



May 6, 2020

Submitted via E-mail

Brian Montgomery, Assistant Secretary for Housing - Federal Housing Commissioner and Acting Deputy Secretary
Hunter Kurtz, Assistant Secretary for Public and Indian Housing
U.S. Department of Housing and Urban Development
451 7th Street S.W.
Washington, D.C. 20410

Re: HUD Must Take Immediate Action to Mandate and Streamline Interim Recertifications

Dear Assistant Secretaries Montgomery and Kurtz,

On March 26, 2020, the National Alliance of HUD Tenants, the National Housing Law Project, and the National Low Income Housing Coalition submitted a [letter](#) to HUD regarding its policies on interim recertification during the COVID-19 crisis. We appreciate that HUD has incorporated some of our previous recommendations into its guidance, notably allowing self-certifications by mail and email; clarifying that stimulus payments will not count as income for rent calculations; and preparing tenant “know your rights” brochures to inform assisted families about their right to seek interim recertification. However, HUD should use its waiver authority to take additional steps to ensure the immediate and safe processing of interim recertifications for assisted families.

We agree that communities across the country have been impacted differently by COVID-19 and many programmatic decisions must be made on a local level. However, there are a handful of key policies that are necessary to protect resident health and safety, no matter what the local community might be facing. HUD's decision to not issue directive guidance regarding interim recertification puts some tenants at risk of paying rents not commensurate with their ability to pay, eviction, or subsidy termination. HUD must swiftly act to require the following of PHAs and owners.

Recommendations

PHAs and owners should construe a non-payment of rent as a request for interim recertification, increase its efforts to inform families of their right to request an interim recertification, and make all interim recertifications effective the first of the month following the income reduction. Because the statute requires rent to be based upon monthly adjusted income, families may request an interim recertification due to any changes that may affect the

tenant's portion of the rent. Many tenants are unaware of this right, and few PHAs and owners are affirmatively notifying tenants of their interim recertification rights. If rent is not paid when due during the national emergency, PHAs and owners should presume that the cause is a reduction in income and construe the nonpayment as a request for an interim recertification.

If HUD is not willing to allow “constructive requests” to trigger the interim recertification process, HUD must ensure tenants are informed of their right to seek an interim recertification. A HUD-prepared notice should be distributed to assisted families, posted prominently at assisted properties, and included in any mailings sent to assisted families. The notice should also be sent to resident advisory board members, resident council officers, and tenant organizations to be shared with their membership.

When a request for an interim recertification is received, PHAs and owners should immediately begin the process for interim recertification. HUD should suspend all regulatory and HUD guidance that permits the denial or delay of prompt interim recertifications. As in the HUD multifamily programs, HUD should establish a uniform effective date for interim recertification as the first of the month following the event triggering the decrease in income.

Amend the procedures for families to self-certify a decrease in their income. In its recent PIH COVID-19 statutory and regulatory waiver notice, HUD allows PHAs to consider self-certification has the highest form of income verification and to forgo third-party verification, including the use of EIV. *See* HUD Notice PIH 2020-05 8-9 (Apr. 10, 2020). HUD should extend this waiver to owners of assisted properties. Further, HUD should ***require*** PHAs and owners to accept a family’s self-certification via mail, email and other electronic delivery.

Additionally, HUD should allow all assisted families to self-certify in the same manner described in HUD’s PIH COVID-19 statutory and regulatory waiver notice. *See* HUD Notice PIH 2020-05 8-9 (Apr. 10, 2020). HUD’s multifamily guidance allows families to self-certify if the information cannot be verified by another acceptable verification method. HUD, Questions and Answers for Office of Multifamily Housing Stakeholders Coronavirus 15 (Apr. 16, 2020); *see* Handbook 4350.3 paragraphs 5-13.B.1.d. HUD has indicated families can provide a written signed statement affirming the loss or decrease of income in lieu of a notarized statement, signed affidavit, or the owner witnessing the tenant sign a statement. However, this option is not clearly reflected in HUD’s current guidance. In its multifamily guidance, HUD should adopt the tenant self-certification language used in its PIH COVID-19 statutory and regulatory waiver notice. If material discrepancies arise after the termination of the federal emergency, PHAs and owners should request additional information from assisted families or obtain third-party verification.

Amend HUD's procedural guidance for annual recertifications. In its recent PIH COVID-19 statutory and regulatory waiver notice, HUD allows PHAs to delay completing annual recertifications until December 31, 2020. *See* HUD Notice PIH 2020-05 8 (Apr. 10, 2020). HUD should extend this waiver to owners of assisted properties. The ability to delay annual recertifications will allow owners to prioritize completing interim recertifications. Prioritizing interim recertifications ensures families are paying rents commensurate with their ability to pay and decreases the potential of assisted families accumulating arrears.

If HUD will not allow owners to delay recertification, or where PHAs have elected to not utilize the waiver, HUD should direct owners and PHAs to allow families to complete the recertification after the ordinary deadline without penalty. In light of the current public health crisis, HUD should direct owners and PHAs to presume an extenuating circumstance is present when a family does not timely provide the requested information and to allow families to complete recertification. Families should not be considered out of compliance or subject to market rent increases. Additionally, owners should be directed to develop a plan with families who do not have access to the internet or email for safe non-electronic transfer of the requested recertification information.

Set minimum rents at zero. HUD should direct PHAs to set their minimum rents to \$0 and should set the minimum rent for the project-based Section 8 program to \$0. If minimum rents are not set at zero, HUD should direct PHAs and owners to immediately inform any families currently paying the minimum rent of their ability to apply for a hardship exemption due to any loss or interruption of income, and to assume that COVID-19-related hardships are long-term in nature. If minimum rent is not paid when due during the federal emergency, PHAs and owners should presume the family has a hardship (a "constructive request") and begin processing the hardship exemption.

Extend the prohibition of the use of fees and require reasonable repayment plans. Although unrelated to recertifications, HUD should use its authority to extend the prohibition of nonpayment and/or "convenience" fees for the duration of the federal emergency. Extending the prohibition of fines and fees for the duration of the federal emergency will decrease the potential of assisted families accumulating arrears. And where families have accumulated past-due rent or other debts that are not relieved by proper interim recertifications, owners and PHAs should work with residents to establish reasonable repayment plans. HUD should establish minimum standards for such repayment agreements, consistent with pre-existing HUD guidance that total rent burdens be limited to 40% of adjusted income. Additionally, HUD should require owners and PHAs to give households a reasonable grace period to meet any past-due programmatic requirements following the end of the federal emergency.

Require Owners and PHAs to distribute and post HUD-prepared tenant resources. To keep assisted families safely housed, HUD must ensure tenants are informed of important policy changes. HUD-prepared tenant resources, such as the "know your rights" brochures, should be printed in bulk by HUD and distributed to assisted families, posted prominently at assisted properties, and included in any mailings sent to assisted families. We recommend that HUD send a letter to owners and PHAs directing them to obtain and distribute the brochures in their developments, by either obtaining them from a HUD hotline or printing them locally, as HUD has done successfully for HUD Multifamily housing tenants' rights and responsibilities brochures, which owners/agents distribute annually to tenants. HUD-prepared tenant resources should also be sent to resident advisory board members, resident council officers, and other tenant organizations to be shared with their membership. All HUD-prepared tenant resources should be translated into appropriate languages, and accessible via printed copies and HUD's COVID-19 webpages.

We recognize and deeply appreciate all your efforts to ensure comprehensive tenant protections during the emergency. Our organizations stand ready to assist the Department in developing the

necessary policies and practices to ensure continued housing security and affordability for tenants in all HUD programs. Please contact Michael Kane at NAHT (michaelkane@saveourhomes.org), James Grow (jgrow@nhlp.org) or Shamus Roller (sroller@nhlp.org) at NHLP, or Diane Yentel at NLIHC (dyentel@nlihc.org).