



March 19, 2020

Submitted via e-mail

The Honorable Benjamin S. Carson, Sr., M.D.
U.S. Department of Housing and Urban Development
451 7th Street S.W.
Washington, D.C. 20410

Re: Protecting Tenants and Homeowners in Response to COVID-19

Dear Secretary Carson:

The National Housing Law Project (NHLP)¹ and the National Low-Income Housing Coalition² write to urge the Department of Housing and Urban Development (HUD) to take immediate steps to protect tenants and homeowners during and after the COVID-19 public health crisis. As a physician and a member of the United States Coronavirus Taskforce, you understand the gravity of the current, rapidly evolving situation. Ensuring housing security for all Americans is crucial to the success of the social distancing measures medical experts have recommended. Furthermore, when the pandemic subsides, families must not be left vulnerable to homelessness because of the long-term economic impacts of this crisis. We applaud the Administration's announcement of temporary suspension of FHA, Fannie, and Freddie-backed mortgages foreclosures and evictions, and feel that this is a necessary first step. There are additional measures that must be taken to protect tenants and homeowners during this uncertain time.

HUD should expeditiously issue guidance adopting the following actions necessary to ensure a timely response to the continuing and growing impacts of COVID-19. The HUD Secretary has,

¹NHLP is a legal advocacy center focused on increasing, preserving, and improving affordable housing; expanding and enforcing rights of low-income residents and homeowners; and increasing housing opportunities for underserved communities. Our organization provides technical assistance and policy support on a range of housing issues to legal services and other advocates nationwide. NHLP hosts the national Housing Justice Network (HJN), a vast field network of over 1,500 community-level housing advocates and resident leaders. HJN member organizations are committed to protecting affordable housing and residents' rights for low-income families.

²National Low Income Housing Coalition (NLIHC) is solely dedicated to ensuring that the lowest income seniors, people with disabilities, families with young children and others in our country have safe, accessible and affordable homes. Its members include non-profit housing providers, homeless services providers, fair housing organizations, state and local housing coalitions, public housing agencies, faith-based organizations, residents of public and assisted housing and their organizations, low-income people in need of affordable homes, and other concerned citizens.

under a determination of good cause, broad authority to waive HUD regulations, subject to statutory limitations,³ and should therefore waive regulatory requirements as needed to protect tenants and homeowners.

HUD/FHA Housing Programs

- **Institute a moratorium on all HUD program evictions and subsidy terminations for non-payment of rent until after the end of the national emergency declaration as a response to widespread economic disruption.** Public health considerations require that individuals and families remain stably housed and the threat of eviction undermines public health orders to remain sheltered in place. HUD should issue guidance to public housing agencies and HUD subsidized owners instituting a nationwide moratorium on evictions and subsidy terminations for nonpayment of rent due to the rapidly evolving situation. This should last until after the conclusion of the national emergency declaration to ease uncertainty among families who may be facing prolonged economic and social disruption. According to the Center on Budget and Policy Priorities, as of 2016, 56 percent of working HUD-assisted households earned below the federal poverty line.⁴ These families will continue to be disproportionately impacted by the widespread economic disruption from the virus.
- **Suspend all other eviction filings and subsidy termination hearings to avoid furthering community spread.** Termination and eviction hearings oftentimes involve in-person gatherings of residents, staff, and hearing officers and judges, which could jeopardize social distancing protocols. Furthermore, tenants are likely to experience greater difficulties in obtaining key documentation, tenant files, and legal representation to support any defenses due to concerns about transmission. Jurisdictions and some housing authorities across the country have begun enacting moratoria on the filing of evictions and subsidy terminations.⁵ PHAs, owners, and HUD subsidized owners should similarly halt subsidy terminations and eviction filings for current tenants. Again, this should last until after the end of the national emergency declaration.
- **Streamline and promote interim recertifications.** Many hourly workers or those without paid sick leave are seeing sudden and significant decreases in their incomes. PHAs and subsidized owners need to be prepared to conduct potentially large numbers of recertifications. HUD should develop a template notice for residents and direct PHAs and owners to take affirmative steps to inform residents of their ability to recertify their income due to loss or reduction of income. It is also critical that HUD issue guidance that outlines how families can document income losses in an environment where their

³ 24 C.F.R. 5.110.

⁴ Alicia Mazzara and Barbara Sard, Center on Budget and Policy Priorities, *Chart Book: Employment and Earnings for Households Receiving Federal Rental Assistance* (Feb. 5, 2018), available at: https://www.cbpp.org/research/housing/chart-book-employment-and-earnings-for-households-receiving-federal-rental#_ftnref5.

⁵ <https://nlihc.org/coronavirus-and-housing-homelessness>; see also <https://nychajournal.nyc/guidance-to-section-8-participants-on-rent-hardships/>.

employers may be closed for long periods of time. One approach could be for PHAs and owners to allow households to self-certify their decrease in income, presumptively approve the interim recertification and provide the household a reasonable period of time to produce documentation once the emergency has ended.

- **Automatically pause Voucher search periods.** Social distancing protocols will make it very difficult for families who have been issued Housing Choice Vouchers, but have not yet leased up, to conduct a successful housing search. Voucher families, particularly those families in tight rental markets, already face difficulties in finding an affordable unit on the private rental market. Such difficulties will be compounded by the disruptions caused by the virus. Recent FAQ guidance stating that HUD waivers for voucher extensions are not required is a step in the right direction but HUD should go further and instruct PHAs to automatically toll the search period for all vouchers, effective March 13, 2020.⁶ At the conclusion of the public health crisis HUD should direct PHAs to restart the search period for voucher families.
- **Issue enhanced social distancing and hygienic protocols for site-based housing.** HUD should issue supplementary guidance to existing FAQs on how PHAs and owners can specifically minimize the virus' spread while still continuing essential operations such as recertification anniversaries, and emergency transfers for survivor of domestic violence, dating violence, sexual assault, and stalking. PHAs and owners should ensure that they are adopting procedures to limit in-person interactions and to disinfect door handles, tabletops, and other surfaces in common areas. PHAs and owners should be holding phone conferences or using other means to engage in social distancing with tenants for recertifications. Properties with substantial elderly populations, people with disabilities, and others with high-susceptibility to the virus should take all possible steps to minimize the risk of infection. In order to accomplish this, owners and PHAs need effective guidelines and protocols issued by HUD.
- **Ensure language access and effective communications to persons with disabilities.** HUD should remind PHAs and owners that they have obligations under both Title VI of the Civil Rights Act of 1964 and Section 504 of the Rehabilitation Act of 1973 to ensure that any changes to procedures and protocols during the virus outbreak must be effectively communicated to persons with limited English proficiency and persons with disabilities, respectively.
- **Provide relief to tenants paying minimum rents.** Where permitted by statute, HUD should direct PHAs to establish a minimum rent of \$0. Where such changes are not possible, HUD should direct PHAs and owners to immediately inform any tenants who pay a minimum rent of the ability to apply for a hardship exemption due to any loss of income due to COVID-19.⁷ HUD should instruct PHAs and owners that they should assume that COVID-19 related hardships will be long-term in nature.

⁶This is the date of the national emergency proclamation by President Trump. *See* Proclamation on Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak (March 13, 2020).

⁷ 42 U.S.C.A. § 1437a(a)(3)(B).

- **Establish a moratorium on late fees and waive rent arrearages that arise during the health crisis.** HUD should instruct PHAs and owners to waive fees on late rental payments during the pandemic. This will ensure that families who have lost income or have experienced delays in getting paid will not continue to accrue late fees and charges such that they will face large arrearages after the crisis. Additionally, HUD should prohibit PHAs and owners from imposing new convenience fees (e.g., fees for online payments) during the emergency period. Rental arrearages accumulated by tenants during the pandemic should be waived. HUD should also instruct PHAs and owners that missed rent payments during the pandemic do not constitute good cause for eviction after the national emergency period has ended.
- **Clarify that funds provided as part of federal stimulus efforts are not income.** HUD should issue guidance to owners and PHAs that any funds received from any federal COVID-19-related stimulus efforts are not income for the purposes of calculating a tenant's rent contribution.
- **Encourage PHAs and owners to exercise flexibility during and after the emergency.** HUD should issue guidance encouraging PHAs and owners to exercise flexibility regarding policies such as extended absences and length of guest stays during the pandemic. After the emergency has subsided, HUD should encourage owners and PHAs to give households a reasonable grace period in meeting any past-due programmatic requirements.
- **Ensure that the foreclosure moratorium is adequate.** The moratorium should last for at least 180 days after the end of any applicable emergency declaration at the federal or state level, and it should explicitly cover all stages of the foreclosure process, including: a ban on initiating judicial or non-judicial foreclosures, moving for order of sale, continuing any already-pending foreclosure process, or executing foreclosure sales and post-foreclosure evictions.

Additional Housing Needs

As the nation's agency whose mission is to create "strong, sustainable, inclusive communities and quality affordable homes for all," HUD has a broad, national platform to lead on housing issues generally. We therefore urge the Secretary to call for the following:

- Emergency Solutions Grants to help address the urgent needs of people experiencing homelessness.
- A nationwide moratorium on all evictions and foreclosures while the COVID-19 crisis is ongoing.
- Market-rate owners to waive late fees and work with residents to set up repayment plans as an alternative to eviction for non-payment of rent.
- An emergency supplemental appropriation for housing assistance payments, eviction prevention tools, and housing operations, including funding for PHAs to plan for and respond to COVID-19.

In conclusion, we urge HUD to take immediate actions to ensure that tenants and homeowners can maintain their housing in these uncertain times, and so that they can avoid housing insecurity and homelessness after COVID-19 has subsided.

Thank you for your consideration of these recommendations.

Sincerely,



Shamus Roller
Executive Director
National Housing Law Project
sroller@nhlp.org



Diane Yentel
President & CEO
National Low-Income Housing Coalition
dyentel@nlihc.org

cc:

Hunter Kurtz, Assistant Secretary for Public and Indian Housing, robert.h.kurtz@hud.gov

Brian Montgomery, Assistant Secretary for Housing - Federal Housing Commissioner, Brian.D.Montgomery@hud.gov