

CERTIFICATE OF EMERGENCY RULES

The Illinois Housing Development Authority certifies that the attached hereto is a true and correct copy of:

Heading of the Part: Federal Emergency Rental Assistance Programs

Code Citation: 47 Ill. Adm. Code 378

Sections Involved:

378.101	378.112	378.305
378.102	378.113	378.401
378.103	378.114	378.402
378.104	378.115	378.403
378.105	378.116	378.404
378.106	378.117	378.405
378.107	378.201	378.406
378.108	378.301	378.407
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378.110	378.303	
378.111	378.304	

which was duly adopted by emergency action by this agency.

The reason for the emergency is: Coronavirus Disease 2019 (COVID-19) is a novel severe acute respiratory illness that can spread among people through respiratory transmissions and present with symptoms similar to those of influenza. Residential evictions are contrary to the interest of preserving public health by ensuring that individuals remain in their homes during this public health emergency.

Statutory Authority: Implementing the COVID-19 Federal Emergency Rental Assistance Program Act (P.A.102-0005) and authorized by Section 7.19 of the Illinois Housing Development Act [20 ILCS 3805/7.19].



Signature of Officer

General Counsel

Title of Officer

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TITLE 47: HOUSING AND COMMUNITY DEVELOPMENT
CHAPTER II: ILLINOIS HOUSING DEVELOPMENT AUTHORITY

PART 378
FEDERAL EMERGENCY RENTAL ASSISTANCE PROGRAMS

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EMERGENCY

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AUTHORITY: Implementing the COVID-19 Federal Emergency Rental Assistance Program Act (P.A.102-0005) and authorized by Section 7.19 of the Illinois Housing Development Act [20 ILCS 3805/7.19].

SOURCE: Emergency rules adopted at 45 Ill. Reg. 6675, effective May 14, 2021, for a maximum of 150 days.

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SUBPART A: GENERAL RULES

Section 378.101 Authority
EMERGENCY

This Part implements the COVID-19 Federal Emergency Rental Assistance Program Act (P.A.102-0005) and is authorized by Section 7.19 of the Illinois Housing Development Act [20 ILCS 3805/7.19]

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Section 378.102 Purpose and Objectives
EMERGENCY

The purpose of the ERA1 and ERA2 emergency rental assistance programs is to use moneys to provide emergency rental assistance for eligible households and to provide housing stability services.

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Section 378.103 Definitions
EMERGENCY

The following definitions apply to terms used in this Part:

“Administering State agency”: An agency or department of the State that will disburse funds and administer all or a portion of ERA1 or ERA2 funds.

“American Rescue Plan Act”: The American Rescue Plan Act of 2021, P.L.117-2 (March 11, 2021).

“Annual Income”: The definition established by the U.S. Department of Housing and Urban Development in 24 CFR 5.609.

“Applicant” or “program applicant”: Any person or, in the case of a landlord or lessor, entity, who is obligated to pay rent on a residential dwelling, or lessee or landlord or lessor that has submitted an application, individually or jointly, to receive ERA1 or ERA2 funds.

“Area Median Income”: The area median income, adjusted for household size, as established by the U.S. Department of Housing and Urban Development.

“Authority”: The Illinois Housing Development Authority, in its capacity as an Administering State Agency of ERA1 and ERA2 funded programs.

“Categorical Eligibility”: An applicant deemed to be an eligible household as a result of the household income having been verified to be at or below 80 percent of the area median income in connection with another local, state, or federal government assistance program, provided the Authority receives a determination letter from the government agency that verified the applicant’s household income.

“Consolidated Appropriations Act”: The Consolidated Appropriations Act, 2021 P.L.116-260 (Dec. 27, 2020).

“Coverage Period”: The portion of an ERA1 or ERA2 program eligibility period applicable to an eligible household.

“COVID-19”: Coronavirus Disease 2019, as referenced in the State Gubernatorial Disaster Proclamations.

“DCEO”: The ERA1 eligible grantee pursuant to the Consolidated Appropriations Act.

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“Eligible Landlord”: An owner, or authorized management agent, of one or more units receiving or approved to receive ERA1 or ERA2 grant funds on behalf of an eligible household.

“ERA1”: An emergency rental assistance program established by Section 501 of Division N of the Consolidated Appropriations Act, 2021, P.L. 116-260 (Dec. 27, 2020).

“ERA1 Award Terms”: The terms and conditions set forth in OMB Approved No.: 1505-0266 as executed by DCEO in connection with the receipt of funds under the Consolidated Appropriations Act.

“ERA1 Eligible Household”: To be eligible, a household must be obligated to pay rent on a residential dwelling and the Authority must determine that:

one or more individuals within the household has qualified for unemployment benefits or experienced a reduction in household income, incurred significant costs, or experienced other financial hardship due, directly or indirectly, to the COVID-19 outbreak;

one or more individuals within the household can demonstrate a risk of experiencing homelessness or housing instability; and

the household has a household income at or below 80% of area median income.

“ERA1 Eligibility Period”: An eligible household may receive up to twelve months of ERA1 assistance (plus an additional three months if necessary to ensure housing stability for the household, subject to the availability of funds).

“ERA1 Grant”: A grant funded under ERA1 providing emergency rental assistance funds for an eligible household.

“ERA1 Grant Agreement”: Any agreement between DCEO and the Authority with respect to the administration of a portion of the funds granted to DCEO pursuant to the Consolidated Appropriations Act and further granted to the Authority.

“ERA2”: An emergency rental assistance program established by section 3201 of the American Rescue Plan Act of 2021, P.L. 117-2 (March 11, 2021).

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“ERA2 Award Terms”: The terms and conditions set forth in OMB Approved No.: 1505-0270 as executed by IEMA in connection with the receipt of ERA2 funds under the American Rescue Plan Act.

“ERA2 Eligible Household”: To be eligible, a household must be obligated to pay rent on a residential dwelling and the Authority must determine that:

one or more individuals within the household has qualified for unemployment benefits or experienced a reduction in household income, incurred significant costs, or experienced other financial hardship during or due, directly or indirectly, to the COVID-19 outbreak;

one 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)).

“ERA2 Eligibility Period”: The maximum period of time covered by an ERA2 grant, not to exceed the time parameters set forth in any applicable law. The aggregate amount of financial assistance an eligible household may receive under ERA2, when combined with financial assistance under ERA1, must not exceed 18 months.

“ERA2 Grant”: A grant funded under ERA2 providing emergency rental assistance funds for an eligible household.

“ERA2 Grant Agreement”: Any agreement between IEMA and the Authority with respect to the administration of a portion of the funds granted to IEMA pursuant to the American Rescue Plan and further granted to the Authority.

“Housing Stability Service” or “HSS”: Case management and other services related to the COVID-19 outbreak, except with respect to ERA2, which services do not have to be related to the COVID-19 outbreak, as defined by the Secretary, including those that enable eligible households to maintain or obtain housing. Such services may include housing counseling, fair housing counseling, case management related to housing stability, housing related services for survivors of domestic abuse or human trafficking, legal services or attorney’s fees related to eviction proceedings and maintaining housing stability, and specialized services for individuals with disabilities or seniors that supports their ability to access or maintain housing, subject to the terms of the agreement executed by the HSS Provider and the Authority.

“HSS Sub-Award”: An award of funds from the Authority to an HSS Provider.

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“HSS Provider”: A recipient of funds from the Authority to provide HSS.

“GATA”: The Grant Accountability and Transparency Act [30 ILCS 708].

“GATU”: The Grant Accountability and Transparency Unit within the Illinois Governor's Office of Management and Budget.

“Guidance”: Guidance, including, but not limited to, “frequently asked questions” released by the U.S. Department of the Treasury or the Secretary in connection with the Consolidated Appropriations Act and, or the American Rescue Plan Act.

“IEMA”: The ERA2 eligible grantee pursuant to the American Rescue Plan Act.

“IL ERA Act”: The Illinois COVID-19 Federal Emergency Rental Assistance Program Act (P.A. 102-0005).

“Lease”: A legal agreement between at least two parties in connection with the occupancy of a residential dwelling unit by someone other than the owner.

“Management Agent”: A company or individual authorized, pursuant to a Property Management Agreement, to lease units and collect rent on behalf of an owner.

“Owner”: A company or individual that holds fee title to the property where the unit is located and occupied by an eligible household.

“Property Management Agreement”: A written document that describes the relationship between the owner and management agent. At a minimum, the agreement will reference the address of the eligible household's property and that the management agent may lease and collect rent on behalf of the owner.

“Secretary”: The Secretary of the U.S. Department of the Treasury.

“Uniform Guidance”: The abbreviated title for Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 CFR 200), which supersedes OMB Circulars A-21, A-87, A-89, A-102, A-110, A-122, and A-133, and the guidance in Circular A-50.

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**Section 378.104 Compliance with Federal and State Law
EMERGENCY**

Notwithstanding anything in this Part to the contrary, this Part shall be construed in conformity and compliance with applicable law, including but not limited to the ERA1 award terms, any ERA1 Grant Agreement, the ERA2 award terms, any ERA2 Grant Agreement and the Uniform Guidance.

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**Section 378.105 Applications, Forms and Procedures
EMERGENCY**

- a) The Authority should, to the extent possible, implement ERA2 consistently with ERA1.
- b) The Authority may prepare, use, prescribe, supplement and amend forms, including application forms, agreements and other documents and procedures as may be necessary to implement any ERA1 or ERA2 program.
- c) The Authority may accept applications for any ERA1 or ERA2 program in one or more rounds of funding.
- d) The Authority must provide grants covered by the IL ERA Act in an amount based on stated need rather than a flat or fixed amount. An eligible household's stated need may include, but is not limited to, the amount of arrears owed to a landlord, or future rental payments based on monthly rent. Nothing in this Part shall be construed as precluding the Authority from capping or setting a limit on the amount of ERA1 or ERA2 emergency rental payments made on behalf of any single eligible household.
- e) The Authority must create an application process to provide grants covered by the IL ERA Act directly to eligible households and to obviate or minimize the necessity of landlord participation in submitting the application when the landlord refuses to accept a direct payment or fails to cooperate with an application for assistance.

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Section 378.106 Fees and Charges
EMERGENCY

The Authority will not charge an application fee for any ERA1 or ERA2 grants.

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**Section 378.107 Authority Administrative Expenses
EMERGENCY**

- a) The Authority is entitled to reimbursement from DCEO for administrative expenses incurred with respect to the administration of ERA1 funds. Under ERA1, not more than 10 percent of the amount paid to an eligible grantee may be used for administrative costs attributable to providing financial assistance and housing stability services to eligible households.

- b) The Authority is entitled to reimbursement from IEMA for administrative expenses incurred with respect to the administration of ERA2 funds. Under ERA2, not more than 15 percent of the amount paid to an eligible grantee may be used for administrative costs attributable to providing financial assistance, housing stability services, and other affordable rental housing and eviction prevention activities.

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Section 378.108 Amendment
EMERGENCY

This Part may be supplemented, amended or repealed by the Authority from time to time and in a manner consistent with the Illinois Administrative Procedure Act [5 ILCS 100], this Part and other applicable laws. This Part does not constitute or create any contractual rights.

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Section 378.109 Severability
EMERGENCY

If any clause, sentence, paragraph, subsection, Section or Subpart of this Part is adjudged by any court of competent jurisdiction to be invalid, that judgment shall not affect, impair or invalidate the remainder of this Part, but shall be confined in its operation to the clause, sentence, paragraph, subsection, Section or Subpart to which the judgment is rendered.

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Section 378.110 Non-Discrimination
EMERGENCY

- a) Unless necessary to comply with applicable federal or State law, the Authority shall not require any type of documentation relating to any household member's immigration status.

- b) Eligible landlords and HSS Providers shall comply with the applicable provisions of the Illinois Human Rights Act [775 ILCS 5] and the regulations promulgated under that Act, the federal Fair Housing Act (42 USC 3601), Section 504 of the Rehabilitation Act of 1973 (29 USC 794), the Illinois Environmental Barriers Act [410 ILCS 25], the Illinois Accessibility Code (71 Ill. Adm. Code 400), and all other applicable State and federal law concerning discrimination and fair housing.

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**Section 378.111 Record Retention
EMERGENCY**

Eligible households, eligible landlords and HSS Providers shall maintain copies of any records in their possession in connection with ERA1 and ERA2 for at least five years from the date of the grant.

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**Section 378.112 Monitoring
EMERGENCY**

The Authority has the right to monitor all records of eligible households, eligible landlords and HSS Providers relating to an award of funds under ERA1 and ERA2. Eligible households, eligible landlords and HSS Providers shall make all records relating to ERA1 and ERA2 available for inspection by the Authority upon the Authority's request.

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**Section 378.113 Federal Legislation
EMERGENCY**

Notwithstanding anything herein to the contrary, this Part shall be construed in conformity and compliance with the Consolidated Appropriations Act and the American Rescue Plan Act. To the extent that this Part conflicts with federal law, federal law shall control and prevail.

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**Section 378.114 Prioritization
EMERGENCY**

- a) The Authority will establish a system for ERA1 and ERA 2 programs that prioritizes assistance to eligible households with incomes less than 50% of the area median income and to eligible households with one or more members that have been unemployed for at least 90 days.
- b) The Authority shall make best efforts to give further prioritization to programs covered by the IL ERA Act to an eligible household:
 - 1) located within a disproportionately impacted area based on positive COVID-19 cases;
 - 2) that has a documented history of housing instability or homelessness; or
 - 3) that has a significant amount of rental arrears.

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Section 378.115 Accessibility and Transparency
EMERGENCY

- a) In addition to federal requirements, with respect to any program covered by the IL ERA Act, the Authority shall make publicly accessible by publishing on its website any important information, including, but not limited to, the following:
- 1) application forms for households and landlords, including any joint application forms;
 - 2) program eligibility requirements;
 - 3) the Authority's procedures and processes for administering the applicable program;
 - 4) the Authority's procedures and communication methods for notifying program applicants of defective applications due to incompleteness, errors, missing information, or any other impediment;
 - 5) the Authority's procedures and methods for applicants to remedy defective applications due to incompleteness, errors, missing information, or any other impediment; and
 - 6) any other important program information critical to applicants, including renters and landlords relating to the application requirements and process, eligibility determination, and disbursement of payment.
- b) The Authority shall ensure that important program information, including the application and all marketing materials, is language accessible by publishing to its website the same in both English and Spanish. To the extent administratively feasible, the Authority should make efforts to provide certain program information, such as frequently asked questions and responses, in other languages.

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**Section 378.116 Required Notifications and Correspondence
EMERGENCY**

With respect to any program covered by the IL ERA Act, the Authority shall ensure it communicates clearly with an applicant about the application determination process, including acceptance, status of a pending application, and any reason for denying an application.

- a) The Authority shall provide notice to an applicant upon finding that a submitted application is defective or should otherwise be considered ineligible, denied, or rejected.
- b) The notice from the Authority shall explain the reason why an applicant's submitted application is defective or should otherwise be considered ineligible, denied, or rejected.
- c) The notice shall contain the necessary information, process, accepted method, and deadline for the applicant to remedy any defective or deficient application, provided that remedy is possible.
- d) All notice and correspondence required to be provided by the Authority shall be given promptly and without unnecessary delay to any applicant.

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**Section 378.117 Recapture
EMERGENCY**

ERA1 and ERA2 grants, including HSS Grants, are subject to recapture in the event of default, such as fraud on behalf of an eligible household, eligible landlord, or HSS Provider, failure to comply with this Part, any other applicable law, or failure to meet any obligations under any program document.

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SUBPART B: HOUSEHOLD ELGIBILITY REQUIREMENTS**Section 378.201 Household Eligibility
EMERGENCY**

- a) For an applicant to be eligible to receive an ERA1 or ERA2 grant, the occupants of the residential dwelling unit must qualify as an eligible household. The Authority is permitted to verify income based on categorical eligibility.
- b) The Authority shall not disqualify an eligible household from any program covered by the IL ERA Act based on previous application for or receipt of other similar federal assistance for periods that are different than that for which the program assistance is being provided.

EMERGENCY EFFECTIVE**MAY 14 2021****SOS-CODE DIV.**

SUBPART C: LANDLORD ELGIBILITY REQUIREMENTS**Section 378.301 Landlord Eligibility
EMERGENCY**

Prior to receiving ERA1 or ERA2 grant funds on behalf of an eligible household, landlords must:

- a) Provide any documentation and information reasonably required by the Authority, including, but not limited to, a copy of the lease (if available), evidence of ownership and verification of address, a W-9, and a property management agreement (if acting as an agent on behalf of an owner).
- b) Execute documentation evidencing their agreement to comply with the terms and conditions of all program documents and all applicable laws, including, but not limited to, the Consolidated Appropriations Act, the American Rescue Plan Act, the IL ERA Act, the Illinois Housing Development Act, the Guidance, and this Part.

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Section 378.302 Waiver of Fees, Fines and Charges
EMERGENCY

Prior to receiving ERA1 or ERA2 grant funds on behalf of an eligible household, and in order to become an eligible landlord, landlords must agree to waive all late fees accrued by the eligible household during the grant coverage period, as well as all fines or other charges and may not charge holdover rent during the grant coverage period.

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Section 378.303 Leases
EMERGENCY

- a) Unless necessary to comply with applicable federal or State law, the Authority shall not require a fully executed written lease to participate in any ERA1 or ERA2 program.
- b) Prior to receiving ERA1 or ERA2 grants funds on behalf of an eligible household, landlords must agree they will not terminate the lease of an eligible household until the end of the program coverage period, or the expiration of the program eligibility period, whichever comes first.
- c) In the event an eligible household is residing in a unit with an expired lease, occupancy status may be viewed by the Authority as month-to-month, on the same terms and conditions as the most recently expired lease.

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**Section 378.304 Eviction Moratorium
EMERGENCY**

- a) Prior to receiving ERA1 or ERA2 grants funds on behalf of an eligible household, landlords must agree they will forgo any right to commence or continue an eviction action, or other legal action, including but not limited to breach of contract, against an eligible household, for non-payment of rent or other fees, during the longer of:
- 1) the eligible household's program coverage period; or
 - 2) the date of any eviction moratorium established by State or federal law, including, but not limited to, any order issued by the Centers for Disease Control and Prevention or the Governor.
- b) This Section is not intended to limit an eligible landlord's right to evict a tenant for legally permissible reasons unrelated to the payment of rent, fees or other financial charges.

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**Section 378.305 Distribution of Grants
EMERGENCY**

- a) ERA1 grants made by the Authority may cover all or any portion of the ERA1 eligibility period.
- b) ERA2 grants made by the Authority may cover all or any portion of the ERA2 eligibility period.
- c) When making ERA1 or ERA2 grant payments to an eligible landlord on behalf of an eligible household, the Authority must include a statement indicating which eligible household the grant payment is being made.
- d) If the landlord does not agree to accept an ERA1 grant payment from the Authority after the Authority has made contact with the landlord, then the Authority may make such payments directly to the eligible household for the purpose of the eligible household making payments to the landlord. The Authority shall make reasonable efforts to obtain the cooperation of landlords to accept ERA1 payments.
 - 1) Outreach will be considered complete if:
 - A) a request for participation is sent in writing, by mail, to the landlord, and the addressee does not respond to the request within 7 calendar days after mailing (unless such time period is modified by applicable law); or
 - B) the Authority, or an authorized representative of the Authority, including but not limited to an HSS Provider, has made at least three attempts by phone, text, or e-mail over a 5 calendar-day period to request the landlord's participation (unless such time period is modified by applicable law); or
 - C) a landlord confirms in writing that the landlord does not wish to participate.
 - 2) The final outreach attempt or notice to the landlord must be documented.
- e) In the event the outreach does not result in the landlord's participation in the applicable program, the Authority will provide an alternative mechanism to provide ERA1 assistance directly to eligible households with approved applications.

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- f) In administering any ERA2 funded programs, the Authority may choose to seek the cooperation of landlords before providing assistance directly to tenants. In doing so, the Authority will follow the provisions of this Section.

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SUBPART D: HOUSING STABILITY SERVICES PROVIDERS**Section 378.401 Purpose
EMERGENCY**

Subject to the terms of the agreement executed by the HSS Provider and the Authority, HSS Sub-Awards allocated to an HSS Provider are for the provision of HSS outreach and intake services, as described in this Part, and the purchase of HSS equipment.

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Section 378.402 Request for Proposals
EMERGENCY

The Authority may issue one or more requests for proposals for applications for an HSS Sub-Award from prospective HSS Providers.

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Section 378.403 HSS Provider Eligibility
EMERGENCY

HSS Providers may be HUD approved counseling agencies, community or faith based organizations, non-profit organizations, including legal assistance groups, and such other community organizations that specialize in housing or community outreach and engagement. and such other organizations to the extent permitted by applicable law.

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**Section 378.404 Eligible Uses on an HSS Sub-Award
EMERGENCY**

- a) HSS outreach, which includes:
 - 1) Disseminating information about ERA1 and ERA2 throughout the provider's coverage area;
 - 2) Performing outreach services within the provider's coverage area to inform as many people as possible about ERA1 and ERA2 programs in languages needed in the coverage area; and
 - 3) Identifying other available housing resources for clients.
- b) HSS intake, which includes:
 - 1) Assisting Illinois residents, including landlords and tenants, with the initial ERA1 or ERA2 program application process virtually, over the phone, or in-person;
 - 2) Providing assistance to applicants after submittal of an ERA1 or ERA2 program application, including case management and referral services;
 - 3) Following up with applicants after the submittal of an ERA1 or ERA2 program application, including case management and referral services;
 - 4) Provide intentional outreach and intake assistance to landlords of 2-4 unit buildings who may face technology and/or language barriers; and
 - 5) Assisting applicants who have applied for funds from an ERA1 or ERA2 program, but whose landlords have been unresponsive, including engaging in any specific landlord outreach steps required by applicable law.
- c) Purchasing HSS equipment to bolster a provider's mobile and technology network in order to perform the HSS outreach and intake services.

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Section 378.405 Application Requirements
EMERGENCY

Each application for an HSS Sub-Award under the request for applications shall include the information required by the Authority to promote efficient program administration and quality of performance.

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Section 378.406 Maximum HSS Provider Sub-Awards

The maximum HSS Sub-Award available to HSS Providers may vary based on the eligible activities the HSS Provider is approved to undertake.

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**Section 378.407 Distribution of HSS Provider Sub-Awards
EMERGENCY**

Once approved for an HSS Sub-Award, HSS Providers will be eligible to receive an initial disbursement in an amount established by the Authority and set forth in the Authority's program policy documents. An accounting of expenses will be required to demonstrate use of the HSS Sub-Awards provided in the initial disbursement. Additional HSS Sub-Awards disbursements will be made pursuant to the submission and approval of report, as established by the Authority and set forth in the Authority's program policy documents.

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