

January 21, 2021

The Honorable Joseph R. Biden
President of the United States
Washington, D.C.

Ms. Janet Yellen
Secretary Designate
U.S. Department of the Treasury
Washington, D.C.

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

To President Biden, Secretary Designate Yellen and Secretary Designate Fudge:

On behalf of the National Low Income Housing Coalition and the NLIHC-led Disaster Housing Recovery Coalition (DHRC), I write to express deep concern about the [Frequently Asked Questions](#) (FAQ) document released by the U.S. Department of the Treasury on January 19, 2021 regarding the emergency rental assistance (ERA) program. This program was created by Congress to distribute critically needed emergency rental assistance to millions of households at risk of losing their homes. Many of the provisions in the FAQ document, however, would make it more difficult for America's lowest-income and most marginalized individuals to remain stably housed during the pandemic. I urge you to quickly rescind the FAQ and replace it with improved guidance that includes NLIHC's [recommendations](#), which were written with significant stakeholder input and supporting research.

Many of the provisions of the FAQ – as outlined below – directly undermine our nation's ability to keep renters stably housed and to prevent the spread of COVID-19. The Treasury Department must ensure that any guidance it provides addresses the challenges experienced by localities in administering rental assistance programs funded through Coronavirus Relief Fund (CRF) and other CARES Act resources. Instead, the FAQ document exacerbates such challenges by requiring unnecessary and burdensome application processes and documentation requirements and creating new barriers that will increase application processing times, discourage eligible households from seeking assistance, and prevent states and localities from spending resources in a timely manner.

Imposes Burdensome Documentation Requirements

Treasury should make clear that self-certification is the preferred method for state and local governments to meet statutory criteria and should bar or actively discourage entities from imposing additional, unnecessary documentation requirements. Self-certification will enable states and localities to quickly disseminate aid to households in need and prevent evictions and, in worse cases, homelessness during the pandemic.

Financial Hardship

Treasury's FAQ document imposes additional, unnecessary documentation requirements in direct conflict with the statutory requirement. While the FAQ states that grantees "must require applicants to document" hardship beyond self-attestation, the statute expressly states that renters "shall attest in writing" to self-certify their financial hardship. This provision was enacted by Congress to address challenges in distributing rental assistance under the CARES Act.

Despite minimal requirements under the CARES Act, many state and local rental assistance programs required burdensome documentation from renters. These standards typically required renters to provide proof of hardship due to COVID-19, involving documentation of income before and after COVID-19. These requirements increased application processing times, discouraged eligible households from seeking assistance, and prevented some states and localities from spending down CRF resources in a timely manner, despite the clear and overwhelming need. Congress explicitly included this provision to require self-attestation to discourage states and local governments from repeating the challenges experienced in implementing CARES Act-funded rental assistance programs.

This provision in the Treasury document undermines Congressional intent. Treasury should direct states and localities to not impose any additional documentation requirements beyond self-attestation.

Income Determination

The Treasury FAQ also imposes burdensome documentation requirements for income determinations. The statute allows grantees to determine income eligibility based on “sufficient confirmation, as determined by the Secretary, of the household’s monthly income at the time of application...” Rather than allowing self-certification by the household of their monthly income, the FAQ document directs households to provide “source documentation” to verify two months of income.

This directive goes beyond the federal statute and will make it difficult for renters to receive needed assistance to remain stably housed.

Treasury should explicitly state that self-certification or self-attestation is the allowable and the preferable standard for determining income eligibility. Treasury Department guidance should, to the greatest extent possible, encourage states and localities to minimize unnecessary or overly restrictive documentation requirements.

Risk of Housing Instability and Homelessness

The statute requires eligible households to demonstrate a risk of experiencing homelessness or housing instability. This criteria can and should be met through self-certification. Instead, the Treasury FAQ requires that states and localities impose additional documentation requirements that will undermine the ability to provide assistance quickly to households in need.

Instead, Treasury should direct grantees to accept a broad range of evidence, including self-certification, of one or more of the following or other similar indicators of housing instability: income at or below 30% of AMI, severe housing cost-burdens, doubling or tripling up with other households, accumulation or expectation of back rental or utility payments, and currently experiencing homelessness at the time of application.

Eligible Assistance

Throughout the document, Treasury incorrectly states that eligible housing costs under the emergency rental assistance program are limited to those that the household is unable to meet as a result of COVID-19. That is a misreading of the statute: there is nothing in the statutory language that limits assistance in this way. The only references to COVID-19 in the law are related to the scope of allowable stabilization services, the use of funds beyond rental and utility

assistance, examples of how grantees can prioritize applicants, and the requirement that grantees allow households to self-attest to financial hardship, as discussed above.

Treasury must clarify in a new FAQ that there is no such limitation in the program and that prior interpretations by Treasury were incorrect.

Creates Barriers for Eligible Households

Prioritization of Very Low-Income Households

The statute requires that states and localities serve households with incomes at or below 80% of the area median income (AMI) and prioritize households with incomes at or below 50% AMI. Unfortunately, the Treasury FAQ provides no guidance on how states and localities should meet this requirement.

Without clearer direction, 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.

Direct Assistance to Renters

The statute expressly allows grantees to provide rental assistance funds directly to renters if their landlord refuses to participate in the program. This important provision stems directly from the challenges some states and localities experienced in distributing CARES Act-funded rental assistance. In some cases, landlords refused to complete a W-9 form or accept payment directly from the program, leaving renters ineligible for assistance. Some localities quickly adjusted their programs to allow funds to be provided directly to the renter for the purposes of making rent payments when landlords were unresponsive. This change helped ensure housing stability and avoid unnecessary evictions during the pandemic.

The FAQ provides for an unnecessarily lengthy period of time for program administrators to determine that a landlord is refusing to participate by requiring grantees to wait 21 days after conducting outreach to the landlord before providing assistance directly to the renter.

With the primary goal of housing security in mind, Treasury should issue a new FAQ allowing states and localities to provide assistance directly to renters in as short a timeframe as possible after outreach to the landlord. This timeframe should be no longer than 7 calendar days, with "day one" beginning the day the landlord is contacted by the grantee.

Federally Assisted Households

The statute expressly allows federally assisted households to receive emergency rental assistance, though it requires grantees “to the extent feasible” to “ensure that any rental assistance provided to an eligible household...is not duplicative of any other federally funded rental assistance provided to such household.”

The FAQ, however, unnecessarily limits assistance to federally assisted households beyond the statutory requirement. The FAQ states that if “tenant rent is adjusted according to changes in income, the renter household may not receive ERA assistance.” This unfairly excludes households who may have received an income recertification, but who, nonetheless, have accumulated back rent. Not all federal programs are required to make income recertifications retroactive, even during a pandemic. Because federal housing programs typically serve households with the lowest incomes, Treasury’s FAQ will bar assistance to households most at risk of housing insecurity and, in worst cases, homelessness.

Treasury should make clear that federally assisted households are eligible for emergency rental assistance and that such assistance can cover tenant rental obligations not addressed through income recertifications.

Fails to Collect Required Data

The statute requires that Treasury, in consultation with HUD, publish reports quarterly on program outcomes. Collecting meaningful data allows for proper oversight and for policymakers and advocates to discern best practices and areas for improvement in programs and program design. To achieve this goal, the statute specifically requires Treasury to collect data on applicant incomes, disaggregated by income levels, including applicants with incomes below 30% of Area Median Income (AMI), between 30% and 50% of AMI, and between 50% and 80% of AMI. The FAQ document, however, does not specifically direct grantees to collect data on the applicant’s income as a percentage of median income, as required by law.

Treasury should direct grantees to collect this data. This information is critically needed to ensure that grantees comply with the federal requirement to prioritize households below 50% of AMI. This information is also needed to ensure that households with the lowest incomes who face the greatest levels of housing instability are served.

Excludes Internet and Telephone Utilities

The FAQ states that internet and telephone service is not included as a “utility” and therefore, households cannot receive assistance to cover these costs. This is short-sighted. Given the pandemic and the resulting reliance on internet for remote work, learning, and telehealth, and the need to communicate via telephone, assisting with these costs can and should be an allowable use of the ERA funds.

Treasury should provide guidance that explicitly allows home internet service and telephone service to be considered “utilities” and eligible for assistance.

The primary goal of emergency rental assistance must be to ensure housing stability during and after the pandemic. To this end, I urge the Treasury Department to rescind the FAQ and replace it with new guidance that includes NLIHC's [recommendations](#).

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,

A handwritten signature in black ink that reads "Diane Yentel". The signature is written in a cursive, flowing style.

Diane Yentel
President and CEO
National Low Income Housing Coalition