NATIONAL LOW INCOME HOUSING COALITION

June 17, 2021

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Office of the Undersecretary for Domestic Fiance
Department of the Treasury
1500 Pennsylvania Avenue NW
Washington, DC 20220

Re: Docket No. TREAS-DO-2021-0008
Coronavirus State and Local Fiscal Recovery Funds

The National Low Income Housing Coalition (NLIHC) is dedicated solely to achieving socially just public policy that ensures people with the lowest incomes in the United States have affordable and decent homes. NLIHC's members include state and local affordable housing coalitions, residents of public and assisted housing, nonprofit housing providers, homeless service providers, fair housing organizations, researchers, faith-based organizations, public housing agencies, private developers and property owners, local and state government agencies, and concerned citizens. While our members include the spectrum of housing interests, we do not represent any segment of the housing industry. Rather, we work on behalf of and with low-income people who receive and those who need federal housing assistance, especially extremely low-income people and people who are homeless.

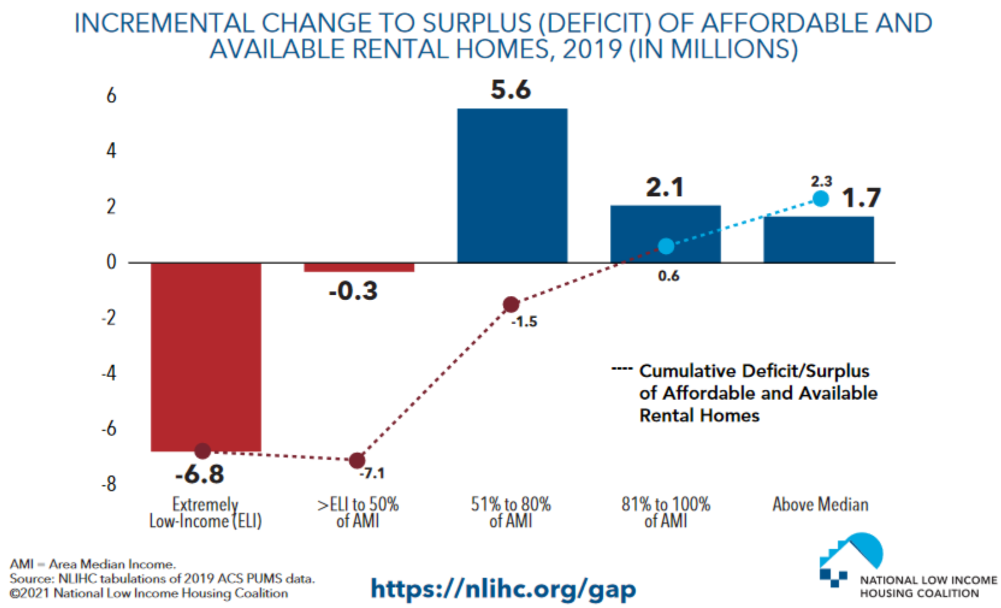
The State and Local Fiscal Recovery Funds ("Fiscal Recovery Funds") allocated in the "American Rescue Plan Act" (ARPA) provide flexibility for governments to meet local needs, including emergency rental assistance, addressing the housing and health needs of people experiencing homelessness, and building and preserving affordable housing in impacted communities. These funds present a significant opportunity for communities to meaningfully address the systemic discrimination that has led to the pandemic's disproportionate toll on people of color, people with disabilities, immigrant communities, low-income households, and other historically marginalized groups.

NLIHC is grateful for the opportunity to weigh in on Treasury's Interim Final Rule governing implementation of these vital resources. NLIHC developed the following recommendations with direct input from state and local stakeholders for Treasury's consideration when developing guidance for the implementation of Fiscal Recovery Funds. These recommendations are designed to ensure any funds used for affordable housing development are targeted to the lowest-income and most impacted communities and advance racial and economic equity.

Clarify the Meaning of "Development" and Prioritize the Development of Permanently Affordable, Accessible Housing for People with the Lowest Incomes

America's affordable housing crisis is one of the most pressing issues facing people with the lowest incomes. Even before the pandemic, nationally [only 37 affordable, available rental units existed for every 100 of our nation's lowest-income households] – those earning 30% or less of area median income (AMI) every year. No state has enough available, affordable, accessible rental homes to meet demand. The shortfall of almost 7 million homes affordable and available to extremely low-income households accounts for virtually the entire shortage of affordable homes in the U.S. (see Figure 1).

Figure 1:



The shortage of deeply affordable rental homes is caused by a market failure and the chronic underfunding of solutions. Without government assistance, decent, affordable, accessible homes cannot be reliably built, operated, and maintained at a price the lowest-income workers, seniors, or people with disabilities can afford. The private market cannot, on its own, solve this persistent market failure, making it necessary for government intervention to fill the gap between what people can afford and the cost of developing and operating rental homes. Congress has consistently underfunded housing subsidies, however, leaving three out of four households eligible for housing assistance unable to obtain the assistance they need.

In the absence of affordable housing, approximately [70% of the lowest-income households] are severely housing cost-burdened, routinely spending over half of their income on rent and leaving little left over to save for emergencies, buy nutritious food, or obtain needed medication.

Housing insecurity and homelessness disproportionately harm people of color. Generations of structural racism created [tremendous disparities] in housing and homelessness – renters of color, and particularly Black, Latino, and Native people, are much more likely to be housing cost-burdened and to experience homelessness than white renters.

The potential infusion of funding for affordable housing construction through ARPA's Fiscal Recovery Fund presents a significant opportunity for communities to begin addressing the severe shortage of homes affordable, accessible, and available to the lowest-income renters.

To provide communities clarity on how Fiscal Recovery Funds can be used to address affordable housing needs and ensure states and localities are prioritizing affordable housing projects for the lowest-income renters, Treasury should clearly define "development of affordable housing" to mean the construction, preservation, rehabilitation, or operation of housing affordable to very low-income households (those earning less than 50% of AMI) and ensure the longest possible affordability period.

Treasury should also require that state and local governments set aside a significant share of Fiscal Recovery Funds used for affordable housing to be targeted to serve extremely low-income renters, and to ensure at least 10% of any housing built with federal support is accessible to people with physical disabilities, and 4% accessible to people with sensory disabilities.

Additionally, Treasury should allow communities to use Fiscal Recovery Funds for land and building acquisition, and to buy down debt on Low-Income Housing Tax Credit (LIHTC) developments to support affordability.

Treasury should also require states and localities to prioritize the ownership and management of affordable housing by nonprofit organizations, public housing authorities, community land trusts, and other nonprofit entities. Nonprofit organizations and mission-driven owners typically have greater interest in protecting and expanding the availability of affordable housing for low-income families than for-profit owners, who have a greater focus on maximizing their return on investment.

Ensure Funds Can Be Used for Operating Subsidies and to Finance Operating Reserves in Permanent Supportive Housing and Affordable Housing

Fiscal Recovery Funds present a significant opportunity for communities to not only expand their supply of affordable housing, but to ensure units are affordable to people with the greatest needs and have the supportive services necessary to ensure long-term housing stability. To support this effort, Treasury should explicitly state Fiscal Recovery Funds may be used to fund operating expenses in permanent supportive housing and affordable housing developments.

Expanding eligible uses of Fiscal Recovery Funds to include operating expenses associated with running affordable or permanent supportive housing can help maintain long-term housing stability among the lowest-income households. Operating funds for affordable housing more broadly are needed to secure the long-term affordability of units and can help developments provide current and prospective residents with service coordination and housing navigation services.

Expand Funding Availability for Low-Income Housing Development Beyond Qualified Census Tracts

Restricting the construction of new affordable housing to primarily Qualified Census Tracts (QCTs) threatens to reinforce the housing segregation and patterns of racial discrimination the Biden administration has pledged to address. Generations of racist housing policies and practices in both the public and private sectors have made it difficult for people of color to build wealth and difficult to develop affordable housing in higher-income neighborhoods with greater access to resources.

Addressing this legacy of discrimination requires both targeting resources to disinvested communities and constructing affordable housing in higher-income neighborhoods with greater access to resources. This balanced approached is central to the goal of dismantling racial segregation and ensuring all renters have the freedom and ability to choose where to live. By limiting affordable housing investments to QCTs, Treasury may reinforce racial segregation and limit housing opportunities for low-income people.

Limiting the use of Fiscal Recovery Funds for the development of affordable housing to primarily QCTs would also unduly restrict some communities' ability to utilize these funds. While QCTs are an easily accessible means of identifying areas with persistent poverty, they do not necessarily reflect the number of extremely low-income people in a given area, the area's housing costs, or the number of housing cost-burdened renters, providing a limited perspective of the actual housing needs in a particular community. Moreover, limiting the construction of affordable housing to only QCTs does little to help low-income people who are severely housing cost-burdened and living outside of a QCT access affordable housing.

To help undo racial segregation, Treasury should allow housing investments in any community – not just QCTs. Treasury should also require grantees to follow the 2015 Affirmatively Furthering Fair Housing (AFFH) rule until HUD issues a revised version of the 2015 AFFH rule, and Treasury should strongly encourage localities to utilize a streamlined, tailored version of the Fair Housing Assessment Tool, as HUD now does, in order to assess factors that cause, increase, maintain, or contribute to discriminatory housing practices that further residential segregation.

Target Housing Investments to Populations Disproportionately Impacted by COVID-19, Not Geographies.

Treasury's Interim Final Rule notes Fiscal Recovery Fund recipients may allocate funding for services provided to "populations, households, or geographic areas disproportionately impacted by the pandemic."

Concentrating affordable housing investments only in communities disproportionately impacted by the pandemic could retrench racial segregation. Instead of focusing housing resources in particular geographies, Treasury should instead target housing investments to those households and populations disproportionately impacted by COVID-19: people with the lowest-incomes; Black, Indigenous, and people of color; people with disabilities, people with limited English proficiency; immigrants; and others. Treasury should require housing development resources primarily benefit these populations, and state in its guidance that any affordable, accessible housing that serves the lowest-income renters automatically meets the statutory requirement to assist "households disproportionately impacted by the pandemic."

The interim rule does not address how recipients can support their determination that a particular population, household or geography has been "disproportionately impacted by COVID-19." In the absence of clear guidance for how states and localities can make the case for disproportionate impact, recipients will likely shift resources away from affordable housing development in high-impact areas, choosing instead to stick to definitively allowable uses to avoid any missteps that could result in funds being clawed back by the federal government.

Encourage Communities to Use Funds to Prevent Evictions

States and communities are deploying billions in emergency rental assistance (ERA) funds to help keep renters stably housed. Currently, 6 million renter households report being behind on rent. Without the intervention of state and local governments, these renters are at high risk of eviction and, in worst cases, homelessness.

More must be done to prevent a wave of evictions. Evictions risk lives, push families deeper into poverty, and further strain our public health systems that are working to vaccinate as many people as possible to contain the virus. The impact would be felt immediately and for years to come, as evictions harm everything from physical and mental health to economic mobility. Because evictions predominantly harm people of color, disproportionately Black women, failing to prevent a historic wave of evictions could deepen racial disparities.

To stave off this potential disaster, Treasury should encourage states and localities to use Fiscal Recovery Funds to support legal aid attorneys, establish eviction diversion programs, and support housing navigator programs to help tenants apply for and receive ERA.

Despite federal, state, and local eviction moratoriums, landlords have continued to wrongfully evict tens of thousands of renters without consequence. Given the prevalence of unlawful evictions and other landlord misconduct, legal aid is vital to ensuring renters can remain stably housed. Navigator programs can help ensure marginalized populations, including people of color, people with disabilities, immigrations, people with limited English proficiency, and others have full and equitable access to ERA resources.

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