, with priority afforded to expenditures to assist with rental arrears. The remaining ten percent (10%) of funds can be used for administrative costs and/or case management or other services related to keeping households stably housed during the pandemic.

Households meeting all of the following criteria are eligible for Federal ERAP assistance:

- One or more individuals within the household qualified for unemployment benefits or experienced a reduction in household income, incurred significant costs, or experienced other financial hardship directly or indirectly due to the pandemic;
- The household can demonstrate a risk of homelessness or housing instability; and
- Household income is below eighty percent (80%) of their area median income ("AMI").

Jurisdictions must prioritize applicants with household incomes below fifty percent (50%) of AMI or with household members who are unemployed at the time application.

Applications for emergency rental assistance may be submitted either by the eligible household or by a landlord or utility provider on behalf of an eligible household. The assistance is paid directly to a landlord or utility provider, unless the landlord or utility provider does not agree to accept the payment, in which case the payment is made directly to the eligible household.

All Federal ERAP funds must be expended by December 31, 2021. Further, if a recipient jurisdiction has not expended at least sixty-five percent (65%) of its Federal ERAP funds allocation by

September 30, 2021, the federal government may reallocate such unexpended funds to other jurisdictions.

## **B. Statewide Emergency Rental Assistance Program**

### **1. Senate Bill 91 (SB 91)**

On January 29, 2021, Governor Gavin Newsom signed into law SB 91, which took effect immediately. SB 91 extends until June 30, 2021 the eviction and foreclosure protections previously established in Assembly Bill 3088 (“AB 3088”) and provides additional eviction and debt protections for qualifying tenants. SB 91 also appropriates \$1.5 billion in Federal ERAP funds allocated to the State (i.e., Federal ERAP funds that were not directly allocated to larger jurisdictions within the State) to implement a new Statewide Emergency Rental Assistance Program (the “State ERAP”).

Like the Federal ERAP, funds from the State ERAP can be used to assist eligible households with (1) rent and rental arrears, (2) utilities and utility arrears, and (3) other expenses related to housing incurred, directly or indirectly, due to the COVID-19 pandemic, with priority afforded to rental arrears. The State ERAP, which will be administered by the State Department of Housing and Community Development (“HCD”), adopts the same criteria for eligible households as the Federal ERAP explained above.

However, the State ERAP prioritizes funds (1) first to eligible households with a household income of less than fifty percent (50%) of AMI, (2) then to communities disproportionately impacted by COVID-19 (as determined by HCD), and (3) finally, to all other eligible households with a household income less than eighty percent (80%) of AMI.

The State ERAP also includes a provision similar to one that was included in the County’s Small Landlord Assistance Program: participating landlords will receive eighty percent (80%) of unpaid rent for qualifying tenants accrued from April 1, 2020 through March 31, 2021 provided that the landlords agree to (1) accept such payment as payment in full of the rental debt owed by the household for whom rental assistance is being provided for that period and (2) release any and all claims for nonpayment of rent debt owed by that household for that period. If a landlord chooses not to participate, eligible households can receive direct financial assistance equal to twenty-five percent (25%) of their unpaid rent, which they can apply toward their rental debt. This is critical because, under SB 91, so long as an eligible household pays twenty-five percent (25%) of monthly rent owed during the identified period, the remaining seventy-five percent (75%) still accrues as civil debt, but nonpayment cannot be grounds for eviction.

Under the State ERAP, prospective rent payments through June 30, 2021 shall be exactly 25% of an eligible household’s monthly rent.

To encourage landlord participation in the State ERAP, SB 91 imposes certain restrictions on legal claims seeking to collect on rental debt accrued between April 1, 2020 and June 30, 2021. First, a landlord suing to recover a COVID-19 rental debt must attach to the complaint documentation showing that the landlord has made a good faith effort to investigate whether governmental rental assistance is available to the tenant, seek governmental rental assistance for the tenant or cooperate with the tenant's efforts to obtain rental assistance from any governmental entity or third party. Second, the damages awarded to a landlord in such a suit may be reduced for any amount of COVID-19 rental debt sought if the court determines that the landlord refused to obtain rental assistance provided under the State ERAP, where the tenant met the eligibility requirements and funding was

available.

## 2. Options for County to Implement State ERAP Locally

As a county with a population of over 200,000 residents, the County could implement the State ERAP in its jurisdiction in one of three ways:

- (1) *Option A: Administration of both the Federal and State Allocations by HCD:* Under this option, the County transfers ninety-eight and a half percent (98.5%) of its direct Federal ERAP allocation to HCD, and HCD administers and disburses this amount, along with County's share of the Federal ERAP funds that were allocated to the State, as emergency rental assistance on behalf of eligible households in the County under the State ERAP. The County would be permitted to retain the remaining one and a half (1.5%) of its direct Federal ERAP allocation for local use, such as for payment of administrative fees to local non-profit organizations and agencies providing technical assistance, education and outreach, and other services to facilitate HCD's administration and disbursement of emergency rental assistance on behalf of eligible households in the County under the State ERAP.
- (2) *Option B: Block Grant from HCD With Agreement to Conform Federal Allocation to State ERAP:* Under this option, the County receives a block grant from HCD in the amount of the County's share of the Federal ERAP funds allocated to the State and the County self-administers the State ERAP funds locally. The County must agree to administer its direct allocation of Federal ERAP funds according to the requirements of the State ERAP (discussed above), and sixty-five percent (65%) of block grant funds must be contractually obligated by June 1, 2021, with all block grant funds fully expended by August 1, 2021, or the funds will revert back to the State.
- (3) *Option C: Block Grant from HCD Without Agreement to Conform Federal Allocation to State ERAP:* Under this option, the County receives a block grant from HCD in the amount of the County's share of the Federal ERAP funds allocated to the State and the County self-administers the State ERAP locally, but does *not* agree to conform its direct Federal ERAP allocation to the requirements of the State ERAP. Thus, the County would administer its direct Federal ERAP allocation and HCD block grant separately, and must ensure there is no duplication of benefits to eligible households. The same block grant expenditure deadlines provided above in Option B would still apply: sixty-five (65%) must be contractually obligated by June 1, 2021, with all block grant funds fully expended by August 1, 2021, or the funds will revert back to the State.

The County must select Option A, B, or C on or before February 12, 2021.

### **DISCUSSION:**

The State has already retained a vendor, Local Initiatives Support Corporation ("LISC"), a national nonprofit community development financial institution, to administer and disburse emergency rental assistance for cities and counties that select Option A. LISC has a strong presence in California with offices in Los Angeles, San Diego, and the San Francisco Bay Area, and LISC has administered programs supporting the State's rural populations for 25 years.

As the Fund Administrator for the Los Angeles Regional COVID-19 Recovery and Relief Fund, LISC recently deployed more than \$108 million in grants to nearly 8,000 small businesses and non-profits

in less than 120 days, eighty percent (80%) of which are businesses located in communities that are low and moderate income. As the Fund Manager for the Bay's Future Fund, LISC has invested \$191 million in affordable housing developments in the Bay Area in the last 16 months. LISC is also the administrator of Facebook's Catalyst Fund which has provided financial support to four San Mateo County affordable housing projects in the last two years totaling nearly 400 units.

LISC's responsibilities for the State ERAP will include:

- Development and management of a central application portal that serves landlords and tenants and has mobile and multi-language capabilities;
- Creation of simplified eligibility requirements and application award scorecard that meets the federal and state requirements and policy goals;
- Establishment and activation of local partner network to support targeted client outreach and successful inflow of applications;
- Technical assistance and support/call center for applicants;
- De-duplication of applications within system;
- Verification of applicants' eligibility and review of all required documentation;
- Fraud and privacy protections;
- Award determination and notification to applicant;
- Verification of bank account or support for opening an account if applicant does not have one;
- Transfer of rental assistance funds to selected applicants;
- Reporting to participating cities and counties; and
- Reporting on program and fund outcomes on a rolling and final basis to U.S. Treasury.

The State will also be retaining a contractor to work with LISC to develop the outreach and messaging strategy for the State ERAP.

Staff recommends that the Board direct the County to select Option A and authorize the County Manager, or designee(s), to take all actions necessary to participate in the State ERAP.

While the County has an existing emergency rental assistance program implemented through the Core Service Agencies, it appears unlikely that this existing program can handle the increased scope and scale required for administration and distribution of Federal and State ERAP funds in the County on the prescribed timelines, which are extremely compressed. Indeed, on the front-end, rental assistance payments must commence in early March 2021, sixty five percent (65%) of State ERAP funds received must be contractually obligated by June 1, 2021, and all State ERAP funds must be spent by August 1, 2021, or they will revert back to the State. Funding beyond the ten percent (10%) administration fee allowed under the federal and state emergency rental assistance programs would be needed. However, even with deployment of additional staff and resources, the County's existing structure for providing emergency financial assistance through the Core Service Agencies would likely not have the capacity to implement a program of this magnitude in such a short period of time, especially with the likelihood of additional changes from state or federal agencies that could make implementation more complex.

Further, the State ERAP requires each grantee to provide HCD information relating to all applicable performance metrics. In addition, the State ERAP funds are subject to the same reporting and verification requirements applicable to the federal ERAP funds and require the grantee to provide any other information HCD deems necessary for these purposes. The County's Human Services Agency does not have the additional capacity to meet these extensive reporting requirements given staff's existing workload, which has increased significantly in the last 11 months due to COVID-19-related

impacts on the agency's clients and services.

On the other hand, LISC is equipped with the operations, resources, networks, and experience to administer and disburse large-scale emergency rental assistance in short order and to ensure program integrity and accountability and consistent treatment of landlords, tenants, and utility providers statewide.

Under Option A, the County's Core Service Agencies and other local non-profit organizations and agencies would still play a critical role in assisting LISC and the education and outreach contractor ultimately selected by the State by providing additional technical assistance, advertisement, education and outreach and other services, crucial to the administration and disbursement of emergency rental assistance on behalf of eligible households in the County. Thus, staff also recommends that the Board:

- Authorize and direct the County Manager, or designee(s), to negotiate and execute appropriate agreements with the County's Core Service Agencies, other local non-profit organizations and/or other entities for the provision of technical assistance, education and outreach, and other services to facilitate the HCD's administration and disbursement of emergency rental assistance on behalf of eligible households in the County under the State ERAP; and
- Authorize disbursement of the remaining one and a half percent (1.5%) in Federal ERAP funds allocated to the County, which amount equals \$341,873.20, and/or other funds as determined by the County Manager, to the County's Core Service Agencies, other local non-profit organizations and/or other entities for payment of administrative fees to provide such services.

County Counsel has reviewed and approved the resolution as to form.

The resolution contains the County's standard provisions allowing amendment of the County's fiscal obligations by a maximum of \$25,000 in aggregate.

**FISCAL IMPACT:**

There is no net County cost associated with the County opting into the State Emergency Rental Assistance Program.