

NHLP Analysis of HUD's Authority to Impose an Eviction Moratorium

March 19, 2020

In light of the declared public health emergency and the need to protect the homes of low-income tenants residing in HUD-supported homes nationwide, NHLP has issued the following analysis demonstrating HUD's authority to impose an eviction moratorium for its rental programs, for the duration of the emergency:

Congress has authorized the HUD Secretary to "make such rules and regulations as may be necessary to carry out his functions, powers, and duties." 42 USC 3535(d). In light of the declared public health emergency, HUD thus has the plenary power to declare a moratorium on eviction for all of its programs for the duration of the emergency.

There is no statute for either the public housing or various HUD-assisted programs that specifically mandates the eviction of tenants by PHAs or owners. For public housing, USHA sec. 6 requires the ACC to establish "...satisfactory procedures designed to assure the prompt payment and collection of rents and the prompt processing of evictions in the case of nonpayment of rent." 42 USC 1437d(c)(4)(B). Section 6(l) also requires public housing leases to permit (but not mandate) evictions for certain specified "good causes." 42 USC 1437d(l)(5) to (9). For HUD-assisted multifamily properties (and enhanced vouchers), Congress has mandated that HUD "assure that ... leases approved by the Secretary provide that tenants may not be evicted without good cause." 12 USC 1715z-1b(b)(3). For Housing choice Vouchers, Congress has required that the HAP contracts "provide that during the term of the lease, the owner shall not terminate the tenancy except for serious or repeated violation of the terms and conditions of the lease, for violation of applicable Federal, State, or local law, or for other good cause." 42 USC 1437f(o)(7)(C). These statutes create no mandate nor any right to evict and thus impose no bar to a moratorium.

These statutory provisions also leave sufficient flexibility for HUD to impose an eviction moratorium during a public health emergency, because the various referenced "good cause" eviction provisions are defined by HUD regulations. Thus HUD can redefine good cause by rule in light of the emergency or waive (for "good cause," i.e., the declared public health emergency, per 24 CFR 5.110) any contrary regulatory eviction provisions or "good cause" definitions, since any right to evict is not mandated by statute.

Although criminal law enforcement and DV protection order-type proceedings ought to be sufficient to deal with major criminal activity violations, policymakers should consider whether there should be any exceptions for evictions of certain DV perpetrators (via lease bifurcation) under VAWA due to the unique threat presented.

[Note: this memo does not address any additional authority supporting such action under Presidential Disaster declarations or similar statutes.]