June 14, 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 Merrick Garland
Secretary
U.S. Department of Justice
Washington, D.C.

The Honorable Rochelle Walensky
Director
Centers for Disease Control and Prevention
Atlanta, Georgia

The Honorable Susan Rice
Director
Domestic Policy Council
White House
Washington, D.C.

The Honorable Dave Uejio
Acting Director
Consumer Financial Protection Bureau
Washington, D.C.

The Honorable Gene Sperling
American Rescue Plan Coordinator &
Senior Advisor to the President
White House
Washington, D.C.

To Secretaries Yellen, Fudge, and Garland, Directors Walensky and Rice, Acting Director Uejio and Advisor Sperling:

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 federal eviction moratorium's pending expiration, as well as ongoing roadblocks and new challenges in the Emergency Rental Assistance (ERA) program. Despite historic efforts by Congress, the administration, and state and local governments, far too many renters are struggling to access ERA programs and are at risk of losing their homes when the moratorium expires.

There are several current challenges with ERA programs, including: state and local governments limited by capacity issues; program administrators continuing to impose burdensome documentation requirements that make it more difficult to distribute funds; program administrators not utilizing direct-to-tenant assistance when needed; landlord refusal to participate in ERA programs; many renters and landlords being unaware that aid is available and; a developing trend of some landlords evicting tenants even after receiving ERA funds to cover back rent.

These challenges will worsen if the Biden administration allows the federal eviction moratorium issued by the Centers for Disease Control and Prevention (CDC) to expire on June 30, 2021, before states and localities can distribute aid to households in need. We request a meeting with the Biden administration to discuss the urgent challenges and solutions to keep renters stably housed.

NLIHC is tracking more than 1,000 state and local rental assistance programs created or expanded during the pandemic, analyzing key features of these programs, and sharing best practices to ensure assistance is distributed to households most in need and is used to advance racial equity. Over 400 of these programs are funded through the $25 billion appropriated for the Treasury ERA program under the December 2020 Consolidated Appropriations Act. Through this research, NLIHC has also been able to identify program challenges as they occur and bring these issues to the forefront.

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.

We applaud federal, state, and local policymakers who have responded to the pandemic and the resulting economic fallout with historic action. Congress provided $46 billion in emergency rental assistance in the American Rescue Plan Act and the December 2020 COVID-19 relief package to help keep renters stably housed. The Biden White House and the Department of the Treasury have made major program improvements to respond directly to roadblocks identified by NLIHC based on our ongoing tracking and analysis of state and local emergency rental assistance programs, feedback from our partners including renters and program administrators, and findings from collaborative research conducted by NLIHC, the Housing Initiative at Penn, and NYU Furman Center. State and local governments are working diligently to design, scale up, and distribute aid to renters and landlords.

Despite these critical efforts, millions of renters across the nation are struggling to access aid. The risk of housing instability will dramatically increase if the Biden administration allows the federal eviction moratorium issued by the Centers for Disease Control and Prevention (CDC) to expire on June 30, 2021, before states and localities can distribute aid to households in need. At least 6 million renter households – predominantly households of color, people with disabilities, and other marginalized populations – were behind on rent last month, and are at heightened risk of eviction when the moratorium expires.

Evictions risk lives and push households deeper into poverty, impacting everything from health outcomes, educational attainment, and more. The Biden administration must quickly take action – as outlined below – to mitigate the risk of an historic wave of evictions this summer and fall.

Strengthen and Extend a Federal Eviction Moratorium

The first – and best – way to mitigate the risk of evictions is for the Biden administration to extend and strengthen the CDC eviction moratorium until states and localities can distribute ERA, and until vaccination rates in marginalized communities have increased. If the CDC is unwilling to extend the full moratorium, the Biden administration should establish a more limited eviction moratorium for renters living in federally assisted properties, including those with Fannie Mae or Freddie Mac-backed mortgages and those financed with the Low-Income Housing Tax Credit, and resources from the U.S. Department of Housing and Urban Development (HUD) or Agriculture (USDA) resources, as was established by Congress and implemented early in the pandemic.

While vaccinations rates are up and COVID caseloads down in many communities, those communities with lower vaccination rates and higher COVID cases tend to be the same as those with renters at heightened risk of eviction when the moratorium expires. Allowing the moratorium to expire before vaccination rates increase in marginalized communities could lead to increased spread of, and deaths from, COVID-19.

The federal eviction moratorium is also critical to ensuring that state and local governments have the time to properly design, implement, and scale up the distribution of ERA to renters at risk of losing their homes. If the moratorium ends prior to the distribution of ERA, it will undermine the historic investments Congress and the Biden administration have provided to respond to this crisis.

Raise Awareness of Emergency Rental Assistance

Incorporate ERA in the Biden Administration's National Month of Action

The Biden administration has announced a National Month of Action for June to mobilize an all-of-government approach to increase vaccine distribution by July 4. The administration should incorporate raising awareness of ERA, along with other American Rescue Plan resources such as stimulus checks and increased child tax credits, into this broad effort.

For example, the White House is partnering with childcare workers to provide free childcare while parents and caregivers receive their vaccination. Those childcare workers should provide all parents and caregivers information on how to access ERA and other American Rescue Plan resources. The Biden administration is working with pharmacies, such as Walgreen's and CVS, to extend their hours to provide vaccinations; these pharmacies should share ERA information with individuals who receive vaccinations at their locations. Existing plans to deploy community canvassing, phone banking, text banking, and hotlines can be modified to share information on ERA, and partnering businesses, colleges, and other institutions can similarly share ERA information.

During the National Month of Action, the Biden administration should also operate a major public education campaign to inform renters and landlords about the availability of ERA. The campaign should include Public Service Announcements with key influencers, airing on traditional and nontraditional media. The public information campaign should include links to NLIHC's searchable ERA Program Table and/or the Department of Treasury's list of ERA programs so that renters can quickly and easily find programs near them.

Convene Stakeholders and Deploy Federal Agency Partners

The Biden administration can play a unique and powerful role in convening stakeholders and federal agencies to maximize awareness and uptake of ERA.

Stakeholders

The Biden Administration should convene stakeholders, including tenant organizers, landlord associations, state and local government officials and advocates, and other key partners to urge them to use their broad networks to raise awareness of the availability of ERA. For example, landlord, apartment, realtor, and homebuilder associations can and should do more to encourage their members to apply for and accept ERA assistance, and the White House can play an important role in ensuring that these landlord associations do so. Tenant organizers should be encouraged and equipped by the Biden administration to inform other renters in their community about the availability of rental assistance.

Federal, State and Local Housing Agencies

Housing-related federal agencies should share information about ERA with their stakeholders. HUD, the Federal Housing Administration (FHA), and the Federal Housing Finance Agency (FHFA) should encourage federally assisted landlords to apply directly for ERA on behalf of tenants behind on their rent and require/encourage them to share information about ERA with tenants. Owners and operators of federally assisted properties – including those using HUD, USDA, and Low Income Housing Tax Credit resources – should be directed to provide information about ERA to tenants who report a reduction in income or who miss a rent payment. HUD should send information and guidance to the public housing agencies (PHAs), Continuums of Care (COCs), HUD-funded supportive housing and rapid rehousing providers, and other HUD-assisted landlords to assist with outreach. To reduce the burden on renters and ERA program administrators, HUD should encourage document sharing and income verification through HUD programs. Coordination with the Homeless Management Information System (HMIS) can help ensure that individuals who apply for ERA, whether or not they receive the funds, are not entering into the homeless system.

The Biden Administration should convene and encourage industry and trade groups – such as National Council of State Housing Finance Agencies (NCSHA), National Association of Housing Redevelopment Officials (NAHRO), Council of Large Public Housing Agencies (CLPHA) – to similarly encourage and equip them to further engage their members in efforts to enroll more renters and landlords in local ERA programs.

U.S. Census Bureau

The infrastructure build by the U.S. Census Bureau for the virtual 2020 count, as well as lessons learned and best practices, could be used to increase awareness of ERA. During the 2020 Census count, the federal government mobilized stakeholders through key partnerships, technology support, social media and other measures, which could be harnessed now, through many of the same already-established networks, to encourage renters and landlords to apply for emergency rental assistance. There is likely significant overlap between communities identified by the Census as “hard-to-count” and those communities with the greatest need for ERA, so utilizing similar Census count tactics could prove powerfully effective.

Other Federal Agencies

People with extremely low incomes are often eligible for and interact with other federal programs and agencies such as Medicaid/Medicare, food assistance programs, SSD/I and others. The White House should encourage interagency collaboration and coordination between federal programs that serve low-income households to: increase knowledge about ERA, eligibility criteria and the application process across programs; increase access to ERA for those most in need; and develop a process to proactively target information on ERA to extremely low-income households and households that have experienced job loss, a decrease in income and/or a recent financial hardship or crisis.

Additionally, other federal agencies, such as the Department of Education, Health and Human Services (HHS), and USDA should include information about ERA in all existing outreach for programs serving low-income households. And the White House should encourage states, who often administer these federal programs, to develop local protocols and procedures for data and information sharing, cross system collaboration and referral processes to increase access to ERA for those most in need.

Partner with State and Local Governments

The Biden administration should convene and encourage state and local governments to use their authorities, communication channels, and resources to increase awareness of the ERA program and its benefit to renters and landlords.

<u>State and Local Eviction Moratoria</u>

The first and best way for state and local governments to mitigate the risk of evictions is to enact local eviction moratoria while they work diligently to distribute ERA. Unlike the CDC, state and local governments have much broader authority to enact eviction moratoria. To date, too few states and localities have established these protections, however, we could see this change with strong encouragement from the Biden administration.

<u>State and Local Eviction Prevention</u>

The Biden administration should set clear expectations that state and local governments should do everything possible to prevent evictions. Congress and the Biden administration have provided historic levels of federal support through the American Rescue Plan that can be used to limit evictions. Billions of dollars in State and Local Fiscal Relief Funds and Community Development Block Grant – Coronavirus funds can and should be used, for example, to fund legal attorneys to protect those renters facing eviction.

The Biden administration should collect and share best practices that can be implemented at the state and local level to mitigate the harm of evictions. For example, states and localities can seal eviction records that occur during or stem from nonpayment of rent during the pandemic, so that the filing does not make it more difficult for renters to find housing in the future.

<u>Communication with Renters and Landlords</u>

The Biden administration should encourage state and local partners to share information about the availability of ERA directly with renters and landlords. For example, local governments can share information about ERA to all locally registered rental property owners, using existing databases. The White House can encourage state and local governments to use emergency communication systems, such as those used during the pandemic and during major disasters) to directly share information with renters. By partnering with mayors and governors to send direct text alerts regarding the availability of ERA, the White House can quickly raise awareness of these resources.

<u>**Establish Eviction Delay, Diversion, and Mitigation Measures**</u>

The Biden administration must use every tool possible to delay, avoid and mitigate the harm of evictions.

Diversion Programs

The administration should create court-based, pre- and post-eviction filing diversion programs that include the provision of rental assistance and relocation services, right to counsel and mediation, and record sealing, among other wrap-around approaches. The primary goal of such programs must be avoiding and mitigating the harm of evictions and keeping renters stably housed, with success measured by the ability to increase housing stability.

Department of Justice

The Department of Justice (DOJ) should communicate with courts directly about the availability of ERA funds and urge judges to postpone hearing eviction cases to give renters the opportunity to apply for and receive ERA. DOJ should issue an opinion to state courts that the acceptance of rental assistance is an indication of eviction avoidance. DOJ can also issue a notice to state courts stating that until high-risk communities are sufficiently vaccinated, there is a heightened danger, and that additional procedural safeguards are required. These safeguards include additional time for discovery, access to legal representation, and other measures.

DOJ should collect and track critical data on evictions before and after the moratorium ends. DOJ should create a universal database and urge legal aid attorneys to report basic information about eviction-related cases, including demographic information and the reasons for eviction. This database will help policymakers better understand the scale of the problem and who is most impacted.

Support ERA Program Administrators To Quickly Deploy Aid

The Department of the Treasury and the White House have taken vital steps to improve the administration of ERA programs. Additional guidance and clarity is needed to further help ERA program administrators quickly and efficiently distribute aid.

Safe Harbor Protections

Many program administrators are being much too cautious in their design and implementation of ERA programs because they are worried that the Biden administration will later penalize them for noncompliance. To facilitate faster ERA spending, Treasury and its Office of Inspector General should set and announce clear expectations together. The White House and Treasury should create an explicit safe harbor to provide program administrators with clear assurances that funds will not be clawed back, if administrators' interpretation of the guidance is "reasonable."

Model ERA Programs

Despite the broad flexibility provided by the White House and Treasury in its updated guidance, many programs are still requiring burdensome documentation and lengthy applications; according to NLIHC's ERA dashboard, only 48% of programs as of June 10 explicitly use self-attestation as an allowable substitute for at least one eligibility requirement. Only 14% of programs explicitly allow self-attestation of income, which is often the most difficult documentation for renters to provide. Only 4.5% of programs allow for self-attestation of lease/proof of tenancy, which can disproportionately impact renters in informal units or undocumented renters. Evidence from 2020 programs in Washington State and Illinois show that self-attestation of income reduces documentation burden and allows funds to be distributed faster and reach the most marginalized renters.

The Biden administration should create and broadly distribute a model streamlined ERA application including broad use of self-attestation that state and local governments can easily and quickly adopt. Such applications should show program administrators how to use proxies for eligibility and self-attestation and should explicitly allow for program administrators to encourage third parties (such as legal aid attorneys, shelter or service providers, teachers, etc.) to apply on behalf of a tenant. Similar to the lessons learned from deploying Paycheck Protection Program (PPP) loans, Treasury should ensure that funding can be disbursed quickly through a brief application, self-attestation, and minimal risk to administrators. Treasury should consider oversight/consequences for programs not applying model principles to their programs.

Program Compliance and Transparency

Treasury and the White House made major improvements to the ERA program guidance in direct response to roadblocks in programs. However, too few programs are making use of this flexibility and reducing barriers for renters and landlords. As discussed in the subsection above, many programs are still requiring burdensome documentation and lengthy applications, despite the broad flexibility provided by the White House and Treasury in its updated guidance.

Similarly, programs have also been too slow to adopt direct-to-tenant assistance options, which are especially critical when landlords refuse to accept ERA. According to NLIHC's ERA dashboard, only 26% of programs are explicitly allowing this flexibility. Some programs have stated publicly that they are allowing direct-to-tenant assistance, but neglect to make this option available or known to renters and landlords. In other cases, grantees are not making public basic information about programs, including how much back rent will be covered and any caps on assistance.

Treasury must monitor compliance with program guidance and take action against program administrators who blatantly disregard the guidance.

Incentives and Performance Goals and Benchmarks

The Biden administration can use its ERA guidance to create new incentives to programs that are able to spend down their allocations more quickly. For example, Treasury can announce that programs that have successfully spent down their funds will receive an increased allocation of recaptured funds. The administration should also set clear performance goals and benchmarks for programs, i.e., limiting or preventing evictions for nonpayment of rent.

Partnerships with Legal Aid Organizations

The Biden administration should encourage state and local governments to subcontract with legal aid organizations, including those working directly out of eviction courts, to directly administer ERA funds. Legal aid attorneys are in direct contact with renters facing eviction, and they can quickly deploy funds to those most at risk of losing their homes.

Navigator Programs

The White House should reaffirm and strongly encourage state and local ERA programs to utilize the maximum allowable amount of funding to support outreach, housing navigation, and other services that will assist households, particularly those who are the most marginalized, in accessing and successfully navigating ERA and stabilizing their housing. Additionally, the White

House should encourage local programs to contract with community-based organizations, particularly organizations located in and providing services to Black, Indigenous, and People of Color (BIPOC) and extremely low-income communities to provide outreach and navigation services. The White House should also encourage state and local programs to contract with "peers" and people who have been beneficiaries of ERA programs and services as community navigators to assist others through the process. Community service organizations should have "ERA tables" in eviction courts, with a stack of applications and staff available to assist landlords and tenants with filling them out.

Flexible Definitions of "Other Housing Expenses"

Treasury should encourage states and localities to use "other housing expenses" to address reasonable expenses beyond those listed in guidance. Grantees are currently only allowing expenses explicitly identified in the Treasury guidance. Additional flexibility could very well be the difference between grantees that are able to spend down all their allocation and those who are not.

Renter Protections

In the updated Treasury guidance, program administrators are encouraged to bar landlords receiving ERA from evicting renters for a certain period of time. This guidance can be strengthened by encouraging program administrators from barring landlords from evicting tenants while an application is pending.

Greater enforcement and oversight of these protections are needed; NLIHC has heard from some renters who have received ERA funds, but who are now facing eviction by their landlords. Some landlords are charging renters fees – as much as $150 – to apply for ERA on behalf of the renter. In cases where an application for ERA is denied, renters are left with even more debt, resulting in greater housing instability.

The Treasury Department or the Consumer Financial Protection Bureau should create a hotline for renters to call to report landlords acting in bad faith.

Technical and Technology Supports

Many programs face capacity and technology challenges. NLIHC has heard from several state and local administrators that their ability to quickly stand up a technological system to process applications and disburse an unprecedented amount of funds has been severely limited due to the urgency of opening programs and limited capacity to invest in these systems. The White House should deploy the U.S. Digital Service and teams from other federal agencies to provide broad tech support to help simplify and speed up the administration of ERA programs. Many state and local governments do not have the technology systems in place to allow them to scale up their programs quickly, and support from the U.S. Digital Services can help address these needs. Moreover, HUD should provide technical assistance to communities to help shape programs.

Ensure Data Transparency

Data Transparency

The emergency COVID-19 relief package 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. Despite these clear benefits to data transparency, Treasury has not made such data publicly available nor has it identified the process it will use for data-sharing agreements regarding non-public data. Treasury should immediately make publicly available all data it has already collected from program administrators and the process for data-sharing agreements.

Advocates in communities across the nation are already struggling to access program data that could be used to help identify barriers and solutions. Only 13 states maintain real-time dashboards to inform the public of their progress. In Puerto Rico, advocates do not even know which territorial agency is tasked with distributing funds. Access to this basic information is critical to ensuring proper oversight and addressing barriers as they arise.

Data Collection and Dissemination

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.

For example, when reporting "the acceptance rate of applicants for assistance," Treasury should clarify that grantees should report both the number of applicants deemed eligible and the number of eligible applicants who also accepted assistance. 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.

The statute requires data collected by Treasury 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.

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.

With at least 6 million renter households still behind on rent as the expiration of the eviction moratorium nears, the Biden administration must work quickly and aggressively to avert an historic wave of evictions this summer and fall. The National Low Income Housing Coalition, and our broad network of thousands of partners throughout the country, stand ready to assist.

Sincerely,

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*
Jacob Leibenluft, *Counselor to the Secretary, U.S. Department of the Treasury*
Noel Poyo, *Deputy Assistant Secretary for Community Economic Development, Office of Domestic Finance, U.S. Department of the Treasury*
Peggy Bailey, *Senior Advisor on Rental Assistance at U.S. Department of Housing and Urban Development*
Julie Brinn Siegel, *Deputy Chief of Staff, U.S. Department of the Treasury*
Jenn Jones, Chief of Staff, *U.S. Department of Housing and Urban Development*