NATIONAL LOW INCOME HOUSING COALITION

February 2, 2022

The Honorable Janet Yellen
Secretary
U.S. Department of the Treasury
Washington, D.C.

To Secretary Yellen:

On behalf of the National Low Income Housing Coalition (NLIHC), the NLIHC End Rental Arrears to Stop Evictions (ERASE) cohort, and the NLIHC-led Disaster Housing Recovery Coalition (DHRC), I write to express deep concern that an inequitable initial allocation formula, the slow redistribution of funds, and delays in the disbursement of obligated funds are creating critical gaps in the emergency rental assistance (ERA) program that must be immediately addressed by the U.S. Department of the Treasury. I urge Treasury to accelerate the ERA recapture and reallocation process to enable states and communities to address urgent rental arrears and keep low-income renters stably housed amid the ongoing COVID-19 pandemic.

The ERASE cohort includes 38 state and local nonprofit partners working together to conduct on-the-ground partnership development, capacity-building, outreach and education, and systems-change work to ensure that ERA funds reach renters with the greatest need for assistance – especially Black and Indigenous people and people of color (BIPOC), as well as other marginalized people and communities – and to build support for long-term housing solutions.

The DHRC includes more than 850 local, state, and national organizations focused on ensuring the lowest-income and most marginalized people have stable, affordable homes while they work to recover after a disaster. During the pandemic, the DHRC mobilized to lead a national effort to prioritize the health and safety of low-income renters and people experiencing homelessness.

Critical Gaps in Emergency Rental Assistance

Efforts by the Biden administration, advocates, and program administrators have significantly improved ERA programs and quickened the pace of ERA distribution, keeping millions of people stably housed. However, despite the improvement in ERA distribution, many struggling renters have yet to receive needed assistance: recent Treasury data indicate that over $29 billion in ERA remains unspent, and NLIHC estimates that $27 billion in ERA remains unobligated.

Moreover, some large ERA programs are in urgent need of more resources to serve low-income renter households at risk of losing their homes during the pandemic. In recent weeks, several large ERA programs have been forced to pause operations or close due to a lack of funds, putting low-income renters at risk of eviction. Texas, New York, New Jersey, and Illinois, for example, have all paused their programs, and California has indicated that it does not have enough funds to meet the existing need. NLIHC estimates that these five states are home to a combined 2.6 million households that are behind on rent, representing 40% of all renters behind on rent nationally. Meanwhile, the ERA programs run by these states have only served a fraction of those who have applied. Public dashboards indicate that New York's program has served 36% of applicants, for example, while California's program has served just 25% of applicants.

Recent NLIHC analysis indicates that without reallocated funds, six state programs – those run by California, the District of Columbia, Minnesota, New Jersey, New York, and Texas – will have spent all their ERA1 and ERA2 funds by March 2022. Meanwhile, despite having spent nearly all their funds, several of these states have so far only reached a small portion of potentially eligible renter households. In New York, California, and New Jersey, for example, ERA programs have served only 6%, 14%, and 15%, respectively, of all low-income, housing cost-burdened renter households statewide. These states demonstrate a clear and continued need for additional ERA funds.

In contrast, due to an inequitable statutory formula, ERA funds were disproportionately provided to several states with fewer renters. Current spending patterns indicate that some states can reach a high proportion of their cost-burdened, low-income renter households with only a portion of their funds and will be unable to spend all their ERA funds by the statutory deadline. NLIHC analysis finds that, absent any other changes, if states continue to spend at their current rate, nine states will still have remaining ERA2 funds by the statutory deadline for expending these resources. South Dakota, North Dakota, and Montana, for example, could serve 100% of their cost-burdened, low-income renter households and still have a combined total of more than $400 million in excess funds by September 2025.

To address the critical gaps in ERA, Treasury should use a data-driven approach to reallocate funds from programs where they may be left unused to programs requiring additional resources to serve all households in need. In support of this goal, NLIHC urges Treasury to take four steps.

Reallocate ERA1 and ERA2 Funds to High-Need Grantees

Treasury should evaluate and make public its estimates of the remaining need for assistance in jurisdictions by comparing the number of households that have received ERA in particular jurisdictions to the number of low-income, cost-burdened renter households and individuals experiencing homelessness in these jurisdictions. Reallocation policies and formulas must also include metrics to address inequities that were present in the initial allocation formula, which provided disproportionately low funding to jurisdictions with high proportions of renters of color. Treasury should then reallocate unused ERA funds quickly and equitably, prioritizing high-need states and jurisdictions that received disproportionately low ERA allocations and that have larger populations of low-income renters and people of color.

Recapture and Reallocate ERA2 Funds Beginning March 31, 2022

To enable states and jurisdictions to fulfill the intent of the ERA program – keeping low-income renters stably housed amid a public health and economic crisis – Treasury must use its statutory authority to recapture and reallocate unspent ERA2 funds starting on March 31, 2022. Rather than relying on a voluntary process, Treasury should aggressively recapture unspent and unneeded funds from jurisdictions where evidence indicates clearly that funding was received in excess of community needs and redirect these funds to jurisdictions where funding will be quickly deployed to keep families and individuals safely housed.

Although the statute establishes an expenditure deadline of September 30, 2025, for ERA2, the congressional intent of that deadline was to cover cases in which unspent funds are used for "other affordable housing purposes," including the construction and preservation of affordable rental housing, an activity that often takes several years to complete. Congress did *not* intend that the deadline apply to the expenditure of *emergency* rental assistance.

Treasury must meet the urgency of the moment and quickly reallocate funds to grantees that will spend the money now to keep renters safely housed. ERA funds should only be used for affordable housing development in cases where there is no longer a need for emergency assistance.

Increase Transparency of Reallocation Determination Process

As funds run out, many grantees are starting to consider next steps for their ERA program. Because the reallocation process occurs on a rolling basis, these grantees are unsure of the scale of the additional funds – if any – they could receive in the future. To help programs plan, Treasury should increase the transparency of the reallocation process by making public the formula by which reallocation amounts are determined. Treasury should also brief grantees on the amount of funding that could become available in future rounds of reallocation.

Require Programs to Release Obligated Funds through Direct-to-Tenant Assistance

Lastly, several programs have reported large amounts of obligated funds awaiting final approval before disbursement. For example, according to New York State Office of Temporary and Disability Assistance Summary Data through January 18, 2022, there are currently approximately 53,000 provisionally approved applications waiting for landlord verification. Some of these applications were submitted by tenants as long ago as September, August, July, and even June 2021.[1] While obligated funds cannot be reallocated, Treasury should require programs that are holding on to obligated funds due to lack of landlord response or completion of paperwork to disburse these funds directly to the tenants who applied for assistance. Many tenants who are awaiting approval are currently facing eviction or have already been evicted due to these unnecessary delays.

Thank you for your attention and consideration. For more information or to discuss further, please contact me (dyentel@nlihc.org) or NLIHC Senior Vice President of Policy Sarah Saadian (ssaadian@nlihc.org).

Sincerely,

Diane Yentel

Diane Yentel
President and CEO
National Low Income Housing Coalition

[1] ERAP Program Reports | Emergency Rental Assistance Program | OTDA (ny.gov)