

To: Housing Justice Network
From: NHLP
Re: 30-Day Notification Requirement Prior to Termination of Lease for Nonpayment of Rent
Date: January 10, 2025; Updated February 3, 2025

On December 13, 2024, HUD published a final rule entitled “30-Day Notification Requirement Prior to Termination of Lease for Nonpayment of Rent.”¹ On **January 13, 2025**, the final rule replaces HUD’s 2021 interim final rule (“IFR”) entitled “Extension of Time and Required Disclosures for Notification of Nonpayment of Rent.”² As of January 13, 2025, PHAs and owners must comply with the final rule.³

Issued during the height of the COVID-19 pandemic, the IFR required public housing authorities (“PHAs”) and owners of public housing and Section 8 Project-Based Rental Assistance (“PBRA”) properties to provide thirty days’ notice of eviction for nonpayment of rent, and include in that notice information about how to access available emergency rental assistance.⁴ The IFR was only effective in the case of a national emergency, pursuant to a determination by the Secretary of HUD. The requisite determination was also issued on October 7, 2021, and to date has not been rescinded.⁵ The final rule differs from the IFR in key ways. Notably, the final rule makes permanent that thirty day notice requirement, in contrast to the IFR’s contingency on a national emergency. The final rule also adds key notice requirements to protect public housing and PBRA tenants.

The final rule follows a proposed rule issued for public comment on December 1, 2023.⁶ HUD received 316 comments to the proposed rule.⁷ The final rule is substantially similar to the proposed rule, with some key improvements.

This memorandum lays out important information about the new rule, key takeaways from HUD’s narrative and response to comments, and some practice tips for implementation.

A. New requirements detailed in the final rule

The final rule requires that PHAs and private owners that operate public housing or PBRA⁸ properties provide a minimum of thirty days’ written notice of eviction for nonpayment of rent.⁹ The rule

¹ 30-Day Notification Requirement Prior to Termination of Lease for Nonpayment of Rent, 89 Fed. Reg. 101,270 (Dec. 13, 2024).

² The Office of Information and Regulatory Affairs (OIRA) has determined that the rule is not a “Major Rule” under the Congressional Review Act; therefore, it is not subject to the delays in 5 U.S.C. § 801(a)(3).

³ PHAs and owners have a longer window to amend their lease agreements, as will be discussed later in this memorandum.

⁴ Extension of Time and Required Disclosures for Notification of Nonpayment of Rent, 86 Fed. Reg. 55,693 (Oct. 7, 2021).

⁵ Supplemental Guidance to the Interim Final Rule “Extension of Time and Required Disclosures for Notification of Nonpayment of Rent,” PIH 2021-29 and H 2021-06 (Oct. 7, 2021).

⁶ 30-Day Notification Requirement Prior to Termination of Lease for Nonpayment of Rent, 88 Fed. Reg. 82,877 (proposed Dec. 1, 2023).

⁷ 30-Day Notification Requirement Prior to Termination of Lease for Nonpayment of Rent, 89 Fed. Reg. at 101,272.

⁸ See comprehensive list of covered programs in subsection A(iv).

⁹ 24 C.F.R. § 247.4(c) (certain PBRA and other HUD multifamily properties listed in 24 C.F.R. § 247.2); 24 C.F.R. § 880.607(c)(6) (Section 8 New Construction, Section 8 Substantial Rehabilitation under Part 881, and Section 8 Housing Assistance Payments Program under Part 883); 24 C.F.R. § 884.216(d) (Section 8 New Construction Set-Aside for Section 515 Rural Rental Housing Projects); 24 C.F.R. §§ 886.127(c); 886.327(c) (Section 8 Special

only applies to evictions for nonpayment of rent. By mandating thirty days' notice, HUD "seeks to remove the variable patchwork of notice requirements and reduce the number of prevent able evictions filed against HUD-assisted tenants."¹⁰

i. Content of notice

In its preamble, HUD explains that "evictions for HUD-assisted housing could be prevented with more time and notice which might help all parties work together to pay the rent owed or attain a rent hardship exemption, rent recalculation, or other financial rental assistance."¹¹ The specific notice requirements are intended to remind both landlords and tenants that "[t]here are other tools to employ before reaching an eviction."¹² In addition to other pre-existing program-specific requirements, the notice must contain the following:

1. Instructions on how the tenant can cure the nonpayment violation;
2. The amount due, itemized and separated by month, with the amount of rent due listed *separately* from any other arrearages allowed by HUD and included in the lease;
3. The date by which the tenant must pay the amount owed before an eviction for nonpayment can be filed;
4. Information about how the tenant can recertify their income and/or request a hardship exemption from minimum rent under 24 C.F.R. § 5.630; and
5. In public housing, information about how the tenant can request to switch from flat rent to income-based rent.

In addition, the rule provides that in circumstances where there is a Presidential declaration of national emergency, the notice must include any information that the HUD Secretary so requires.¹³

HUD made several changes to the proposed rule in response to comments from advocates that improved the final rule. The proposed rule only required that the thirty day notice contain (1) instructions on how the tenant can cure the nonpayment of rent violation, (2) information on how the tenant can recertify their income, apply for a hardship exemption, and in public housing switch from flat rent to income-based rent, and (3) in the event of a presidential declaration of a national emergency, such information as may be required by the Secretary.¹⁴ In the final rule, HUD added the requirement that the landlord include an itemized statement of charges, separated by month and separating rent and non-rent charges. In the final rule, HUD also specifies that the tenant has the full thirty days to cure the default, and

Allocations); 24 C.F.R. § 891.425(d) (Supportive housing for the elderly and persons with disabilities); 24 C.F.R. §§ 966.4(l)(3)(i)(A); 966.4(q) (public housing).

¹⁰ 30-Day Notification Requirement Prior to Termination of Lease for Nonpayment of Rent, 89 Fed. Reg. at 101,270.

¹¹ 30-Day Notification Requirement Prior to Termination of Lease for Nonpayment of Rent, 89 Fed. Reg. at 101,270-101,271.

¹² 30-Day Notification Requirement Prior to Termination of Lease for Nonpayment of Rent, 89 Fed. Reg. at 101,271.

¹³ 24 C.F.R. § 247.4(e) (certain PBRA and other HUD multifamily properties listed in 24 C.F.R. § 247.2); 24 C.F.R. § 880.607(c)(6) (Section 8 New Construction, Section 8 Substantial Rehabilitation under Part 881, and Section 8 Housing Assistance Payments Program under Part 883); 24 C.F.R. § 884.216(d) (Section 8 New Construction Set-Aside for Section 515 Rural Rental Housing Projects); 24 C.F.R. 966.4(l)(3)(ii) (public housing). Note that these specific notice requirements were not added to the regulations in part 886 or 891, but housing subsidized under these parts are covered by the requirements of part 247. See table in subsection (A)(iv).

¹⁴ 30-Day Notification Requirement Prior to Termination of Lease for Nonpayment of Rent, 88 Fed. Reg. at 83,886-83,887.

the landlord cannot give notice until the day after rent is due.

Comments submitted by NHLP on behalf of HJN members influenced these changes. NHLP and HJN commented that HUD should clarify the meaning and scope of the right to cure, and clarify in the final rule that tenants have the full thirty days to cure in nonpayment cases. NHLP and HJN also commented that HUD should require additional specificity as to the balance allegedly owed, including “the amount of rent due free from extra fees or charges.” HUD implemented both of these suggestions by adding the thirty-day cure period and requiring an itemized accounting.

The following chart demonstrates the changes in required notice content and other requirements between the IFR, the proposed rule, and the final rule.

<p>Interim Final Rule: Extension of Time and Required Disclosures for Notification of Nonpayment of Rent, 86 Fed. Reg. 55,693 (Oct. 7, 2021)</p>	<p>Proposed Final Rule 30-Day Notice Requirement Prior to Termination of Lease for Nonpayment of Rent, 88 Fed. Reg. 83,877 (Dec. 1, 2023)</p>	<p>Final Rule: 30-Day Notification Requirement Prior to Termination of Lease for Nonpayment of Rent, 89 Fed. Reg. 101,270 (Dec. 13, 2024).</p>
<p>1. Adequate notice to secure federal funding that is available due to a Presidential declaration of a national emergency.*</p> <p>*IFR applicable only in case of national emergency pursuant to determination by the HUD Secretary.</p>	<p>1. Instructions on how to cure nonpayment including alleged amount due and deadline to pay;</p> <p>2. Instructions on how to recertify income and request a hardship exemption;</p> <p>3. In public housing, information about how the tenant can request to switch from flat rent to income-based rent; and</p> <p>4. In the case of a national emergency, such information as Secretary may require.</p>	<p>1. Instructions on how to cure nonpayment including alleged amount due and deadline to pay before an eviction for nonpayment can be filed;**</p> <p>2. The amount due must be itemized and separated by month, with the amount of rent due listed <i>separately</i> from any other arrearages allowed by HUD and included in the lease;</p> <p>3. Instructions on how to recertify income and request a hardship exemption;</p> <p>4. In public housing, information about how the tenant can request to switch from flat rent to income-based rent; and</p> <p>5. In the case of a national emergency, such information as Secretary may require.</p> <p>** Notice may not be given until day after rent is due. Eviction may not be filed if the alleged rent owed is paid within the thirty-day notice period.</p>

i. Timing of notice

The rule is explicit that the thirty day period begins to run upon the date of the tenant's *receipt* of the notice, rather than the date the landlord issued the notice.¹⁵ Furthermore, in response to public comments asking HUD to clarify the required timeline, the final rule includes two new provisions. First, the final rule specifies that the PHA or owner may not issue the notice prior to the day after the rent is due according to the lease. Second, the final rule states that the PHA or owner must not proceed with filing an eviction if the tenant pays the alleged amount of rent owed within the thirty day notification period.¹⁶ In other words, the PHA or owner must not file an eviction until after the thirty day period has expired.

The thirty day notice may run concurrently with any additional notice required under state or local law.¹⁷ Where required under state law, the thirty day notice may run consecutive to any additional required state or local notice period.¹⁸ HUD notes that the rule does not preempt state or local law that provides greater or equal protection to tenants.¹⁹

As a practical matter, because the final rule allows the tenant the full thirty-day notification period to cure the rent delinquency, some state law notices may be premature prior to the expiration of the thirty days. For example if, under state law, a notice to vacate may not be issued until after expiration of any cure period, the state law notice to vacate may not be issued concurrently with the thirty day notice required under this rule.

ii. Right to cure

The final rule effectively creates a right to cure for covered tenants in nonpayment cases by prohibiting PHAs and owners from filing an eviction if the tenant pays the alleged amount of rent owed within the thirty day notification period.²⁰ The preamble to the final rule further states that in evictions for

¹⁵ 24 C.F.R. § 247.4(c) (certain PBRA and other HUD multifamily properties listed in 24 C.F.R. § 247.2) ("the termination notice shall be effective no earlier than 30 days after *receipt* by the tenant of the termination notice") (emphasis added); 24 C.F.R. § 880.607(c)(6) (Section 8 New Construction, Section 8 Substantial Rehabilitation under Part 881, and Section 8 Housing Assistance Payments Program under Part 883) (same). See also 24 C.F.R. § 884.215 (Section 8 New Construction Set-Aside for Section 515 Rural Rental Housing Projects) ("... tenants will *receive* notification at least 30 days before an eviction for nonpayment of rent is filed.") (emphasis added); 24 C.F.R. §§ 886.127(c); 886.327(c) (Section 8 Special Allocations) (same); 24 C.F.R. § 891.425(d) (Supportive housing for the elderly and persons with disabilities) (same); 24 C.F.R. § 966.4(q) (public housing) (same).

¹⁶ 24 C.F.R. § 247.4(c) (certain PBRA and other HUD multifamily properties listed in 24 C.F.R. § 247.2); 24 C.F.R. § 880.607(c)(7) (Section 8 New Construction, Section 8 Substantial Rehabilitation under Part 881, and Section 8 Housing Assistance Payments Program under Part 883); 24 C.F.R. § 884.216(e) (Section 8 New Construction Set-Aside for Section 515 Rural Rental Housing Projects); 24 C.F.R. § 966.4(r) (public housing). Note that these specific requirements were not added to the regulations in part 886 or 891, but housing subsidized under these parts are covered by the requirements of part 247.

¹⁷ 30-Day Notification Requirement Prior to Termination of Lease for Nonpayment of Rent, 88 Fed. Reg. at 83,882.

¹⁸ 30-Day Notification Requirement Prior to Termination of Lease for Nonpayment of Rent, 89 Fed. Reg. at 101,271; 101,288.

¹⁹ 30-Day Notification Requirement Prior to Termination of Lease for Nonpayment of Rent, 89 Fed. Reg. at 101,271.

²⁰ 24 C.F.R. § 247.4(c) (certain PBRA and other HUD multifamily properties listed in 24 C.F.R. § 247.2); 24 C.F.R. § 880.607(c)(7) (Section 8 New Construction, Section 8 Substantial Rehabilitation under Part 881, and Section 8 Housing Assistance Payments Program under Part 883); 24 C.F.R. § 884.216(e) (Section 8 New Construction Set-Aside for Section 515 Rural Rental Housing Projects); 24 C.F.R. § 966.4(r) (public housing). Note that this specific requirement was not added to the regulations in part 886 or 891, but housing subsidized under these parts are covered by the requirements of part 247.

failure to pay *rent*, the tenant need only pay the delinquent *rent* amount (as specified on the itemization) in order to cure the default. “If the tenant pays the full amount of the alleged rent owed but not other arrearages, the nonpayment will still be considered cured, and an eviction for nonpayment of rent cannot be filed.”²¹ However, HUD notes that if the eviction was expressly filed for nonpayment of both rent and other non-rent arrearages (if permissible under the lease and HUD rules), the eviction can proceed. PHAs and owners commonly file evictions for nonpayment of “rent,” and include other arrearages in their calculation of the amount owed, so this distinction may be helpful to tenants. Advocates should note, however, that the rule refers to payment of “alleged rent owed” instead of just “rent owed.” Such language may raise issues for tenants, who may be required to pay the full amount of rent alleged by the landlord to prevent an eviction filing, even if that amount is inaccurate.

iii. Lease requirements

The final rule requires PHAs and owners to amend their lease agreements to incorporate the requirement of thirty days’ notice for eviction for nonpayment of rent.²² This requirement applies to both current and future leases.²³ In addition, HUD will update its model leases for PBRA programs to incorporate HOTMA regulations and this new rule, though there is no indication of a timeframe for these updates.²⁴ Nevertheless, the rule is effective even without the lease modifications.²⁵

Although the rule itself goes into effect and compliance with the notice requirements is required as of January 13, 2025, PHAs and owners have a longer window to amend their leases. PHAs must amend their lease agreements by June 15, 2026, and PBRA owners have fourteen months from the date that HUD publishes amended model lease to incorporate the new requirements in their leases.²⁶

iv. Covered programs

The final rule only applies to public housing, Section 8 PBRA properties, and certain other HUD multifamily properties. It does not apply to the voucher programs (Housing Choice Voucher or Project-Based Voucher), or other HUD subsidy programs.²⁷ Specifically, the rule amends the following regulations:

²¹ 30-Day Notification Requirement Prior to Termination of Lease for Nonpayment of Rent, 89 Fed. Reg. at 101,271.

²² 24 C.F.R. § 880.606(b) (Section 8 New Construction, Section 8 Substantial Rehabilitation under Part 881, and Section 8 Housing Assistance Payments Program under Part 883); 24 C.F.R. § 884.215 (Section 8 New Construction Set-Aside for Section 515 Rural Rental Housing Projects); 24 C.F.R. §§ 886.127(c); 886.327(c) (Section 8 Special Allocations); 24 C.F.R. § 891.425(d) (Supportive housing for the elderly and persons with disabilities); 24 C.F.R. 966.4(l)(3)(i)(A); 24 C.F.R. §§ 966.4(q) (public housing).

²³ 30-Day Notification Requirement Prior to Termination of Lease for Nonpayment of Rent, 89 Fed. Reg. at 101,271.

²⁴ 30-Day Notification Requirement Prior to Termination of Lease for Nonpayment of Rent, 89 Fed. Reg. at 101,281.

²⁵ The existing HUD Model Lease for PBRA properties states “Any termination of this Agreement by the Landlord must be carried out in accordance with HUD regulations, State and local law, and the terms of this Agreement.” Most public housing lease contain similar language about compliance with federal regulations and program rules. This language can be used to urge compliance with the new rule where a court refuses to look past the lease agreement.

²⁶ 30-Day Notification Requirement Prior to Termination of Lease for Nonpayment of Rent, 89 Fed. Reg. at 101,270, 101,281.

²⁷ Advocates commented in favor of applicability to the voucher programs, but HUD declined to amend the rule, citing concerns about HCVP landlord recruitment and participation, and the difficulty of enforcement against private market actors. 30-Day Notification Requirement Prior to Termination of Lease for Nonpayment of Rent, 89 Fed. Reg. at 101,299.

Part	Regulations Amended	Programs Covered
24 C.F.R. Part 247	24 C.F.R. § 247.4	<p>Per 24 C.F.R. § 247.2:</p> <ul style="list-style-type: none"> • Multifamily housing projects with HUD-subsidized mortgages under sections 221(d)(3), 221(d)(5) and 236 of the National Housing Act, and section 202 of the Housing Act of 1959. • Section 8 Project-Based Rental Assistance (except under 24 C.F.R. parts 880, 881, 883 and 884*). • Rent supplement payments under Section 101 of the Housing and Urban Development Act of 1965. <p>*These programs are covered by the rule under other sections, explained below.</p>
24 C.F.R. Part 880	24 C.F.R. §§ 880.606; 880.607	Section 8 – New Construction
		Section 8 – Substantial Rehabilitation under 24 C.F.R. Part 881 (24 C.F.R. § 881.601 states that all provisions of part 880 subpart F, including §§ 880.606 and 607, apply).
		Section 8 – Housing Assistance Payments Program – State Housing Agencies under 24 C.F.R. Part 883 (24 C.F.R. § 883.701 states that all provisions of part 880 subpart F, including §§ 880.606 and 607, apply).
24 C.F.R. Part 884	24 C.F.R. §§ 884.215; 884.216	Section 8 – New Construction Set-Aside for Section 515 Rural Rental Housing Projects
24 C.F.R. Part 886 (subject to 24 C.F.R. Part 247 – see 24 C.F.R. § 886.128)	24 C.F.R. §§ 886.127; 886.327	<p>Section 8 – Section 8 Special Allocations:</p> <ul style="list-style-type: none"> • Subpart (A): Additional Assistance Program for Projects with HUD-Insured and HUD-Held Mortgages (Loan Management Set-Aside) • Subpart (C): Housing Assistance Program for Disposition of HUD-Owned Projects
24 C.F.R. Part 891 (subject to 24 C.F.R. Part 247 – see 24	24 C.F.R. § 891.425	<p>Section 202** and 811 projects:</p> <ul style="list-style-type: none"> • Section 202/162 Project Assistance Contract (PAC); • Section 202 Project Rental Assistance Contract (PRAC); • Section 811 PRAC;

C.F.R. § 891.430(b))		<ul style="list-style-type: none"> • Section 811 Project Rental Assistance Program (811 PRA); and • Senior Preservation Rental Assistance Contract Projects (SPRAC) <p>** Section 202 projects may also have a separate Section 8 PBRA contract (like new construction or substantial rehabilitation).</p>
24 C.F.R. Part 966	24 C.F.R. § 966.4	Public housing

Your client’s lease or lease addendum should reveal whether they live in a public housing unit. For clients residing in PBRA properties and other HUD multifamily properties, check the National Housing Preservation Database (“NHPD”)²⁸ or HUD’s Multifamily Assistance & Section 8 Database²⁹ to determine the subsidy. The HAP contract or loan documents may also identify the subsidy. These may be recorded in public records, or obtainable via discovery from the property, or via a public records request from the Project Based Contract Administrator (“PBCA”) or HUD. Because identifying the subsidy determines which rules govern the eviction, judges should be amenable to a continuance for this purpose.

a. Public housing converted through Rental Assistance Demonstration (“RAD”)

The Rental Assistance Demonstration (“RAD”) is a preservation tool that can be used to convert public housing units to either Section 8 PBRA or Project-Based Vouchers (“PBV”). PBRA conversions are clearly covered by the new rule, since 24 C.F.R. Part 880 applies to those conversions.³⁰ HUD’s Rental Assistance Demonstration – Supplemental Notice 4C amends the current RAD notice (Revision 4) to require 30 days’ notice of eviction for nonpayment of rent from PBRA RAD conversions.³¹ The notice must be “in conformance with 24 CFR part 247,” which is subject to the final rule’s notice and content requirements.³² In addition, RAD PBRA properties use the HUD Model Lease, which will be updated to include the new rule.³³

Application of the new rule to PBV conversions is more of a gray area, because the final rule does not apply to the PBV program. Commenters, including NHLP on behalf of HJN, pointed out that failure to apply the rule to PBV will create a discrepancy in the RAD program where PBRA conversions would be subject to the new rule, but PBV conversions would not.³⁴ In response to this comment, HUD stated, “HUD will amend the RAD Notice to reflect the change that this rule is making for all PBRA properties and to address the requirements related to HUD PBV conversions.”³⁵ HUD then released RAD Supplemental Notice

²⁸ National Housing Preservation Database, <https://preservationdatabase.org/> (last visited Jan. 9, 2025).

²⁹ *Multifamily Assistance & Section 8 Database*, U.S. Department of Housing and Urban Development, https://www.hud.gov/program_offices/housing/mfh/exp/mfhdiscl (last visited Jan. 9, 2025).

³⁰ Rental Assistance Demonstration REV-4 – Final Implementation, H-2019-09 PIH-2019-23 (HA), at 154-155 (Sept. 5, 2019).

³¹ Rental Assistance Demonstration – Supplemental Notice 4C, H-2025-01 PIH 2025-03 (HA), at 16 (Jan 16, 2025).

³² Rental Assistance Demonstration – Supplemental Notice 4C, H-2025-01 PIH 2025-03 (HA), at 16 (Jan 16, 2025).

³³ HUD, RENTAL ASSISTANCE DEMONSTRATION (RAD) POLICY QUICK REFERENCE GUIDE TO MULTIFAMILY HOUSING (PBRA) REQUIREMENTS § 2.10.1 (Sept. 2020).

³⁴ 30-Day Notification Requirement Prior to Termination of Lease for Nonpayment of Rent, 89 Fed. Reg. at 101,299.

³⁵ 30-Day Notification Requirement Prior to Termination of Lease for Nonpayment of Rent, 89 Fed. Reg. at 101,299.

4C, which amends the requirements for PBV conversions to include 30 days' notice of eviction for nonpayment of rent.³⁶ However, Supplemental Notice 4C does *not* add any of the other requirements of the final rule, such as the content requirements for the 30 day notice, or the right to cure the delinquency in the 30 days. Supplemental Notice 4C does state that the 30 day notice must be in conformance with the PBV Tenancy Addendum, but it is unclear when and whether that document may be favorably updated by HUD.³⁷ HUD's failure to include the full protections of the final rule in its amended RAD notice will create unnecessary confusion and disparities within the RAD program between tenants in PBRA conversions and those in PBV conversions.

Advocates should argue that the RAD statute, which states that tenants of RAD-converted public housing units "shall, at a minimum, maintain the same rights under such conversion as those provided under sections 6 and 9 of the Act."³⁸ Section 6 of the U.S. Housing Act governs termination notices, and provides, in part, the authority for the new rule.³⁹ Therefore, the full protections of the final rule should be applicable to RAD PBV conversions pursuant to the RAD statute.

b. Moving to Work ("MTW") jurisdictions

The new rule applies to Moving-to-Work agencies: "Moving-to-Work agencies and the housing they own, operate, manage, and administer are subject to the final rule."⁴⁰

B. Authority

As authority for its rulemaking, HUD cites its general rulemaking authority to implement its statutory mission,⁴¹ its specific authority to regulate PHA management practices and operations,⁴² and its specific authority to establish requirements for project-based rental assistance.⁴³ Importantly, HUD does not cite the CARES Act as statutory authority for the rule.⁴⁴ Covered residents, therefore, can cite to the CARES Act and the final rule as separate justifications for a thirty day notice requirement in public housing and PBRA, especially in jurisdictions where court enforcement of the CARES Act is inconsistent.

C. HUD recommendations and other useful statements not included in regulations

In the preamble of the final rule, HUD makes certain recommendations and statements that HJN members can cite in their advocacy to demonstrate HUD's intent to encourage alternatives to eviction and to counter pushback by PHAs or owners.

i. Repayment plans

³⁶ Rental Assistance Demonstration – Supplemental Notice 4C, H-2025-01 PIH 2025-03 (HA), at 16 (Jan 16, 2025).

³⁷ Rental Assistance Demonstration – Supplemental Notice 4C, H-2025-01 PIH 2025-03 (HA), at 16 (Jan 16, 2025).

³⁸ Consolidated and Further Continuing Appropriations Act, 2012, Pub. L. No. 112-55, 125 Stat. 552, 673 (2011).

³⁹ 42 U.S.C. § 1437d(l)(4); 30-Day Notification Requirement Prior to Termination of Lease for Nonpayment of Rent, 88 Fed. Reg. at 83,844 n. 44.

⁴⁰ 30-Day Notification Requirement Prior to Termination of Lease for Nonpayment of Rent, 89 Fed. Reg. at 101,300.

⁴¹ 42 U.S.C. § 3535.

⁴² 42 U.S.C. § 1437d(c)(4).

⁴³ 42 U.S.C. § 1437f(g); 12 U.S.C. § 1701q; 42 U.S.C. § 8013.

⁴⁴ 30-Day Notification Requirement Prior to Termination of Lease for Nonpayment of Rent, 89 Fed. Reg. at 101,283; 30-Day Notification Requirement Prior to Termination of Lease for Nonpayment of Rent, 88 Fed. Reg. at 83,883-83,884.

Although the final rule does not require PHAs and owners to enter into repayment plans in lieu of eviction, various statements in the preamble demonstrate HUD's strong support for this alternative to evictions. For example, "HUD strongly recommends the best practice of entering into a rental repayment agreement as an alternative to a lump-sum payment for past due amounts."⁴⁵ Later, in response to a comment, HUD elaborates:

While this rule will not require repayment plans, HUD strongly encourages the use of repayment plans and reiterates that PHAs and owners have flexibility to design them to be reasonable. Repayment plans are just one way for tenants to cure their nonpayment of rent and this rule is focusing particularly on notification requirements.⁴⁶

HUD also states that it plans to issue updated guidance for repayment plans, and include in such guidance the requirement to comply with federal civil rights laws.⁴⁷

In practice, advocates can argue that repayment plans are recommended by HUD, and that a PHA or owner's refusal to offer a reasonable repayment plan is out of sync with HUD policy. Given the strength of HUD's commentary on this topic, a court should exercise its discretion to order a repayment plan in lieu of eviction.

ii. The importance of PHA or owner working with tenant to preserve assistance, and the responsibility of the PHA or owner to prevent recertification errors

The rule contains commentary by HUD about the importance of additional time to correct errors and preserve assistance that may be useful to advocates. This commentary represents a narrative shift from blaming tenants exclusively for rent delinquencies, reporting issues, and recertification errors, to acknowledging that housing providers frequently share, or hold, the blame. HUD's comments also affirm that HUD expects PHAs and owners to attempt to work with tenants to correct any errors that underly the nonpayment rather than pursuing eviction.

In response to comments, "HUD emphasizes the need for PHAs and owners to attempt to work with the tenant to correct any noncompliance with the program requirements and/or establish repayment arrangements with the tenant."⁴⁸ Oftentimes a rent delinquency can be attributed to "an error or delay in recertification, which simply needs time to be corrected."⁴⁹ A tenant may also be able to cure the delinquency by requesting a reasonable accommodation or securing funds from a local nonprofit, both of which also require time.⁵⁰

HUD repeatedly emphasizes that recertification errors on the part of the PHA or owner may be the root cause of a tenant's rent arrearage. In response to comments from PHAs and owners regarding their financial obligations and the burden of complying with the new rule, HUD states the following:

HUD also reminds PHAs and owners that the more PHAs and owners improve their compliance with

⁴⁵ 30-Day Notification Requirement Prior to Termination of Lease for Nonpayment of Rent, 89 Fed. Reg. at 101,271.

⁴⁶ 30-Day Notification Requirement Prior to Termination of Lease for Nonpayment of Rent, 89 Fed. Reg. at 101,295.

⁴⁷ HUD has some existing guidance on repayment agreements. See *Repayment Agreement Guidance*, HUD, https://www.hud.gov/sites/dfiles/PIH/documents/Attachment4_Repayment_Agreement_Guidance.pdf; Administrative Guidance for Effective and Mandated Use of the Enterprise Income Verification (EIV) System, PIH 2018-18, at § 16 (Oct. 26, 2018).

⁴⁸ 30-Day Notification Requirement Prior to Termination of Lease for Nonpayment of Rent, 89 Fed. Reg. at 101,278.

⁴⁹ 30-Day Notification Requirement Prior to Termination of Lease for Nonpayment of Rent, 89 Fed. Reg. at 101,279.

⁵⁰ 30-Day Notification Requirement Prior to Termination of Lease for Nonpayment of Rent, 89 Fed. Reg. at 101,279.

recertification requirements, the less likely tenants will be improperly overcharged their portion of rent. These requirements include ensuring that PHA and owner staff are not transferring burdens of recertification onto tenants that are properly the responsibility of the staff, not failing to properly and timely inform tenants of the different verification options that the tenant may provide for their income, not requiring more verification than necessary from the tenant, and/or not requiring tenants to seek verification that staff should and/or can be seeking themselves.⁵¹

In response to comments about the tenants' responsibility to notify the PHA of a change in income, HUD responds:

HUD believes there is a mutual responsibility between the tenant and the PHA or owner to ensure that recertification requirements are followed by both parties. HUD would like to underscore the importance of PHAs and owners working with their tenants to identify opportunities to improve practices and procedures that facilitate on-time recertifications, rental payments or timely re-payment plans. Additionally, the notice requirements in this rule will help those tenants who are unaware or remind tenants who are aware of ways they can cure their nonpayment of rent.⁵²

Advocates should cite this commentary by HUD in arguments for application of the new rule, repayment agreements, and continuances where additional time is needed to disentangle any recertification issues that may have led to the rent arrearage.

iii. Reasonable accommodation

HUD "suggests that the 30-day notice advise individuals of their right to requests reasonable accommodations including information on how individuals with disabilities can request a reasonable accommodation, and include a point of contact for reasonable accommodation requests."⁵³ In response to a comment requesting that HUD require, rather than recommend, that the thirty day notice include information about reasonable accommodation, HUD declines to require such language, arguing that PHAs and owners are already required to notify tenants of their right to reasonable accommodation at admission and annually.⁵⁴ HUD states that it will issue additional guidance on reasonable accommodations that PHAs and owner can use to assist tenants, though it is unclear how likely this is under the incoming Trump administration.⁵⁵ In addition, HUD states that it will "continue to encourage PHAs and owners to advise individuals of their right to request reasonable accommodations, including information on how individuals with disabilities can request reasonable accommodation, and include a point of contact for reasonable accommodation requests."⁵⁶

HUD helpfully acknowledges that there are instances in which a tenant may be entitled to a reasonable accommodation in cases of non-payment of rent, for example where a tenant receives a disability-related government assistance later in the month after rent is due.⁵⁷ This commentary can be used to counter arguments that nonpayment evictions do not implicate reasonable accommodation, or that an accommodation that has financial implications for the landlord is automatically unreasonable.

⁵¹ 30-Day Notification Requirement Prior to Termination of Lease for Nonpayment of Rent, 89 Fed. Reg. at 101,280.

⁵² 30-Day Notification Requirement Prior to Termination of Lease for Nonpayment of Rent, 89 Fed. Reg. at 101,280.

⁵³ 30-Day Notification Requirement Prior to Termination of Lease for Nonpayment of Rent, 89 Fed. Reg. at 101,272.

⁵⁴ 30-Day Notification Requirement Prior to Termination of Lease for Nonpayment of Rent, 89 Fed. Reg. at 101,293.

⁵⁵ 30-Day Notification Requirement Prior to Termination of Lease for Nonpayment of Rent, 89 Fed. Reg. at 101,293.

⁵⁶ 30-Day Notification Requirement Prior to Termination of Lease for Nonpayment of Rent, 89 Fed. Reg. at 101,293.

⁵⁷ 30-Day Notification Requirement Prior to Termination of Lease for Nonpayment of Rent, 89 Fed. Reg. at 101,293.

iv. Access for LEP persons

In response to a comment requesting that HUD require that PHAs and owners take steps to make the required notice accessible to Limited English Proficiency (“LEP”) individuals, HUD declines to add specific language to the rule.⁵⁸ However, HUD reiterates that “PHAs, owners and managers must also continue to take reasonable steps to ensure meaningful access to their programs, services, and activities to individuals with LEP.”⁵⁹ HUD’s LEP requirements and other civil rights requirements at 24 C.F.R. part 5 are applicable without need for cross reference in the new rule.

v. Naming only signatories to the lease on notice and court documents

In response to a comment, HUD responds that “PHAs and owners must ensure that only the signatories of the lease are named in the 30-day notification, any lease termination notices, and subsequent court documents.”⁶⁰ Naming non-signatories to the lease agreement, in particular minor children, on termination notices and court documents can have an adverse long-term impact on the minor child’s credit and ability to secure housing in the future. While this requirement is not reflected in the regulatory language, it represents clear guidance from HUD that can be used in advocacy with PHAs and owners.

vi. The ongoing applicability of the CARES Act notice requirement

Though the authority for the final rule does not come from the CARES Act, HUD does state in its response to comments that “the CARES Act 30-day notice to vacate requirement for nonpayment of rent, in section 4024(c)(1), is still in effect for all CARES Act covered properties.”⁶¹ HUD’s express position that the CARES Act’s thirty day notice requirement remains in effect may be helpful for advocates representing tenants who are not covered by the new rule, but are covered by the CARES Act.

D. Practice tips for eviction court

This section examines some possible issues that may arise in eviction court when arguing for applicability of the new rule.

i. Court refuses to apply the new rule, mistakenly believing it is related to the CARES Act’s thirty day notice requirement.

Some courts may refuse to enforce the CARES Act’s thirty-day notice requirement, erroneously ruling that the provision has expired. Advocates should be clear with courts that this new rule is separate from the CARES Act notice requirement under 15 U.S.C. § 9058(c). The rule does not cite to the CARES Act for its authority, instead providing an alternative legal basis for a thirty day notice. HUD is explicit that “this final rule has no implication on the CARES Act.”⁶² Furthermore, the rule is limited to public housing and PBRA and therefore only applies to a small fraction of the “covered properties” under the CARES Act.

At the same time, advocates may find it useful to emphasize to hesitant judges that they should

⁵⁸ 30-Day Notification Requirement Prior to Termination of Lease for Nonpayment of Rent, 89 Fed. Reg. at 101,294.

⁵⁹ 30-Day Notification Requirement Prior to Termination of Lease for Nonpayment of Rent, 89 Fed. Reg. at 101,294.

⁶⁰ 30-Day Notification Requirement Prior to Termination of Lease for Nonpayment of Rent, 89 Fed. Reg. at 101,300.

⁶¹ 30-Day Notification Requirement Prior to Termination of Lease for Nonpayment of Rent, 89 Fed. Reg. at 101,300.

⁶² 30-Day Notification Requirement Prior to Termination of Lease for Nonpayment of Rent, 89 Fed. Reg. at 101,300.

apply the final rule because HUD already regulates how PHAs and PBRA owners may terminate assistance to tenants, and what type of notice they must give. The required notice period for public housing and PBRA properties already exceeded that required under state law in many jurisdictions, even before implementation of this rule, and the previous IFR.⁶³ HUD already requires 30 days' notice of eviction for nonpayment for properties subsidized through the HOME Investment Partnership Program.⁶⁴ PHAs and PBRA owners receive a benefit from the federal government, and in return must comply with federal rules governing management and operations. This rule is nothing novel.

ii. Court refuses to apply the new rule because it conflicts with the lease agreement, which has not yet been updated.

As explained earlier, the rule provides an extended timeline for compliance only with regulatory changes that require PHAs and owners to change their lease agreements. PHAs have until June 15, 2026 to amend their lease agreements, and PBRA owners have fourteen months from the date that HUD publishes amended model lease to incorporate the new requirements in their leases.⁶⁵ However, the actual notice requirements in the rule go into effect on January 13, 2025.⁶⁶ Therefore, PHAs and owners must comply with the new notice requirements as of that date, even though their lease agreements will not yet be updated.

There may be a way to read the new regulation into the lease agreement even before it is updated. The existing HUD Model Lease for PBRA properties states “[a]ny termination of this Agreement by the Landlord must be carried out in accordance with HUD regulations, State and local law, and the terms of this Agreement.” Most public housing lease contain similar language about compliance with federal regulations and program rules. This language can be used to urge compliance with the new rule where a court refuses to look past the lease agreement.

iii. Court refuses to apply the new rule based on argument that the regulations are not privately enforceable by the tenant.

It is possible that a PHA or owner could raise an argument that the rule – absent the corresponding lease provision – is not enforceable by the tenant. This argument would be more appropriately raised in the context of an affirmative federal suit by the tenant under 42 U.S.C. § 1983 or an implied private right of action theory, where courts have limited a tenant’s right of action to enforce regulations.⁶⁷ Such an argument is misplaced in eviction court where the regulations are raised defensively. There is no authority for the premise that a tenant is barred from raising federal regulations to defend a state court eviction action.

⁶³ For example, prior to the IFR, fourteen days’ notice was required for nonpayment evictions from public housing. 24 C.F.R. § 966.4(l)(3)(i)(A) (effective until January 12, 2025). By contrast, state law in many jurisdictions requires as little as three to five days’ notice.

⁶⁴ 24 C.F.R. § 92.253(c).

⁶⁵ 30-Day Notification Requirement Prior to Termination of Lease for Nonpayment of Rent, 89 Fed. Reg. at 101,270, 101,281.

⁶⁶ 30-Day Notification Requirement Prior to Termination of Lease for Nonpayment of Rent, 89 Fed. Reg. at 101,270.

⁶⁷ See *Alexander v. Sandoval*, 532 U.S. 275, 293, 121 S. Ct. 1511, 1523, 149 L. Ed. 2d 517 (2001) (Title VI disparate impact regulations not privately enforceable); *Yarbrough v. Decatur Hous. Auth.*, 931 F.3d 1322, 1327 (11th Cir. 2019) (preponderance of evidence standard for termination in federal regulations is “unmoored from any federal right” and therefore not enforceable under 42 U.S.C. § 1983).

iv. Court refuses to apply the new rule because it conflicts with state law that requires less notice.

HUD is clear that “[t]he final rule is applicable to the specified HUD programs regardless of state or local law.”⁶⁸ To the extent that there is a conflict between state law and federal program regulations, state law is preempted and program regulations should be applied absent a statement of contrary intent.⁶⁹ However, a stronger argument (and one seemingly implied by HUD in its preamble) is that the rule does not actually conflict with or invalidate state or local notice requirements, because landlords must still issue the notice required under state or local law in addition to the HUD-required notice. The state or locally required notice may run concurrently or consecutively to the HUD-required notice, depending on the requirements of state and local law.⁷⁰ The rule expressly states that it does not preempt any State or local law that provides greater or equal protection for tenants.⁷¹

It may be useful to reiterate to a skeptical court that the new rule only applies to public housing and PBRA properties, which were already subject to more stringent notice requirements than exist in most state landlord-tenant laws. As previously detailed, HUD has general and specific statutory authority from Congress to promulgate regulations to govern its subsidy programs.

One commenter wrongly suggested that *Alabama Association of Realtors v. U.S. Department of Health and Human Services*, 594 U.S. 758 (2021) renders the final rule improper and overreaching because “HUD does not have legal authority to preempt state landlord-tenant laws without the express authorization of Congress.”⁷² In that case, the Supreme Court ruled that the Centers for Disease Control and Prevention lacked the statutory authority to impose a nationwide, near universal eviction moratorium in response to the public health threat of the COVID-19 pandemic. The Supreme Court said nothing about HUD’s statutory authority to regulate the PHAs and owners that administer its programs and utilize its subsidies. Indeed, HUD has express authorization by Congress to regulate the public housing and PBRA programs. To the extent that a landlord or court might raise the *Alabama Association of Realtors* case, it has no application here.

v. Court refuses to apply portion of the new rule that allows tenant to cure violation without paying alleged non-rent arrearages due to perceived conflict with state law.

In the final rule HUD is clear that if the eviction is noticed for nonpayment of rent, the landlord may not file if the tenant pays all of the alleged *rent* owed within the thirty-day notice period. The tenant need not pay non-rent arrearages to cure the default.⁷³ Some state landlord-tenant acts define rent as all charges due under a rental agreement, including non-rent arrearages, and/or allow housing providers to designate non-rent charges as “additional rent.” A landlord might use such statutory language to argue that payment of all past arrearages is necessary to cure the violation. However, such laws are likely preempted by the Brooke Amendment to the U.S. Housing Act, which generally limits a family’s rent obligation to thirty

⁶⁸ 30-Day Notification Requirement Prior to Termination of Lease for Nonpayment of Rent, 89 Fed. Reg. at 101,296.

⁶⁹ *Ayers v. Philadelphia Hous. Auth.*, 908 F.2d 1184, 1189 (3d Cir. 1990) (as applied to a PHA’s eviction of a family participating in the Turnkey III homeownership program, “to the extent that the provisions, procedures and protections of [state law] are found to be in conflict with the relevant federal regulations, the federal regulations must displace and preempt the state law as to Turnkey III residents.”)

⁷⁰ 30-Day Notification Requirement Prior to Termination of Lease for Nonpayment of Rent, 89 Fed. Reg. at 101,271.

⁷¹ 30-Day Notification Requirement Prior to Termination of Lease for Nonpayment of Rent, 89 Fed. Reg. at 101,271; 101,288.

⁷² 30-Day Notification Requirement Prior to Termination of Lease for Nonpayment of Rent, 89 Fed. Reg. at 101,290.

⁷³ 30-Day Notification Requirement Prior to Termination of Lease for Nonpayment of Rent, 89 Fed. Reg. at 101,271.

percent of the family's monthly adjusted income, or ten percent of the family's monthly income, whichever is higher.⁷⁴ As a practical matter, based on this statutory limitation on how much "rent" a subsidized tenant can be charged, PHAs and owners would be severely limited in how much they could assess in non-rent charges if those charges were included in "rent."⁷⁵ Presumably, PHAs and owners will not wish to limit their ability to charge non-rent arrearages by adopting a more expansive definition of "rent" as may be permissible under state law.

Another issue could arise where the tenant makes the required rent payment, but a portion of it gets applied to an older non-rent debt. This practice is common across the management industry and permitted under some state laws. As long as the amount paid equals the amount of rent alleged due, advocates should argue that the delinquency is cured, and the eviction may not proceed.

vi. Court refuses to apply the new rule because it mistakenly believes it need not follow federal regulations due to *Loper Bright*.

On June 28, 2024, the U.S. Supreme Court overturned the "*Chevron* deference" doctrine in *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369, 144 S. Ct. 2244, 219 L. Ed. 2d 832 (2024). The Court held that federal courts may no longer defer to agency interpretation of a federal statute. *Loper Bright* was an Administrative Procedure Act ("APA") case, and it impacts the legal standard a court must apply in evaluating a challenge to a promulgated regulation under the APA. APA actions can only be brought in federal court. In other words, a state eviction court judge's decision to disregard a regulation based on *Loper Bright* would be a gross misinterpretation of the case's holding and would be procedurally improper. For a detailed analysis of *Loper Bright*'s implications and arguments against its (erroneous) application in eviction court, see NHP's [Loper Bright Enterprises v. Raimondo: HJN Primer](#).

⁷⁴ 42 U.S.C. § 1437a(a)(1); *See, e.g., Hous. Auth. & Urban Redev. Agency of Atl. City v. Taylor*, 796 A.2d 193 (N.J. 2002) (federal laws preempted state law permitting recovery of other charges as "additional rent" in summary proceeding because local law undermined federal tenant rent limitation); *Sudersan v. Royal*, 900 A.2d 320 (N.J. Super. Ct. App. Div. 2005) (Section 8 statute preempted lease terms attempting to broaden definition of "rent" to include utility charges as basis for eviction under state law). See discussion in NHP Greenbook, § 14.9.3.4.3.

⁷⁵ 42 U.S.C. § 1437a(a)(1); 24 C.F.R. § 5.634 (defining "Tenant Rent" in Section 8 programs); 24 C.F.R. § 960.253 (explaining "Tenant Rent" options in public housing program).