



## **Funding Legal Representation for Tenants Facing Eviction: A Strategic and Allowable Use of Emergency Rental Assistance**

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### **Emergency Rental Assistance: Critically Needed, Slowly Distributed**

Since the onset of COVID-19, housing advocates have predicted that the existing eviction crisis (where [3.6 million tenants](#) are served with eviction papers in an ordinary year) will [substantially worsen](#) due to the pandemic. More tenants than ever are at risk of eviction because of an [inability to pay rent](#) due to COVID-19. And not only do they face the [usual consequences of eviction](#), but studies have shown that evictions during the pandemic also [threaten lives and spread disease](#).

With two rounds of funding into the [Emergency Rental Assistance Program](#) (ERAP 1 & 2), Congress has injected over \$45 billion into states and localities to help tenants pay rent, avoid eviction, and remain stably housed. However, many jurisdictions are [struggling to distribute those funds](#) either at all or quickly enough to help tenants avoid eviction, and the problem will dramatically increase after the federal eviction moratorium [expires](#) at the end of June 2021. Localities without existing rental assistance programs are trying to [create them from scratch](#), while [existing programs](#) are struggling to [make tenants aware of the program](#), have them [complete applications successfully](#), or effectively [distribute the money](#) where the funds are substantially more than these programs have ever had to manage. And funds that have already been allocated to jurisdictions can be reallocated to other jurisdictions if [spending targets](#) are not met by specified deadlines. As a result, many tenants in need are not receiving and may continue to not receive critical rental assistance just as eviction protections expire.

### **Tenant Representation is an Allowable Use of ERAP 1 & 2 Funds**

At least [90% of ERAP 1 & 2](#) funds must be used for direct assistance with rent and utility payments. However, the remaining 10% can be used for “[housing stability services](#).” The Treasury Department, charged with administering these funds, has [issued guidance](#) defining “housing stability services” to include “legal services or attorney’s fees related to eviction proceedings and maintaining housing stability.” Though tenants provided housing stability services under ERAP 1 had to be otherwise eligible under ERAP, there is [no similar constraint](#) on ERAP 2. Moreover, Treasury has made it clear that [administrative costs](#) for distributing ERAP funds are taken out of the 90% reserved for direct assistance and not from the 10% allowable for housing stability.

At this stage, over [two dozen jurisdictions](#) have already allocated COVID-based federal funds of various types (including ERAP) to expand tenant legal representation, demonstrating the viability of this approach. Most recently, Texas allocated \$20 million for statewide tenant representation.

### **Tenant Representation is a Strategic Use of the ERAP 1 & 2 funds**

## Tenant representation is effective at both preventing evictions and increasing ERAP utilization

For tenants, [evictions implicate virtually every basic human](#) need a family can have: safety, mental and physical health, child custody, employment, education, and so on. Yet tenants are routinely unrepresented in these proceedings. Tenant [representation rates hover at approximately 3%](#), while over 80% of landlords are represented in eviction proceedings. This massive imbalance of power between landlords and tenants in the courtroom has led to the evictions process becoming a pro forma procedure devoid of due process that nearly always yields the same result regardless of the facts or law.

[Expanding legal representation with ERAP](#) doesn't just result in more tenants avoiding eviction, or settlements that are fairer. This expansion also helps tenants be aware of and [utilize critical COVID-19 protections](#) such as moratoria, ensure that tenants are aware of and effectively apply for rental assistance, negotiate with landlords who may be reluctant to accept rental assistance, work with landlords and/or courts to forestall evictions where rental assistance applications are in process, prevent or remedy illegal evictions that have dramatically increased due to landlord impatience with the moratoria, and lessen the long-lasting impact of eviction on tenants. In many jurisdictions, legal aid organizations have done pre-screening on behalf of rental assistance programs that has greatly helped expedite the approval process.

At present, nine cities and three states have enacted a right to counsel for tenants facing eviction. Of these, three have been implemented long enough for data collection, and the results are dramatic:

- In [New York City](#), which has the most evictions in the country, 86% of represented tenants have remained in their homes while the eviction filing rate has dropped by 30%. Moreover, New York City housing court judges have testified that the right to counsel has made their courts more efficient and just.
- [San Francisco](#) saw a 10% filing rate drop in just one year, and two-thirds of all represented tenants are staying housed.
- [Cleveland](#) released a report on the first six months of the program that found 93% of those represented avoided eviction or involuntary move, 83% who were seeking additional time to move were able to get it, and 89% of those seeking to mitigate damages were able to do so.

## ERAP spending on housing stability funding increases the availability of future ERAP funding

Using the 10% of ERAP funds available for housing stability services helps protect already-allocated ERAP 1 funds from recapture, increases the likelihood of subsequent ERAP 2 disbursements, and better positions jurisdictions to receive reallocated funds in the future. Under [ERAP 1](#), starting September 30, 2021 Treasury must recapture all “excess funds” that are “unobligated” and reallocate them based on demonstrated need to jurisdictions that have obligated at least 65% of their ERAP 1 funds at the time of the reallocation. Under [ERAP 2](#), all eligible jurisdictions have already been disbursed 40% of their allocation. However, to receive subsequent disbursements of ERAP 2 funds, jurisdictions must obligate 75% of this initial 40%. Beginning March 31, 2022, Treasury will reallocate ERAP 2 funds that have not been disbursed. Only jurisdictions that have obligated at least 50% of their *total* initial ERAP 2 allocation will be eligible for reallocated funds. Expanding tenant representation with allowable portions of the ERAP funds can help jurisdictions meet these requirements and ensure that they keep the funding allocated to assist tenants.