TREASURY'S IMPROVED GUIDANCE ADDRESSES CONCERNING TRENDS IN ERA PROGRAMS

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The U.S. Department of the Treasury and the White House released on May 7, 2021 the second allocation of Emergency Rental Assistance (ERA) and published new guidance and a White House summary with major improvements to ensure these critical resources reach the lowest-income and most marginalized people in need. The updated guidance directly addresses NLIHC's concerns about several developing trends in ERA programs that may prevent critical resources from reaching households with the greatest needs. NLIHC urged the Biden administration to remove these barriers and provide further needed guidance to ensure the lowest-income and most marginalized renters can remain stably housed during the pandemic. The changes made by Treasury and the White House will help ensure ERA funds reach the renters most in need of assistance to avoid evictions and secure housing stability.

This table highlights Treasury's previous guidance on several roadblocks in ERA programs, NLIHC's recommendations on how to overcome these challenges, and how Treasury and the White House's revised guidance addresses each issue. While most of these improvements apply specifically to the allocation of funds from the American Rescue Plan (ERA2), the White House and Treasury make clear what they consider model ERA programs that serve renters most in need and do not violate civil rights laws. Program administrators should apply this guidance to their full ERA program.

Concerns about ERA Programs	Treasury's Previous Guidance (3/26)	NLIHC's Recommendation	Treasury's Revised Guidance (5/7)
Lack of Direct-to-Tenant Assistance Options	Treasury's 3/26 FAQ says grantees must conduct outreach to landlords, but it does not encourage or require a direct-to-tenant option when the landlord does not respond. Treasury's 3/26 guidance requires program administrators to wait 14 days when reaching out to landlords by mail or 10 days when reaching out by phone, text, or email before providing direct-to-tenant assistance.	Treasury should encourage or require states and localities to provide direct-to-tenant assistance options. Additionally, Treasury should shorten the period of time program administrators must wait before they can provide assistance directly to tenants. The current timeframe is still too long and will cause significant delays as program administrators work to distribute funds.	Treasury's new guidance **requires** programs distributing ERA provided by the American Rescue Plan (ERA2) to offer direct-to-tenant assistance when landlords refuse to participate. Treasury's new guidance cuts in half the time to determine whether a landlord elects to participate, to 7 days when reaching out by mail and **5 days** when reaching out by phone, text, or email. Additionally, the new guidance allows ERA2 programs to offer direct-to-tenant assistance **first and immediately** – not requiring programs to go to landlords beforehand.

Burdensome Documentation Requirements	Treasury's 3/26 guidance explicitly allows renters to self-certify that they meet most eligibility criteria, including COVID-related hardships, income, housing stability, and the amount of back rent owed. Despite this critical flexibility provided in Treasury's FAQ, many programs continue to require burdensome documentation.	Treasury should make clear that self-attestation is the preferred method. Treasury should bar or actively discourage entities from imposing additional, unnecessary documentation.	Treasury strongly encourages grantees to **avoid establishing burdensome documentation requirements** that would reduce participation. This matches the rules for Treasury's Homeowner Assistance Fund, as recommended by NLIHC. Treasury's revised guidance allows programs to verify eligibility based on readily available information or "proxies," such as the average income of the neighborhood in which renters live.
Prioritization of Households with the Greatest Needs	While the statute requires that states and localities prioritize households with incomes at or below 50% of area median income (AMI), neither the statute nor Treasury's previous guidance address how programs should meet this requirement. The statute says administrators can incorporate additional criteria to prioritize applicants, but Treasury's 3/26 guidance does not address how programs might implement prioritization of specific populations.	Treasury should direct states and localities to set aside at least 40% of total funds for extremely low-income households and 70% of total ERA funds to households with incomes below 50% of AMI. Treasury should encourage grantees to target outreach and assistance to census tracts with the highest number of low-income and rent-burdened tenants, using tools such as the Urban Institute's rental assistance prioritization tool or the CDC's Social Vulnerability Index.	To ensure that ERA is reaching those who need it most, Treasury's new guidance **requires** programs to report how they will achieve the required prioritization of assistance to renters most in need.
Exclusion of Federally Assisted Households	While Treasury's 3/26 guidance makes clear that federally assisted households are not precluded from receiving ERA, several programs are still excluding these households from applying for assistance.	Treasury should prohibit states and localities from excluding federally assisted households from applying for assistance. Since federal housing programs typically serve households with the lowest incomes, excluding these households will harm those most at risk of housing insecurity and, in worst cases, homelessness.	Treasury's new guidance **prohibits** ERA2 programs from denying assistance to eligible households solely because they live in federally assisted housing, and notes that **failure to do so may violate civil rights laws**. Treasury encourages grantees to partner with the owners of federally subsidized housing to ensure their residents are reached.

Renter Protections	Neither the statute nor Treasury's 3/26 FAQ establish eviction protections for renters when ERA is provided directly to the landlord.	Treasury should require landlords not to evict renters for a certain period upon receipt of assistance. The need to impose renter protections must be balanced with the need to distribute critical ERA resources to renters most in need. The concern of landlords refusing to participate due to this concession can be minimized by establishing robust direct-to-tenant options.	The new guidance **prohibits the eviction of renters** for nonpayment while ERA payments are being made on their behalf. Treasury encourages grantees to require that landlords not evict tenants for at least 30 days longer than the period covered by the ERA as a condition of receiving payment.
Access for People Experiencing Homelessness	Treasury's 3/26 FAQ, while not explicit, provides flexibility to states and localities to use ERA to help people experiencing homelessness secure permanent housing by stating, "there is no requirement regarding the length of tenure in the current unit," and the statute "does not prohibit the enrollment of households for only prospective benefits."	Treasury should explicitly state in further guidance that assisting households experiencing homelessness to secure housing is an eligible use of ERA funds.	Treasury's new guidance **reinforces** that using ERA for moving expenses, security deposits, future rent, utilities, and the cost of a transitional hotel or motel stay are eligible – and encouraged – uses of ERA.

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