



County of San Mateo

Inter-Departmental Correspondence

Department: HUMAN SERVICES AGENCY

File #: 21-197

Board Meeting Date: 3/9/2021

Special Notice / Hearing: None
Vote Required: Majority

To: Honorable Board of Supervisors
From: Ken Cole, Director, Human Services Agency
Subject: State HCD Template Resolution Authorizing County Participation in State Rental Assistance Program Under SB 91

RECOMMENDATION:

Approve and adopt template resolution from the State Department of Housing and Community Development, authorizing County's participation in State's Rental Assistance Program.

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” or the “State Rental Assistance Program”).

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 had the option to 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: Administration of State Allocation by HCD and County Administration of Federal Allocation:* Under this option, the County would elect to have the State administer the County's State ERAP allocation and the County administer its direct Federal ERAP allocation locally. However, the County would be required to ensure there is no duplication of benefits to eligible households between the two separate programs.

DISCUSSION:

On February 9, 2021, by Resolution No. 077985, your Board directed the County to participate in the

State's Rental Assistance Program under Option A and authorized 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. On February 10, 2021, the Director of the Human Services Agency ("HSA"), as the County Manager's designee, executed and submitted to HCD the State Rental Assistance Program Expression of Interest Form, electing for the County to participate in the State ERAP under Option A.

On February 26, 2021, HSA, along with other agencies representing local jurisdictions with populations of greater than 200,000 residents, received an e-mail communication from HCD requesting that each local jurisdiction's governing board approve and adopt, as soon as possible, the template resolution developed and distributed by HCD authorizing participation by the local jurisdiction in the State Rental Assistance Program. Accompanying this memo is HCD's template resolution for local jurisdictions, like the County, that have elected to participate in the State Rental Assistance Program under Option A.

However, this template resolution, which conforms to HCD's specifications, has been appropriately modified to include information specific to the County. For instance, for the template resolution, HCD recommends that the County identify an authorized amount for the Standard Agreement with the State that is at least triple the County's anticipated or received total direct Federal ERAP allocation (based on current formula calculations). The goal of the increased amount is to avoid having to go back should additional federal funds come in or the amount is adjusted by the U.S. Treasury. Accordingly, the total authorized amount for the Standard Agreement with the State is \$68,374,639.80 (which is equal to 3xs the County's direct Federal ERAP allocation in the amount of \$22,791,546.60).

At HCD's direction, staff requests that your Board authorize and adopt HCD's accompanying template resolution. Thereafter, staff will send a certified copy of the resolution to HCD. County Counsel has reviewed and approved the resolution as to form.

FISCAL IMPACT:

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