

March 5, 2021

The Honorable Janet Yellen  
Secretary  
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.

The Honorable Matt Ammon  
Acting Secretary  
U.S. Department of Housing and Urban  
Development  
Washington, D.C.

To Secretary Yellen, Secretary Designate Fudge, and Acting Secretary Ammon:

On behalf of the National Low Income Housing Coalition and the NLIHC-led Disaster Housing Recovery Coalition (DHRC), I write to express our appreciation for your diligent work on the new [Frequently Asked Questions](#) (FAQ) document released by the U.S. Department of the Treasury on February 22, 2021 to help states and communities effectively distribute \$25 billion in [emergency rental assistance](#) (ERA) to renters in need. The new FAQ directly addresses the significant [flaws](#) in the previous FAQ issued by the Trump administration and includes many of the [recommendations](#) made by NLIHC with direct input from local stakeholders.

Further guidance is needed to ensure that America's lowest-income and most marginalized people remain stably housed during the pandemic. I urge you to build on improvements made in the FAQ by issuing further guidance to ensure that resources reach renters who face the greatest risk of eviction during the pandemic.

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 DHRC developed our recommendations for further Treasury guidance – outlined below – with direct input from local advocates and organizations in response to challenges and lessons learned in responding to the pandemic. Our recommendations are also based on NLIHC's [recent and ongoing analysis](#) of [more than 600 state and local rental assistance programs](#) created or expanded during the pandemic.

### ***Prioritize Households with the Greatest Needs***

#### **Statutory Requirements to Prioritize Very Low-Income Renters**

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. 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 tended to be more effective at distributing assistance than programs targeting households with moderate incomes. The report provides strong support that program administrators should target resources to lower-income households.

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. 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.

#### Additional Prioritization for Assistance

While the statute allows grantees to establish additional prioritization for assistance, the Treasury Department should ensure that such prioritization categories be based on measurable need. Examples include, but are not limited to, households with incomes at or below 30% of AMI, those with severe housing cost-burdens, or those who are doubling or tripling up with other households, who have an accumulation or expectation of back rental or utility payments, and who are experiencing homelessness at the time of application.

The Treasury Department 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 [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). Tenants should also be allowed to self-certify these conditions. Assessments should include pre-pandemic economic conditions.

#### Access for Individuals Experiencing Homelessness

NLIHC believes 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 explicitly state in its FAQ that assisting households experiencing homelessness with securing housing is an eligible use for emergency rental assistance funds. Including this as explicit use of funds will help ensure more communities use these critical resources in this way.

### Definitions of Income for Tribal Nations

Treasury's emergency rental assistance program must work well for tribal nations, which suffer from the worst housing needs in America. Treasury should allow tribes and tribally designated housing entities to use HUD's Native American Housing and Self-Determination Act (NAHASDA) definition of the term Area Median Income (AMI) under 24 C.F.R. §1000.10 and HUD's NAHASDA Program Guidance 2020-01. Under NAHASDA, AMI is defined as the greater of either the local or the national median income.

Because the updated Treasury FAQ allows grantees to use categorical eligibility to help streamline the application process, tribes can easily make the determination that NAHASDA-certified households meet income eligibility standards. However, flexibility is needed for those households not already participating in the NAHASDA or other tribal housing program.

By allowing tribes to use the NAHASDA standard for AMI, tribes can better serve struggling households who may otherwise be excluded from qualifying for assistance because of the low AMIs in tribal areas. This is vitally important because tribes and tribal communities tend to have disproportionately lower AMIs than other communities served by HUD.

### Access for Marginalized Populations

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.

### Survivors of Domestic Violence

Ensuring access to safe, decent, and affordable housing for survivors of domestic violence, dating violence, sexual assault, sexual harassment, and stalking ("domestic or sexual violence") is critical. The COVID-19 pandemic has exacerbated housing insecurity for survivors of domestic violence, and it has increased reports of domestic violence during shelter-in-place orders.

The Treasury Department should make clear that grantees must structure their programs to meet the unique needs of survivors, including the need for survivors to separate from perpetrators, with either the perpetrator or survivors leaving the rental home.

Treasury should instruct grantees that:

- The term "eligible households" does not limit the ability of grantees to issue assistance to a household separating as a result of domestic or sexual violence, including offering rental assistance to remaining household members and offer other assistance, including moving expenses, security deposits, and rent, to the household members who move;
- Income eligibility should be separately assessed for the separate or separating households to reflect a change in income as a result of the separation;
- Survivors should be permitted to apply directly to the program for assistance if they are doing so as a result of domestic or sexual violence, including because they need to move;

- Confidentiality during the application process is critical to the survivor's safety and the program must only contact survivors in a manner the survivor has stated is safe; and
- Partnerships with local and state domestic violence and sexual assault programs can help the grantees ensure that survivors' needs are prioritized and considered in a trauma-informed way.

To better serve survivors of domestic violence and other households, including people experiencing homelessness, the statutory requirement for a rental obligation should be determined when payment is made to the landlord or renter, not when eligibility of the household is determined. Many survivors will not have rental obligations until after they leave their abuser.

### Incorporating Expertise from People with Lived Experience

People with lived experience – including people experiencing homelessness and housing instability – should play a key role in designing state and local rental assistance programs. These individuals offer a unique and valuable perspective, and they can help ensure that programs are user-friendly and accessible. The Treasury Department should encourage states and localities to work directly with people with lived experience in designing and implementing programs.

### ***Further Discourage Burdensome Requirements***

We applaud the Treasury Department for expressly allowing state and local programs to meet many statutory eligibility criteria through self-attestation by the renter. In doing so, the updated FAQ directly addresses the challenges experienced by localities in administering rental assistance programs, and by renters attempting to qualify for them. In many cases in programs funded through the Coronavirus Relief Fund (CRF) and other CARES Act resources, states and localities imposed unnecessary and burdensome application processes and documentation requirements, which created barriers that slowed application processing times, discouraged eligible households from seeking assistance, and prevented states and localities from spending resources in a timely manner.

Treasury should further expand the use of self-attestation and discourage burdensome requirements in future guidance to enable states and localities to effectively disseminate aid to households in need and prevent evictions. In addition to allowing states and localities to use self-attestation, Treasury should make clear that self-attestation is the preferred method and should bar or actively discourage entities from imposing additional, unnecessary documentation. Unnecessary restrictions prevent assistance from reaching households with the greatest needs who are most at risk of evictions and homelessness, undermining the purpose of emergency rental assistance funds provided by Congress.

### Income

While the updated FAQ provides some opportunities for state and local programs to use self-attestation to determine the incomes of applicants in certain circumstances, we encourage Treasury to provide greater flexibility.

To help ease the administrative burdens of implementing ERA programs and to ensure that households with the lowest incomes have few barriers to accessing the program, Treasury

should consider allowing grantees to use additional simple methods of determining income. Currently, the Treasury FAQ allows grantees to “choose between using HUD’s definition of “annual income” in 24 CFR 5.6091 and using adjusted gross income as defined for purposes of reporting under Internal Revenue Service Form 1040 series for individual federal annual income tax purposes.”

Treasury should provide additional options for grantees, including gross income, which is easier for applicants to demonstrate and for grantees to administer.

### Risk of Housing Instability and Homelessness

The updated FAQ requires eligible households to demonstrate a risk of experiencing homelessness or housing instability. This criteria can and should be met through self-attestation. Treasury should direct grantees to accept a broad range of evidence, including self-attestation, 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.

### ***Ensure Financial Assistance Reaches Households In Need***

#### Application Processes

The Treasury Department should require that states and localities set up administrative processes (e.g. hotlines, online portals) that allow tenants to directly apply for rental assistance, taking into account language, technological, and disability-related barriers, among other accessibility considerations. Absent explicit Treasury guidance, states and localities may fail to set up timely and appropriate administrative processes for tenants to directly access rental assistance dollars, as required by the statute.

#### Renter Protections

The statute establishes several protections for renters when landlords submit rental assistance applications on their behalf. These protections include requiring the landlord to obtain the renter’s signature on the application, to provide documentation of the application to the renter, and to use any payments to satisfy the renter’s rental obligations.

It is important that the Treasury Department enforce these provisions. There must be sufficient enforcement in place to ensure that landlords that accept rental assistance payments do not continue to seek collection of back rent or use such rental obligations as the basis to formally or informally evict or otherwise force a tenant to vacate their home. The Treasury Department should deem acceptance of ERA a full satisfaction of a tenants’ rental obligations to an owner, as allowed by the statute.

Given the ongoing threat of COVID-19 and the technology and accessibility challenges faced by many households in need of rental assistance, the Treasury Department should be clear that states and localities may allow renters to sign applications remotely, via email and text, among other methods.

Treasury should require grantees to issue a written certification to tenant households who receive rental assistance, whether the assistance is paid directly to the landlord or the tenant household. The certification should include the amount of assistance and date of issuance.

### Housing Type

The Treasury Department should make clear that rental assistance is available to households living in hotels, motels, manufactured housing, mobile homes, single rooms, and other types of subsidized or unsubsidized rental homes.

Rental housing costs should include gross rents associated with mobile home parks, as defined by HUD, to address the needs of individuals who may own their mobile home, but who rent the lot on which their home sits. Treasury should use the standards enacted by Congress in the "Housing Opportunity Through Modernization Act of 2016" to identify allowable rental costs, including "the sum of the monthly payments...to amortize the cost of purchasing the manufactured home, including any required insurance and property taxes, the monthly amount allowed for tenant-paid utilities, and the monthly rent charged for the real property on which the manufactured home is located, including monthly management and maintenance charges."

Households currently experiencing homelessness at the time of application should also be eligible for rental assistance to help move them into permanent housing solutions.

### Eviction Moratoriums

Treasury should clarify that rental assistance can and should be provided even when federal, state, or local eviction moratoriums are in place. Some jurisdictions with CARES Act-funded rental assistance programs have interpreted the statute and regulations as barring eviction prevention assistance while moratoriums are active.

### Maximum Assistance

The updated FAQ allows grantees to aid households for up to 15 months. In future guidance, the Treasury Department should clarify any federally funded rental assistance received prior to February 1, 2021 (or another appropriate date) does not count against the 15-month maximum period of rental assistance set forth in the bill.

### Rental Arrears

The statute allows ERA funds to cover rental arrears under Section (c)(2). The Treasury Department should allow for a broad interpretation of the term "rental arrears," by defining it to include any "unpaid past rental amount" and affirming that the term is intended to be broadly interpreted.

The FAQ states that rental assistance cannot address rental arrears "accrued" before March 13, 2020, the date of the emergency declaration. Treasury should clarify that assistance can be provided to cover renters' March 2020 rent, rather than requiring such assistance be prorated.

## Credit Card Debt

Treasury guidance should explicitly allow households to receive assistance for rent arrears paid for with credit cards or other loans. During the pandemic, many renters used credit cards to pay rent, accumulating a debt that they cannot afford to pay off and that threatens their long-term housing security. Treasury guidance should provide state and local programs with the flexibility needed to serve these households.

## Mobile Phone

The current FAQ does not include mobile phone service as a “utility” or other “other expenses related to housing.” For households without Internet access, mobile phone service can be vital for “obtaining government services” and should be covered.

## Reallocation of Unused Funds

The statute requires that beginning on September 30, 2021, the Treasury Secretary “shall reallocate and repay such amounts to eligible grantees who, at the time of such reallocation, have obligated at least 65% of the amount originally allocated and paid to such grantee.” Reallocation of unused funds should be distributed based on need, as evidenced by the number of very low income households with severe housing cost burdens or living in substandard or overcrowded conditions, rental market costs, and employment trends.

## Prospective Rent Payments

While the updated FAQ reiterates the statutory requirement that “grantees may not make commitments for prospective rent payments unless they have provided assistance to reduce an eligible household’s rental arrears,” the Treasury Department should clarify that *any* reduction in rental arrears, including de minimis reductions, is sufficient to satisfy the limitation on prospective rent payments.

Treasury should issue this guidance to allow parties the flexibility to enter into repayment agreements that waive past rent in exchange for payment of rent moving forward, which may be appropriate in many circumstances.

## ***Provide Effective Housing Stability Services***

### Legal services

The updated FAQ states that housing stability services may include, among other items, “attorney’s fees for eviction proceedings.” Given the prevalence of unlawful evictions and other landlord misconduct, the Treasury Department should expressly allow funds to be used to cover legal services, which are vital to ensuring renters can remain stably housed. Because legal aid providers do not charge attorney’s fees, the updated FAQ may be interpreted by state and local governments to prohibit assistance provided by legal services. The current FAQ language could also prevent the use of legal services to help renters apply for rental relief where no eviction has yet been filed or to assist with illegal self-help evictions that are extrajudicial. We urge Treasury to expressly hold that supportive services include “legal and mediation services for housing-related matters.”

## Ensure Adequate Funding for Administrative Fees and Supportive Services

The Treasury Department website outlines key information about the ERA program, including information related to housing stability services. Through the website language, the Treasury department misinterprets the statutory language related to administrative fees; if not corrected, this will undermine the ability for states to provide housing stability services to households in need.

While the website correctly notes that “not less than 90 percent of awarded funds must be used for direct financial assistance,” it incorrectly holds that the remaining 10% of funds are to be used for both (1) housing stability services and (2) administrative fees. Section (c) of the emergency COVID-19 relief bill outlines how states and localities can use available funds, providing clear, separate allocations of funding for housing stability services and administrative fees.

Subsection (c)(2)(A) states that “not less than 90 percent of the funds received by an eligible grantee from a payment made under this section shall be used to provide financial assistance to eligible households.” Subsection (c)(3) Housing Stabilization Services states that “not more than 10 percent of funds received by an eligible grantee from a payment made under this section may be used to provide eligible households with case management and other services related to the novel coronavirus disease (COVID-19) outbreak, as defined by the Secretary, intended to help keep households stably housed.” A separate subsection of the bill – subsection (c)(5) – addresses administrative costs. This language holds that “not more than 10 percent of the amount paid to an eligible grantee under this section may be used for administrative costs attributable to providing financial assistance and housing stability services under paragraphs (2) and (3)...”

The Treasury department should be clear that this provision allows for a maximum of 10% of a grantees’ overall allocation to be used for administrative fees. If not corrected, the current interpretation by the Treasury Department would make it nearly impossible for states and localities to provide critically needed housing stability services because administrative fees would quickly consume the available funds set-aside for this purpose.

## Broad Flexibility

Other examples of stabilization services should be listed explicitly in the Treasury FAQ. To the greatest extent possible, the Treasury Department should define “housing stability services” to include, at a minimum, those services allowed under HUD’s Emergency Solutions Grant (ESG) program. Under the ESG program, “housing relocation and stabilization services” include financial assistance to cover rental application fees, security deposits, last month’s rent, utility deposits, moving costs, housing search and placement, and credit repair. Treasury should explicitly list these costs as allowable in the FAQ. Using existing program rules and definitions will help expedite the delivery of resources, streamline processes, and allow states and localities to better layer resources.

Treasury should clearly state that the examples of stabilization services and other housing-related expenses outlined in the FAQ are not exhaustive and that state and local governments can use their flexibility to provide additional services and cover additional expenses.



## Blending Resources

Treasury should facilitate the blending of different federal, state, and local resources to ensure the housing stabilization service needs of households are met.

## ***Ensure Meaningful Data Collection and Reporting***

### Compliance

The emergency COVID-19 relief package requires that the Department of 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. The Treasury Department must ensure that states and localities fully comply with reporting requirements by providing specific directions to states and localities on the data needed to comply with reporting requirements.

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.

Grantees should also report the number of applicants deemed ineligible and the reasons for denial. When reporting "the outcome...for the eligible household at the end of the assistance period," Treasury should clarify what date signifies the end of the assistance period for households only receiving back rent and for households who receive future rent payments.

### Disaggregation of Data

The statute requires such data to be publicly disaggregated by the gender, race, and ethnicity of the applicant. Treasury should further require that data be disaggregated by the smallest geography possible, such as block group or census tract, while protecting personally identifiable information. Disaggregating data by geography will allow researchers, academic institutions, and advocates to better understand gaps in program design and opportunities for policy improvements.

### Facilitate Research

The statute also directs the Treasury Department to make full and unredacted data available for statistical research purposes. 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.

## ***Clarify Key Terminology***

### HUD Definitions

Despite the broad statutory language of the CARES Act, state and local governments reported that the Treasury Department's guidance for CRF resources was too vague, stymieing efforts to distribute funds quickly and, in some cases, actively discouraging grantees from using CRF resources for activities that would have otherwise met the purpose of CRF. For example, initial Treasury guidance on April 22 defined costs "incurred" to be when a grantee has "expended funds to cover a cost." Revised guidance on June 30 sought to "clarify" the meaning of "incurred" only to provide guidance that was confusing and that precluded certain types of projects that would have been consistent with the intent of CRF. For example, some grantees were unable to use CRF to purchase existing vacant or underutilized structures and to convert them to non-congregate shelter facilities because the process would not fit the circumscribed timetable to expend the funds. Treasury's guidance was frequently couched in terms appropriate to the provision of goods or services, and it was not pertinent to most housing activities.

Even today, states and localities are confused about how the Treasury Department is defining key terms under the CRF program, such as "expend" and "incur." As a consequence, it has been challenging for many state and local governments to quickly spend down funding.

To avoid confusion and delay, the Treasury Department should expressly state in its guidance for ERA that the agency will use definitions provided by HUD to the greatest extent possible. For example, the Community Development Block Grant (CDBG) program uses the term "obligate" to mean that a grantee plans to use a certain amount of CDBG funds for a specific eligible activity, generally awarding obligated funds to a recipient entity which in turn "expends" the obligated funds by carrying out the eligible activity. In the HOME Investment Partnerships Program (HOME), HUD uses the term "commitment," meaning a grantee has: a legally binding agreement with contractors, subrecipients, and state recipients for specific activities; a reservation of funds for a nonprofit development corporation; or a written commitment to fund an activity. A "commitment to a specific HOME project" is defined as execution of a written agreement under which construction is reasonably expected to begin within 12 months of the date of the agreement.

The entities administering rental assistance programs are very likely to be familiar with HUD terminology, and they could more easily apply these definitions to the current allocation of rental assistance funds.

### ***Other Issues***

#### Scams

The Biden administration should use all available tools to prevent predators from attempting to scam low-income renters under the guise of helping them apply for emergency rental assistance, as has been reported as happening in some communities. The Consumer Financial Protection Bureau must create a hotline for renters to report scammers and ensure robust enforcement to help protect America's lowest-income and most marginalized households.

Evictions risk lives, harm communities, and threaten our country's ability to contain the pandemic. We appreciate your efforts to provide guidance to allow state and local governments

to effectively distribute critically needed emergency rental assistance to millions of households at risk of losing their homes.

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

Sincerely,

A handwritten signature in cursive script that reads "Diane Yentel".

Diane Yentel  
President and CEO  
National Low Income Housing Coalition

CC:

Erika Poethig, *Special Assistant to the President for Housing and Urban Policy at the White House Domestic Policy Council*

Peggy Bailey, *Senior Advisor on Rental Assistance at U.S. Department of Housing and Urban Development*

Noel Poyo, *Deputy Assistant Secretary for Community Economic Development, Office of Domestic Finance, U.S. Department of the Treasury*

Jacob Leibenluft, *Counselor to the Secretary, U.S. Department of the Treasury*