

August 31, 2021

The Honorable Maxine Waters
Chair
Committee on Financial Services
U.S. House of Representatives
Washington, DC

To Chair Waters:

On behalf of the National Low Income Housing Coalition and National Housing Law Project, we write in regards to your plans, as Chair of the House Financial Services Committee, to advance legislation to improve the Emergency Rental Assistance (ERA) administered by the U.S. Department of the Treasury. We share your deep concern about the slow pace of spending within the ERA program, especially given the Supreme Court decision to invalidate the federal eviction moratorium, which puts millions of renters at greater risk of housing insecurity, eviction, and in worst cases, homelessness. While we support measures to streamline program delivery and improve performance, we are deeply concerned about proposals to allow landlords to apply for assistance directly without the participation of renters, which, without significant safeguards, may result in increased fraud by landlords and greater housing instability for tenants.

Congress, the Biden administration, and Treasury Department have taken historic action to provide state and local governments with the flexibility needed to quickly distribute emergency assistance to renters and landlords in need. Despite these significant efforts, however, too many programs are distributing emergency aid much too slowly.

Through the end of July 2021, just \$6.1 billion of the \$46.5 billion in ERA provided by Congress had been spent or obligated, according to NLIHC data. Of the first allocation of \$25 billion, states had, on average, spent only 16% of their total allocations and cities had spent 30% through July. Sixteen states had spent less than 5% of their funds. Some programs are successfully scaling up their efforts. Virginia has distributed 54% of its ERA allocation. Texas and D.C. have spent 47% and 45% of their funds through July, and New Jersey, Massachusetts, Alaska, and Illinois have spent more than 30% of their funds. These are, however, still the outliers. Many states and cities need to dramatically improve and expedite their efforts.

Poor-performing programs continue to rely on overly complicated applications, including burdensome documentation requirements, that slow down the application process and prevent access for the lowest-income and most marginalized renters. As you work to advance legislation, we urge you to include key reforms, as outlined below, to streamline program delivery, improve program performance.

We also urge you to not include in any reform legislation measures to allow landlords to apply for ERA directly without the participation of renters. As discussed below, this could create perverse incentives for landlords to evict tenants while collecting emergency aid, undermining Congress's intent to keep families stably housed during and after the pandemic.

Streamline Program Delivery

To help streamline program delivery, any reform legislation must:

- **Direct grantees to presume a COVID-19 hardship for all income-eligible households.** Treasury uses a similar approach to proving a COVID-19-related hardship under the State and Local Fiscal Recovery Funds. Even with self-attestation, proving a COVID-19-related hardship can be a challenge. Allowing programs to presume that all income-eligible households were negatively impacted by the pandemic – rather than proving such hardship for each individual applicant – would greatly expedite the process of getting aid to households in need. If Congress is not able or willing to create this presumption, it should, at a minimum, align the COVID-19 hardship criteria in ERA1 and ERA2 by allowing households using ERA1 to demonstrate a hardship “during” the pandemic.
- **Require grantees to use self-attestation (for income, risk of housing instability or homeless, lease and rent arrears) without further need for documentation and/or fact-specific proxies to the greatest extent possible.** Treasury guidance currently allows programs to use self-attestation for all eligibility criteria. Despite this flexibility, just 57% of programs explicitly allow self-attestation for at least one eligibility criteria, according to NLIHC’s [dashboard](#): 43% allow self-attestation to prove a COVID-19 hardship; 16% use self-attestation to prove income, and 13% use this flexibility to prove housing instability. Broader use of self-attestation and fact-specific proxies would significantly increase accessibility for the lowest-income and most marginalized renters, decrease processing times, and speed up the delivery of assistance to renters and landlords.
- **Create a safe harbor to encourage programs to spend down resources more quickly.** Many program administrators are hesitant to reduce application requirements, utilize self-attestation, and provide direct-to-tenant assistance and are overly cautious in their design and implementation of ERA programs out of concern that the Biden-Harris or a future administration may later penalize them for noncompliance. To facilitate faster ERA spending, Congress should create an explicit safe harbor to provide program administrators with clear assurances that funds will not be clawed back for improper payments in cases where programs used self-attestation (and the renter was later found to not have met program criteria) and in cases where programs provided assistance directly to tenant (and the tenant did not use the funds for the stated purpose). Congress can also extend safe harbor to programs using “good faith efforts to expedite the distribution of low-barrier assistance.”
- **Set a minimum fraud rate standard before programs are required to repay improperly spent funds to the federal government.** The goal of preventing waste, fraud, and abuse must be balanced with the need to expedite the distribution of assistance. By setting fraud rate threshold, only above which programs are subject to having funds clawed back, may help program administrators better balance these two goals.
- **Prohibit programs from requiring written leases.** The lowest-income and most marginalized renters are least likely to have written leases, but they are often most in need of assistance. Prohibiting programs from requiring written leases reduces overly burdensome documentation requirements and ensures resources can reach those with the greatest needs.
- **Require programs to provide direct-to-tenant assistance for ERA1 and allow such assistance without any need for landlord outreach, as is the case for ERA2.** Despite guidance from Treasury, too few ERA programs offer direct-to-tenant assistance options. Of the 493 ERA programs that NLIHC is tracking, only 28% explicitly state they will provide direct-to-tenant assistance. Without a direct-to-tenant option, renters are effectively barred from receiving the assistance needed to remain in their homes,

undermining the efficacy of the program. While Treasury guidance requires direct-to-tenant assistance under ERA2, without the need for landlord outreach, ERA1 programs are not required to provide assistance directly to tenants when their landlords refuse to participate in the program. Moreover, ERA1 program administrators must first conduct outreach to landlords for up to 7 days before providing direct-to-tenant assistance, slowing down the ability to get resources quickly into the hands of renters and landlords. Congress can help expedite the distribution of aid by requiring ERA1 programs to provide direct-to-tenant assistance and allowing grantees to provide such assistance without seeking participation of the landlord.

- **Require programs to provide renters with multiple ways to apply.** Some programs that have struggled to distribute aid only provide renters with the ability to apply for assistance online, which is a barrier for households without internet access or other accessibility challenges. Programs must be required to provide opportunity to apply via the internet and through paper applications, and all applications should provide language access to people with limited English proficiency.

Improve Program Performance

It is critical that any reform legislation provide the Biden administration with the tools needed to hold programs accountable for their slow and overly burdensome administration of ERA. Such legislation must:

- **Require performance improvement plans for poor-performing programs and provide technical assistance.** Programs that have struggled to distribute ERA resources should be required by Congress to create an improvement plan demonstrating how the program will make mid-course corrections and adopt best practices to expedite the delivery of aid. Congress should also direct Treasury and the U.S. Department of Housing and Urban Development (HUD) to provide technical assistance, focusing on helping these programs get back on track.
- **Identify nonprofit organizations as eligible grantees for recaptured funds.** Beginning on September 30, Treasury may recapture and reallocate excess funds. By identifying nonprofit organizations as eligible grantees, Congress can help ensure that renters and landlords in communities with poor-performing and low-capacity ERA programs can still access emergency aid. This safeguard is especially important in locations where there may not be another eligible state or local government grantee with the capacity to serve additional jurisdictions. Without this flexibility, Treasury may have no choice but to reallocate funds out of state, leaving renters and landlords without the resources Congress provided.
- **Identify courts as eligible grantees for recaptured funds.** By identifying courts as eligible grantees, Congress can help ensure resources are available to renters at immediate risk of eviction.
- **Require programs to use a minimum percentage of funds for outreach, application navigation, and housing stability services.** As noted in your statement on August 27, the lack of awareness among renters and landlords about the availability of ERA is deeply troubling. Beyond lack of awareness, difficulty applying for ERA programs and complicated eligibility criteria are among the top reasons tenants who are aware of assistance have not applied or completed their applications. While some localities adopted creative strategies to overcome these barriers by partnering with trusted community-based organizations to reach those wary of government assistance due to mistrust or fear of stigma, many other programs have not invested in needed outreach

and navigation efforts. Robust and equitable marketing and outreach efforts are needed to ensure all low-income renters and landlords know about ERA and how to access it. Navigators can provide renters with the information they need, from a source they trust, to apply for aid. Navigators are key to helping renters fill out applications and understand the process, particularly where there are barriers, such as language access. Navigators could include additional staff, housing counselors, case managers, nonprofit organizations, and others familiar with the ERA application process. Navigators should be located in state and local eviction courts to provide help to renters facing an immediate eviction. Congress should direct program administrators use a minimum percentage of funds for outreach and application navigation to assist renters and landlords in applying for aid, and it should provide clarification on how these costs should be billed. Congress should clarify that administrative costs will not be recaptured.

- **Create a presumption that people experiencing homelessness (as defined by HUD Categories 1 and 4) meet all eligibility criteria for ERA funds.** While Treasury guidance currently allows people experiencing homelessness to receive ERA funds, these households are typically required to meet the same eligibility and programmatic criteria as renters. This can make it more difficult to serve homeless populations, who may not have a photo ID, lease, or other documentation. Programs should be directed to reduce program requirements to address the unique challenges facing these applicants.
- **Require local eviction courts to participate in the distribution of ERA by entering into data sharing agreements with programs, while protecting private information.** Greater data sharing between eviction courts and ERA programs can help identify renters most at risk of immediately losing their homes.

Do Not Allow Direct-to-Landlord Assistance Without Renter Participation

We have deep reservations over any proposal to allow landlords to apply for ERA without the participation of tenants. Without significant safeguards we believe this proposal may result in increased fraud by landlords and greater housing instability for tenants.

Any policy that allows landlords to apply for funding without tenant participation should be tailored to the scope of the problem. We have heard anecdotes about unresponsive tenants, but we have not seen data or other evidence that this is a widespread problem. Rather, we have seen data that some program administrators have closed a significant number of applications when tenants have not completed their application. This is a different problem that requires different solutions, such as more accessible and less complex applications. Congress should have clear evidence of a widespread problem that needs solving before making any legislative changes to the ERA program.

If you move forward with allowing landlords to be paid ERA without tenant involvement, Congress should first require program administrators to take every action to increase access to ERA programs and to ensure the participation of renters. Programs should be required to first:

- **Fund trusted community-based organizations to act as intermediaries for tenants.** Community-based organizations can serve as third parties to help renters understand their rights and access ERA resources. Many renters may be justifiably scared to communicate with their landlord when they have fallen behind on their rent. Community-based organizations can help conduct outreach to renters to help them better understand their options about how to proceed. These organizations should be required to make several attempts to contact renters for a minimum period of time, similar to the

current requirement for outreach to landlords under ERA1. At least one attempt to contact the renter should be in-person at the housing unit.

- **Provide effective and accessible direct-to-tenant payment options.** Before allowing landlords to apply directly for assistance without the participation of renters, programs should be required to first provide such assistance directly to tenants. There is widespread reports of landlords refusing to participate in ERA programs, choosing instead to evict tenants. These reports prompted Congress to remove language in the American Rescue Plan Act that was previously enacted with ERA1 requiring payments to be made to landlords on behalf of tenants. The lack of landlord participation is a far greater challenge than the lack of renter participation, and Congress should first direct programs to provide assistance directly to renters before circumventing their participation.
- **Eliminate burdensome documentation requirements and fully use tenant self-attestation.** While there is no data on the lack of renter participation in ERA programs, there is evidence that renters have had difficulty completing applications, especially in jurisdictions with overly burdensome documentation and application processes. Rather than providing assistance directly to landlords without renter participation, Congress should first direct programs to make their application processes more accessible and less complex.
- **Fund legal assistance providers to support tenants.** Legal aid organizations provide critical assistance to help renters seeking rental assistance and those facing eviction.

Only if these efforts fail to engage the tenant in the process should the program administrator be permitted to proceed with assisting the landlord without tenant involvement, and only if:

- **The renter remains in their apartment and the landlord self-certifies, under penalty of perjury, an agreement not to evict for at least 120 days.** Any effort to allow landlords to apply directly for assistance must not allow landlords to do so after evicting tenants from their home. Without this protection, there would be little incentive for landlords to allow renters to remain stably housed, undermining congressional intent in enacting these resources.
- **Explicitly bar direct-to-landlord assistance without renter approval in cases where the renter has already been evicted from the home.** Every protection must be provided to ensure that landlords do not evict tenants from their homes during and after the pandemic. Renters, however, must still be permitted to apply for assistance after they have been evicted.
- **There is documented evidence that the landlord/program made their best efforts to contact the tenant.** Best efforts must include at least one attempt to contact the renter should be in-person at the housing unit, and a minimum amount of time for outreach.
- **The landlord agrees to set aside and vacate any past eviction judgment based on nonpayment of rent for the arrears that they were paid.** Congress must prevent circumstances where a landlord receives assistance through the ERA program, but renters continue to be harmed by an eviction judgement, which can follow renters for years, making it more difficult to find future housing.
- **The landlord rescinds any current eviction notice and dismisses and agrees to seal any active eviction filing.** Even an eviction filing, without a final determination, can harm tenants for years, making it difficult to find future housing. Landlords must be required to rescind any eviction notice and courts must seal eviction filings.
- **The landlord accepts the rental assistance in full satisfaction of all outstanding monetary claims against the tenant.** Landlords should not be allowed to circumvent

renter participation to receive rental assistance, while still maintaining claims against the tenant for past rent due.

- **The tenant receives written notice of the landlords' self-certification.** Notice should include the amount paid to the landlord, and additional protections and rights available to the tenant, including information on/connection to legal services. All documentation must be maintained by a public agency and be made accessible to tenants for at least 5 years from the date of the rental assistance payment.
- **ERA programs notify state and local courts** that the landlord received payment and rent is no longer past due and evictions must be halted.

If Congress moves forward with the proposal, there must also be a process developed for the Department of Justice, the Consumer Financial Protection Bureau, or some other federal entity to monitor and enforce these protections.

With at least 6 million renter households still behind on rent, Congress, the Biden administration, and state and local governments must work quickly and aggressively to avert an historic wave of evictions and keep renters stably housed during the pandemic. As always, the National Low Income Housing Coalition, National Housing Law Project, and our broad networks of thousands of partners throughout the country stand ready to assist.

Sincerely,



Diane Yentel
President and CEO
National Low Income Housing Coalition



Shamus Roller
Executive Director
National Housing Law Project