NATIONAL LOW INCOME HOUSING COALITION

March 23, 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) and our End Rental Arrears to Stop Evictions (ERASE) cohort and Disaster Housing Recovery Coalition (DHRC), I write to urge the U.S. Department of the Treasury to begin the process of recapturing and reallocating funds appropriated under the "American Rescue Plan Act" (ERA2) starting on March 31, 2022, as directed by the statute. While COVID-19 cases and deaths are rapidly declining following a winter surge caused by the Omicron variant, millions of people remain behind on rent and at risk of losing their homes. Treasury's efforts to recapture and reallocate the ERA1 funds enacted under the "Consolidated Appropriations Act of 2020" (ERA1) have been critical, but far more resources could be made available to struggling households through the recapture and reallocation of ERA2 funds. To help households avoid displacement and maintain housing stability, Treasury should recapture ERA2 funds from programs where they may be left unused and reallocate them to states and communities that urgently need resources to assist tenants behind on rent. Treasury should meet the urgency of the moment by starting the recapture and reallocation process for ERA2 funds as soon as possible and limiting the ability of grantees to divert funds away from emergency use.

By acting quickly to recapture and reallocate ERA2 funds, Treasury can enable grantees to address urgent housing needs. The most recent data from the U.S. Census Pulse Survey show that 16.8% of adults are currently behind on their rent, up from 15.8% in early January. Nearly half (44.8%) of these adults report that they are very likely or somewhat likely to be evicted within the next two months. America's lowest-income and most marginalized renters are most severely impacted: more than one in five renters with household incomes below $25,000 are behind on rent, and Black, Asian, and Hispanic renters are being disproportionately harmed. Without access to ERA2 funds, many of these households may face eviction, even as millions of dollars remain unspent because some grantees are unable or unwilling to quickly deploy these emergency funds.

Recent NLIHC analysis indicates that without additional reallocated funds, seven state grantees will have spent all their ERA1 and ERA2 funds by the end of March 2022, and 24 states will have expended all their funds by December 2022. Several states are likely to close their programs even sooner – once all funds are obligated – as evidenced by the closure of programs in the District of Columbia, Minnesota, New Jersey, and Texas. Despite having spent nearly all their funds, several states have reached only a small portion of potentially eligible renter households. In New York, California, and New Jersey, for example, the number of households served by ERA programs represent only 8%, 17%, and 16% of all low-income cost-burdened renter households statewide, indicating a continuing need for additional ERA funds.

In contrast, because of an inequitable statutory formula, ERA funds were provided to several states with fewer renters at disproportionate rates compared to states with larger populations of low-income renters and people of color. Current spending patterns indicate that some states will be able to reach a high proportion of their low-income cost-burdened renter households using only a portion of their funds and will be unable to spend all their ERA funds by the statutory deadline. NLIHC analysis finds that if states continue to spend at their current rates, five states will still have ERA2 funds in September 2025. South Dakota, North Dakota, and Wyoming, for example, would be able to serve a number of households equal to 100% of their low-income cost-burdened renter households and still have excess funds by September 2025. Treasury should use a data-driven approach to reallocate funds from programs where they could go unused to programs that are being forced to shutter early.

Begin the Process of Recapturing and Reallocating ERA2 Funds As Soon As Possible

To help ensure that ERA2 funds are used effectively to prevent housing instability during the pandemic, Treasury should begin the process of recapturing and reallocating ERA2 funds starting on March 31, 2022, as directed by the American Rescue Plan Act, rather than waiting months or years to undertake this process. The statute states that "[b]eginning March 31, 2022, the Secretary <u>shall</u> reallocate funds" to eligible grantees. Congress established this early date for beginning the recapture and reallocation process to ensure that limited emergency funds would be deployed quickly to prevent renters from losing their homes.

While Treasury may consider waiting to begin the recapture and reallocation process until after October 1, 2022 – the date when eligible grantees may start to direct ERA2 funds to "other affordable rental housing and eviction prevention activities" – delaying the recapture and reallocation process in this way is contrary to congressional intent. By establishing an earlier timeline for the recapture and reallocation process, Congress created an incentive to encourage grantees to spend down emergency funds quickly to address urgent housing needs occurring during the pandemic. If Congress had intended to give grantees the opportunity to use ERA2 funds for other housing purposes *before* Treasury was permitted to recapture and reallocate funds, it would have clearly established this in statute.

To facilitate the recapture and reallocation of ERA2 funds, Treasury should consider withholding disbursement of a grantee's additional tranches of ERA2 funds until there is clear evidence that the grantee has a need for the remaining funds and is able to deploy resources to households in need quickly and equitably. Treasury should reallocate unspent and unneeded funds to jurisdictions that will spend the money immediately to keep renters safely housed.

Limit the Use of ERA2 Funds for Other Affordable Housing Purposes

We understand that Treasury and some ERA program administrators may prefer to use a portion of ERA2 funds to support "other affordable rental housing and eviction prevention activities," as permitted by statute. We have been in contact with several program administrators, for example, who wish to use these resources to address the severe shortages of affordable housing in their communities by expanding and preserving the supply of affordable homes.

While NLIHC consistently advocates for increased federal investment to expand and preserve the supply of rental homes affordable and available to the lowest-income households, we believe that ERA2 funds are not the appropriate resource for supporting this activity. Despite the statutory provision allowing some grantees to use emergency funds for other housing purposes, Congress clearly intended this program primarily to address the urgent needs of millions of households at imminent risk of losing their homes. ERA2 is an emergency resource, enacted by Congress to keep households stably housed in order to slow the spread of COVID-19 and protect individuals and families from the economic harm caused by the pandemic. For this reason, Treasury should allow ERA2 funds to be used for "other affordable rental housing and eviction prevention activities" *only after these resources are first made available to grantees for use as emergency rental assistance.*

Given the ongoing need for ERA2 funds to help keep renters stably housed and the clear congressional intent to use ERA2 primarily for this purpose, Treasury should strictly interpret the statute as limiting the number of grantees that are able to use emergency funds for "other affordable rental housing and eviction prevention activities." The American Rescue Plan Act states that eligible grantees may use ERA2 funds "that are unobligated on October 1, 2022" for other housing purposes, so long as "prior to obligating any funds for this purpose, the eligible grantee has obligated not less than 75 percent of the total funds allocated to such eligible grantee." Treasury should issue guidance to make clear that the requirement to obligate 75% of total allocated funds must be met *by* October 1, 2022.

While some grantees may argue for a more flexible standard to allow this obligation requirement to be met *any time* after October 1, 2022, Congress did not intend for such an expansive interpretation of the statute. Congress intentionally created a very limited exception to allow some ERA2 funds to be used for other housing purposes for two main reasons. First, Congress wanted to prevent ERA2 funds that would otherwise go unspent from reverting back to the Treasury's general fund, where they could not be used to address critical housing needs. Second, Congress wanted to incentivize grantees to deploy these emergency funds quickly. Only those grantees that worked quickly to distribute aid would be rewarded with the opportunity to address other housing needs in their communities.

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

Sincerely,

Diane Yentel

Diane Yentel
President and CEO
National Low Income Housing Coalition