March 31, 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 Susan Rice
Director
Domestic Policy Council
Washington, D.C.

To Secretaries Yellen and Fudge, and Director Rice:

On behalf of the National Low Income Housing Coalition and the NLIHC-led Disaster Housing Recovery Coalition (DHRC), I write to request a meeting with you to share issues with the Emergency Rental Assistance (ERA) program in need of immediate resolution. NLIHC is tracking more than 700 state and local rental assistance programs created or expanded during the pandemic, analyzing key features of these programs, and sharing best practices for ensuring ERA is distributed to households most in need and is used to advance racial equity. We are concerned with obstacles that will prevent vital resources from reaching households with the greatest needs, and we urge the U.S. Departments of the Treasury (Treasury) and Housing and Urban Development (HUD) to take immediate action to remove these barriers and ensure that the lowest-income and most marginalized renters can remain stably housed during the pandemic.

The more than $46 billion in ERA funds provided by Congress in the American Rescue Plan Act and the December 2020 COVID-19 relief package can prevent millions of low-income people from losing their homes during the pandemic, but only if distributed swiftly and with careful attention to reaching people with the lowest incomes and other marginalized households in need. I appreciate the diligent efforts by the Departments of Treasury and HUD to assist states and localities with the distribution of these historic resources. More must be done, however, to address several developing trends in ERA programs and to provide further needed guidance to ensure resources reach those households most at risk of eviction.

Concerning Trends in ERA Programs

Lack of Direct-To-Tenant Assistance Options

Too few ERA programs offer direct-to-tenant assistance options. Of the 130 ERA programs that are currently accepting applications, only 19 explicitly state they will provide direct-to-tenant assistance. Several other programs misinterpret the Treasury FAQ as requiring programs to dismiss a tenant's application if the landlord does not respond or refuses to participate. The Treasury FAQ discusses the need to contact landlords, but it does not include any reference or discussion of the direct-to-tenant option when the landlord does not respond.

Other states have expressed concern about documentation requirements, duplication of benefits, and future audits when providing direct payments to tenants. Further guidance around these areas could resolve apprehension about adopting this essential method.

Treasury should urge states and localities to provide direct-to-tenant assistance options, which are especially important given the developing trend of landlords refusing to participate in emergency rental assistance programs. Without a direct-to-tenant option, renters will be effectively barred from receiving the assistance needed to remain in their homes, undermining the efficacy of the program.

Treasury should also reduce the period of time program administrators must wait before they can provide assistance directly to tenants. The current FAQ requires program administrators to wait 10 to 14 calendar days after outreach to landlords before providing direct-to-tenant assistance. While we appreciate that the Biden administration reduced this timeframe from the 21 days included in the Trump administration's FAQ, it is still too long and will cause significant delays as program administrations work to distribute funds. Treasury should shorten this period to ensure that resources are quickly deployed before renters face the risk of eviction.

Continued Reliance on Burdensome Documentation Requirements

Many ERA programs are not utilizing the critical flexibility provided in Treasury's FAQ to use self-attestation and reduce burdensome documentation requirements. NLIHC was pleased by the extent to which Treasury's FAQ allows self-attestation, but many programs continue to require burdensome documentation. Of the 130 programs ERA programs that are currently accepting applications, only 27 explicitly allow for self-attestation for income, COVID hardship, and/or housing instability. Many of these programs are only allowing self-attestation in very limited circumstances.

The failure to adopt self-attestation will slow, and in some cases prevent, efforts to distribute critically needed funds. For example, program administrators from Madison (WI), King County (WA), San Antonio (TX), and San Francisco (CA) report that applications for rental assistance have slowed the new ERA funds due to burdensome documentation requirements and requirements to wait 10-14 days after contacting landlords before providing assistance directly to tenants.

Treasury should make clear that self-attestation is the preferred method and should bar or actively discourage entities from imposing additional, unnecessary documentation. Unnecessary and burdensome application processes and documentation requirements create barriers that slow application processing times, discourage eligible households from seeking assistance, and prevent states and localities from spending resources in a timely manner. Moreover, these restrictions prevent assistance from reaching households with the greatest needs who are most at risk of evictions and homelessness, undermining the purpose of ERA funds provided by Congress.

Exclusion of Federally Assisted Households

Although the Treasury FAQ makes clear that federally assisted households are not precluded from receiving ERA, 15 of the 130 programs NLIHC is tracking excludes these households from applying for ERA. Some programs are inconsistent, barring only households with HUD Section 8 or living in public housing.

Because federal housing programs typically serve households with the lowest incomes, these restrictions will bar assistance to households most at risk of housing insecurity and, in worst cases, homelessness. Even those federally assisted households who have received an income recertification may still have accumulated back rent; not all federal programs must make income recertifications retroactive, even during a pandemic.

Exclusion of Undocumented Households

NLIHC is deeply concerned that ERA programs are denying assistance based on citizenship status, despite the statute providing no such limitation. While some resources in the American Rescue Act and other relief packages were restricted based on immigration status, ERA funds were not restricted in this way.
To date, NLIHC has identified eight programs that either require social security numbers or state explicitly that the program is available only for U.S. citizens.

It is inappropriate and unlawful to allow states to impose their own restrictions to bar households at risk of eviction from receiving funds specifically provided by Congress for this purpose. Because emergency rental assistance is not subject to federal immigration restrictions, state and local governments should provide resources to households regardless of immigration status. A recent district court decision found that an attempt to restrict emergency rental assistance funded through the Coronavirus Relief Fund was preempted by federal immigration law.

Treasury must bar states and localities from excluding households in need based solely on their immigration status.

Further Needed Guidance

In addition to the need for immediate resolution to the above items, there are additional issues – as included in NLIHC's latest set of recommendations – that need further guidance by Treasury.

Prioritization of Households with the Greatest Needs

The statute requires that states and localities prioritize households with incomes at or below 50% AMI. The Treasury FAQ provides no guidance on how states and localities should meet this requirement.

Research from NLIHC, the Housing Initiative at Penn, and NYU Furman Center surveyed program administrators across the U.S. to identify key characteristics of emergency rental assistance programs and their relationship to program outcomes. The research shows that programs targeting households with very low incomes were more effective at distributing assistance than programs targeting households with moderate incomes. The report provides strong evidence that program administrators should target resources to lower-income households.

Without clear direction from the Department of Treasury, states and localities may shift resources away from households at the greatest risk of housing instability, evictions, and homelessness to instead assist higher-income households that are easier to reach. Setting spending thresholds encourages states and localities to serve households most at risk of housing instability, evictions, and homelessness. Strict income targeting also ensures greater racial equity.

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. Extremely low-income should be defined as it is under HUD's national Housing Trust Fund program to include households with incomes below the federal poverty limit or 30% of AMI, whichever is higher. In rural areas, AMI should be based on the statewide, non-metropolitan statistical area. As discussed below, tribal nations and tribally designated housing entities should have additional flexibility to determine AMIs using the definition in the Native American Housing and Self-Determination Act (NAHASDA) programs.

Outreach to Marginalized Populations

The Treasury Department should urge 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 rental assistance prioritization tool developed by the Urban Institute as part of the Framework for an Equitable COVID-19 Homelessness Response or the social vulnerability tool created by the Centers for Disease Control and Prevention (CDC).

Treasury should encourage grantees to subcontract with state and local organizations with a demonstrated history of serving marginalized populations including Black or Indigenous People of Color (BIPOC), immigrants, formerly incarcerated people, LGBTQ individuals, people with disabilities, women-headed households, and others. This would help ensure funds are being distributed in an equitable manner and reach households most impacted and harmed by the pandemic.

Access for People Experiencing Homelessness

The updated Treasury FAQ provides flexibility to states and localities to use ERA to help people experiencing homelessness secure permanent housing. The FAQ states that "there is no requirement regarding the length of tenure in the current unit," and that the statute "does not prohibit the enrollment of households for only prospective benefits." To ensure that states understand this flexibility, Treasury should explicitly state in further guidance that assisting households experiencing homelessness with securing housing is an eligible use for emergency rental assistance funds. Including this as an explicit use of funds will help ensure more communities use these critical resources in this way.

I look forward to the opportunity to meet with you to further discuss these urgent issues. Please contact me (dyentel@nlihc.org) or my executive assistant Josephine Clarke (jclakre@nlihc.org) so that we can schedule a call or meeting soon.

Sincerely,

Diane Yentel

Diane Yentel
President and CEO
National Low Income Housing Coalition

Cc:
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