NATIONAL LOW INCOME HOUSING COALITION

November 4, 2021

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

The Honorable Marcia Fudge
Secretary
U.S. Department of Housing and Urban Development
Washington, D.C.

The Honorable Gene Sperling
American Rescue Plan Coordinator &
Senior Advisor to the President
White House
Washington, D.C.

To Secretaries Yellen and Fudge and Senior Advisor Sperling:

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 our appreciation for your diligent work on the emergency rental assistance (ERA) guidance released by the U.S. Department of the Treasury on October 4 to incentivize ERA programs to adopt best practices and hold ERA programs accountable through the recapture and reallocation process. The guidance will, as NLIHC recommended, require poor-performing program administrators to submit improvement plans outlining how they will adopt best practices to expedite the delivery of assistance to renters and landlords. Importantly, Treasury says it aims to use the reallocation process to ensure improved relief to residents in low-performing jurisdictions by looking to other grantees in the state to deliver the funds. More guidance is needed, however, to ensure resources are allocated equitably and to truly hold renters harmless for the inefficiency and slow spending of some ERA programs.

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. The ERASE Cohort is a cohort of 36 state and local nonprofit partners working together to conduct on-the-ground partnership development, capacity-building, outreach and education, and systems-change work to support ERA funds reaching renters with the greatest need for assistance, especially Black, Indigenous, and people of color (BIPOC) and other marginalized people and communities and build support for long-term housing solutions.

The DHRC and the ERASE Cohort developed our recommendations for further Treasury guidance – outlined below – with direct input from local advocates and organizations working to ensure ERA reaches renters who face the greatest risk of eviction.

Ensure Renters are Held Harmless by Low-Performing Programs

Treasury seeks to hold renters harmless by redistributing, when feasible, recaptured funds based on 1) keeping recaptured funds in the same state where they were initially allocated, 2) redistributing to states and localities that have spent all or most of ERA 1 and 2 and 3) assessing need. However, additional guidance is necessary to ensure reallocation decisions are based on a balance between spending resources quickly, meeting the needs of low-income renters in the Unites States, and retaining renters' access to emergency aid when funds are moved across program jurisdictions.

Treasury should make reallocation decisions based on the needs of renters and people experiencing homelessness, and not solely on the ability of programs to get the funds out the door quickly. The Treasury Department should use state and local renter household and homelessness data to define the need for ERA in a state and/or a locality.

Before Treasury reallocates funds out of poor-performing states and localities with high needs, the agency should first 1) ensure that the program makes the programmatic changes necessary to speed up spending; or 2) reallocate to another grantee or require grantees to subaward the funds to another entity in the jurisdiction that can distribute aid. Treasury should avoid the potential unintended consequence of creating ERA deserts, geographic gaps where eligible households cannot access funds due to where they live.

Treasury guidance allows grantees to make subawards to other entities, including nonprofit organizations, to administer ERA programs. Treasury should help ensure renters and landlords in communities with poor-performing and low-capacity ERA programs can still access aid by requiring grantees to subaward funds to community-based nonprofit organizations and courts with the capacity to administer aid. This safeguard is especially important in areas where there may not be another eligible state or local government grantee with the capacity to serve additional jurisdictions. Without this flexibility, Treasury may have no choice but to reallocate funds out of state or locality, leaving renters and landlords without aid.

Treasury must ensure to the greatest extent possible that all households retain access to ERA by requiring grantees receiving recaptured funds to serve households from the jurisdiction where funds were recaptured or voluntarily reallocated. As part of any request for additional funding, Treasury should ask how the new jurisdiction will process applications for households from the original jurisdiction. While we recognize that implementation may be challenging, we believe this critical protection deserves full consideration by Treasury and we are committed to working with the agency to further develop this policy.

Incorporate Need- and Equity-Related Measures into Redistribution Formula

Treasury's reallocation guidance seeks to balance issues of need and spending by redirecting resources to top-performing grantees serving high-need areas. Without a more pronounced focus on need- and equity-related considerations, ERA funds may be reallocated to programs solely based on their ability to spend money the quickest, and not necessarily programs serving households with the greatest needs.

Treasury should evaluate the remaining need for assistance in a jurisdiction by considering the number of extremely low-income households that have received ERA compared to the number of extremely low-income cost-burdened renter households within the jurisdiction – as these households would likely meet program criteria.

Treasury guidance makes clear ERA can be used to help households experiencing homelessness secure permanent housing. Given this, evaluations of remaining need in a jurisdiction should include an estimate of the number of people experiencing homelessness, and program improvement plans should include strategies to house people experiencing homelessness and connect them to longer-term housing and supports.

Treasury should also incorporate equity-related measures in its redistribution formula to ensure resources reach households with the greatest needs, not just renters in high-performing jurisdictions. Treasury should conduct an equity analysis that involves comparing who has been served by the program, as well as who has been denied, with local demographics.

Treasury should use the recapture and reallocation process to address inequities in the allocation formula included in statute establishing the ERA program, which disproportionately distributed ERA funds to small states and communities through the small state minimum. While some recaptured funds should be reallocated to grantees within the state to hold renters harmless for the poor performance of their ERA program (as discussed above), Treasury should use the recapture and reallocation process to direct excess ERA funds to high-need states and communities, regardless of their location, to help address the original inequitable allocation of resources.

Fast-spending programs that are not distributing funds equitably should only receive recaptured funds if they commit to adopting best practices that will help ensure funds reach the households with the greatest needs in an equitable manner. The Treasury Department, for example, should require these programs to partner with community-based organizations to serve the marginalized populations they have not adequately assisted.

Strengthen and Enforce Program Improvement Plans

While the overall rate of ERA spending is improving, far too many programs are needlessly delayed by their own refusal to utilize proven best practices for accelerating the delivery of aid. We applaud the Treasury Department for requiring poor-performing grantees to submit program improvement plans demonstrating how the program will make mid-course corrections and adopt best practices to improve the delivery of aid. Treasury should further strengthen and enforce its program improvement plan provisions.

Treasury guidance says it will approve a grantee’s program improvement plan if it identifies actions the grantee will take to improve program performance. Treasury should explicitly require all program administrators to implement best practices, including self-attestation and direct-to-tenant assistance, as a condition for receiving recaptured funds. Additionally, Treasury should not allow programs to add additional program requirements that are presenting barriers to accessing ERA, such as requiring social security numbers, landlord rental ledgers, and other documentation not required by Treasury.

While Treasury asks programs to indicate the number of applications they project to receive and the amount of assistance they will expend, this number does not necessarily reflect the need for ERA. Treasury should instead ask programs to assess how many renters and people experiencing homelessness are in need of emergency rental assistance and to develop a plan to reach those households.

Treasury should require grantees to explicitly address issues of equity, including how effectively they have served marginalized communities in their jurisdiction and what steps they will take to reach the households they have failed to serve. Treasury should require program administrators to commit to actions that will ensure ERA is distributed equitably, including by partnering with community organizations with a demonstrated history of serving marginalized populations, as a condition for receiving recaptured funds.

There is often a difference between what best practices ERA programs report they are implementing versus their practices on the ground. Treasury should include oversight measures in the program improvement plan review process to ensure grantees are actually implementing the policies identified in their plans.

Finally, spending ERA quickly does not guarantee that funds are being distributed equitably. Treasury guidance, however, requires only poor-performing programs to submit program improvement plans. Treasury should require all ERA grantees to submit program improvement plans that address the equitable distribution of funds. Program improvement plans offer a critical opportunity for Treasury to hold all ERA grantees – not just poor-performing programs – accountable to ensuring aid equitably reaches households most in need.

Increase Data Transparency and Oversight

Treasury should closely monitor how funds are being spent and commit to publishing reports on the progress of low-performing grantees. Treasury should require programs to make public in real time their program improvement plans and the required progress report so that advocates and community members can understand and track program changes in progress.
Collecting meaningful data allows for proper oversight and for policymakers and advocates to identify areas for improvement in programs. Treasury should make public all data that is required to be reported quarterly and identify the process it will use for data-sharing agreements regarding non-public data.

The statute requires data collected by Treasury to be publicly disaggregated by the gender, race, and ethnicity of the applicant, but Treasury is currently only reporting this data for all grantees combined. Treasury should release demographic applicant data for each grantee. This would allow for more granular program-level analysis, particularly concerning issues of racial equity. Treasury should also adjust their reporting requirements so that that demographic data can be disaggregated by the smallest geography possible, such as block group or census tract, while protecting personally identifiable information. These adjustments could include altering the Household Payment File to also include demographic information. Disaggregating data by geography will allow researchers, academic institutions, and advocates to better understand gaps in program design and opportunities for policy improvements.

The statute also directs Treasury to make full and unredacted data available for statistical research purposes. Access to the Participant Household Payment Data File – including physical addresses, zip codes, types of assistance, payee type, months covered by assistance, and amount of assistance – will allow researchers to conduct more in-depth analyses of ERA programs. The Treasury Department should ensure that the process for obtaining such data is open to any research entity capable of maintaining the security of the data and provide clear information about this process in its guidance.

The Treasury Department should make public information on recaptured and reallocated funds, including grantees that have had funds taken away and those that receive additional funds, as part of Treasury's monthly Emergency Rental Assistance data reports.

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

Sincerely,

Diane Yentel
President and CEO
National Low Income Housing Coalition