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Erika Poethig, DPC
From: Deborah Thrope, Bridgett Simmons, Kate Walz, NHLP
Re: Legal Authority for HUD Eviction Prevention Measures
Date: August 31, 2021

Last week, the United States Supreme Court struck down the Centers for Disease Control's latest nationwide eviction moratorium targeted to counties experiencing substantial or high levels of COVID-19. Millions of tenants around the country have been left with no protections as the rise in the Delta variant is driving up Covid-19 cases throughout the United States. **It is more critical now than ever that HUD use its existing statutory and regulatory authority to protect its own residents from eviction- who are primarily Black and Latinx households with extremely low incomes, people with disabilities, and older adults.** In response to the Supreme Court's ruling, Secretary Fudge issued a press release and stated the following:

We call on state and local jurisdictions to take every action they can to safeguard their most vulnerable residents. These actions should include permitting evictions for non-payment of rent only after landlords and tenants have sought Emergency Rental Assistance funds. We call on every landlord, every housing owner, and every partner that receives our support to do all they can to help protect the people of their communities.

On August 25, 2021, the White House issued a [fact sheet](#) on what additional steps the Biden administration is taking to prevent evictions and increase the delivery of Emergency Rental Assistance (ERA). These steps included requiring HUD providers participating in the public housing and project-based Section 8 programs to give tenants additional time to secure ERA, including by extending the time for issuance of a termination notice for non-payment from 14 to 30 days (though this is an existing obligation under the CARES Act). The fact sheet notes that HUD may require additional steps prior to an eviction case being filed.

HUD must immediately mandate additional steps to protect HUD residents from eviction. **HUD has an existing array of legal authority to protect HUD tenants from evictions and involuntary displacement during a global pandemic.** This letter outlines HUD's legal authority to act under:

- The Housing Act of 1949 and the Housing and Community Development Act.
- The Fair Housing Act
- The Brooke Amendment to the U.S Housing Act.
- The CARES Act
- The public housing, voucher, and HUD multifamily statutes.

These statutory authorities allow and obligate HUD to choose from a range of eviction prevention actions such as:

- Enacting a blanket eviction moratorium for HUD residents.
- Revising termination and eviction procedures to exclude nonpayment of rent from good cause.
- Require housing providers to seek emergency rental assistance.
- Require housing providers to offer families’ reasonable repayment plans prior to termination.
- Mandate retroactive interim recertification.
- Require housing providers to determine if the household requires a reasonable accommodation, including from certain program requirements.
- Determine if a household should automatically receive the hardship exemption to the minimum rent.

HUD has exercised its authority elsewhere to protect certain populations from evictions, even when federal law permits HUD covered housing providers to terminate assistance. For example, in an effort to protect the homes of survivors of violence who, pursuant to the Violence Against Women Act, may still be evicted due to an actual and imminent threat of violence against others at the property,¹ HUD has exercised its authority to place pre-conditions on owners before issuing a termination notice, including by stating that “[evictions] and terminations should only be used by a PHA or owner when there are no other actions or remedies to reduce or eliminate the threat, including when actions or remedies are unavailable.”² HUD can exercise similar authority here to protect HUD households from evictions during a global pandemic by creating a set of pre-conditions on terminations of assistance.

As HUD knows all too well, evictions from HUD assisted housing virtually guarantee that low-income households will be unable to live in HUD assisted housing in the future. Given the panoply of laws available to prevent and mitigate the harm, HUD must act now to direct covered housing providers to comply with policies aimed at preventing evictions.

I. The Housing Act of 1949 and The Housing and Community Development Act both provide HUD the legal authority to prevent evictions and involuntary displacement of its residents.

Section 2 of the Housing Act of 1949 (“The National Housing Act”), provides in part:

The Congress hereby declares that the general welfare and security of the Nation and the health and living standards of its people require ... realization as soon as feasible of the goal of a decent home and a suitable living environment for every American family... *The Department of Housing and Urban Development ... shall exercise [its] powers, functions, and duties under this or any other law, consistently with the*

¹ 34 U.S.C. § 12491(b)(3)(iii); 24 C.F.R. § 5.2005(d)(5).

² PIH Notice 2017-08, 36 (May 19, 2017); H-2017-05, 38 (June 30, 2017)

*national housing policy declared by this Act and in such manner as will facilitate sustained progress in attaining the national housing objective hereby established...*³

These housing goals are binding upon HUD and other federal agencies with housing responsibilities, requiring them to exercise policies consistent with the 1949 declaration. Courts have explicitly stated that these policies are mandatory in nature, not precatory.⁴ HUD is thus obligated to follow these policies and to take actions consistent with these policies.⁵ The National Housing Act provides HUD with the authority to exercise its power, functions, and duties under any law it is subject to further the goal of ensuring that “the goal of a decent home and suitable living environment for every American family” is met.

In addition, in enacting the Housing and Community Development Act, Congress “declared it to be the policy of Congress that in the administration of Federal housing and development programs, involuntary displacement of persons from homes and neighborhoods should be minimized.”⁶ HUD and other federal housing agencies can administer their housing programs to prevent the involuntary displacement and eviction of federally assisted housing tenants by creating a set of pre-conditions on terminations of assistance.

In order to further these mandatory goals, HUD could enact a blanket eviction moratorium covering all HUD households. HUD could also prevent evictions by revising the definition of “good cause” to exclude nonpayment of rent, particularly when the non-payment of rent is related to Covid-19. HUD could also require housing providers to engage in a set of pre-conditions, prior to the issuance of a termination notice (hereinafter, pre-conditions on terminations of assistance). For example, HUD could require housing providers to first: apply for rental assistance; recertify the household’s income and apply it retroactively; determine if the household is eligible for the hardship exemption from the minimum rent (see Section IV for a more detailed discussion of hardship exemption); determine if the household is entitled to a reasonable accommodation, including from certain program requirements, such as recertification; enter into a reasonable re-payment plan; and take any other reasonable steps necessary to prevent a household from losing their home and housing assistance.

II. The Fair Housing Act provides HUD the legal authority to prevent evictions and involuntary displacement of its residents.

The Fair Housing Act (“FHA”) requires HUD to “administer the programs and activities relative to housing and urban development in a manner affirmatively to further the policies” of

³ 42 U.S.C. § 1441a(a).

⁴ *Lee v. Kemp*, 731 F. Supp. 1101, 1110 (D.D.C. 1989) (housing goals are mandatory on HUD); *United States v. Winthrop Towers*, 628 F. 2d 1028, 1035-36 (7th Cir. 1980)(HUD’s decisions were reviewable to determine whether they were consistent with the national housing goals); *Walker v. Pierce*, 665 F. Supp. 831, 838 (N.D. Cal. 1987)(“Secretary’s actions must be invalidated if he acts to obtain maximum financial return for HUD and he fails to consider and implement alternatives ... to effect the objectives and priorities of the Act.”)

⁵ *Commonwealth of Pa. v. Lynn*, 501 F. 2d 848, 855 (D.C. Cir. 1974).

⁶ 42 U.S.C. §5313note, Pub. L. 95-557, Title IX, § 902, 92 Stat. 2125 (Oct. 31, 1978).

the FHA.⁷ Given the disproportionate representation of minority households in HUD’s housing programs, HUD must consider what steps it can take to prevent serious injury to them, including homelessness and involuntary displacement as well as the permanent stigma and harm associated with evictions.⁸ HUD must also consider what steps it can take to prevent serious and permanent harm to families with children who rely upon HUD for their housing stability.

Prior to the pandemic, due to a long history of structural racism and ongoing discrimination, Black and Latino households in the United States experienced higher rates of poverty and housing insecurity than white households.⁹ Black and Latino renters were also more likely to be extremely low-income and therefore disproportionately eligible for HUD-assisted housing.¹⁰ Discriminatory policies also led to homeownership efforts mainly targeted to white households.¹¹ As renters, Black and Latino households face a host of discriminatory policies, including the ability to secure rental housing in areas of with employment opportunities, access to quality health care, grocery stores, and quality schools.¹² They are also more likely to live in rental housing with poor conditions and in zip codes with higher rates of environmental toxins, which can contribute to poor health outcomes.¹³

COVID-19 has further amplified these racial disparities and growing economic insecurity among households of color. Renters of color report having “having less confidence in their ability to pay rent and experiencing greater difficulties staying current on rent compared with their white counterparts.”¹⁴ Black and Latino households are also more likely to be essential workers who have an increased risk of exposure to the virus.¹⁵ When the pandemic triggered an

⁷ 42 U.S.C. § 3608(e)(5).

⁸ *NAACP v. HUD*, 817 F. 2d 149, 154 (1st Cir. 1987) (observing that the statutory duty to affirmatively further fair housing “requires something more of HUD than to simply refrain from discriminating itself or purposely aiding the discrimination of others.”)

⁹ Jaboa Lake, *The Pandemic Has Exacerbated Housing Instability for Renters of Color*, CENTER FOR AMERICAN PROGRESS (Oct. 30, 2020), <https://www.americanprogress.org/issues/poverty/reports/2020/10/30/492606/pandemic-exacerbated-housing-instability-renters-color> (citing Andrew Aurand et al., “*The Gap: A Shortage of Affordable Homes*,” NATIONAL LOW INCOME HOUSING COALITION (March 2020), https://reports.nlihc.org/sites/default/files/gap/Gap-Report_2020.pdf; POVERTY USA, *The Population of Poverty USA*, <https://www.povertyusa.org/facts> (last visited Dec. 17, 2020).)

¹⁰ *Id.*

¹¹ See Richard Rothstein, *The Color of Law: A Forgotten History of How Our Government Segregated America* 64-65 (2017); see also NPR, ROBERT WOOD JOHNSON FOUNDATION, HARVARD T.H. CHAN SCHOOL OF PUBLIC HEALTH, *Discrimination in America: Final Summary*, p. 11, 12 (January 2018), <https://cdn1.sph.harvard.edu/wp-content/uploads/sites/94/2018/01/NPR-RWJF-HSPH-Discrimination-Final-Summary.pdf>

¹² Lake, *supra* note 40.

¹³ BROOKINGS INSTITUTE, *Time for justice: Tackling race inequalities in health and housing* (Oct. 19, 2016), <https://www.brookings.edu/research/time-for-justice-tackling-race-inequalities-in-health-and-housing>.

¹⁴ Lake, *supra* note 40.

¹⁵ Danyelle Solomon et al., *The Coronavirus Pandemic and the Racial Wealth Gap*, CENTER FOR AMERICAN PROGRESS (March 19, 2020), <https://www.americanprogress.org/issues/race/news/2020/03/19/481962/coronavirus-pandemic-racial-wealth-gap>; Lisa Dubay et al., *How Risk of Exposure to the Coronavirus Varies By Race and Ethnicity and How to Protect the Health and Well-being of Workers and Their Families*, URBAN INSTITUTE (Dec. 1, 2020), https://www.urban.org/sites/default/files/2020/12/01/executive_summary_risk_of_exposure_to_covid19.pdf.

economic recession, Black and Latino households also faced higher rates of lost employment,¹⁶ which in turn increased their economic insecurity and inability to pay rent.¹⁷ Due to systemic racism in housing, criminal justice, education, employment, and health care, people of color are more likely to experience homelessness.¹⁸

Evictions, like all other policies in the United States, are tinged with racial bias, and disproportionately affect Black and Latino renters in particular. Research indicates that nonwhite renters face higher eviction rates, and in some cases, are more than twice as likely to be evicted as white renters.¹⁹ Evictions also fall particularly hard on Black women. Across their lifetime, 1 in 5 Black women are evicted, compared with 1 in 15 white women.²⁰ Even the threat of an eviction can have lifelong negative health effects on the household.²¹

The impact of evictions on families with children. The nation's children have already had a challenging year, with many falling into deeper poverty and hunger, the loss of social interactions important for their development, and a significant disruption in their education.²² An increasing number of children have been diagnosed with anxiety, and depression.²³ Based upon research observing children who survived natural disasters, experts warn that even with a vaccine rolling out now, it will take years for children to fully recover.²⁴ Given the fact that the majority of evicted households will be families with children, their worst fear may yet to be realized—the loss of their home in the dead of winter in the middle of a global pandemic.²⁵

Eviction is particularly traumatizing to children and affects emotional and physical well-being and development for years, if not for lifetimes.²⁶ Eviction increases the likelihood of emotional trauma, associated with adverse childhood experiences, which have long-term negative health impacts, including increased risk of cardiovascular disease and pulmonary disease in

¹⁶ Lake, *supra* note 40; NPR, ROBERT WOOD JOHNSON FOUNDATION, HARVARD T.H. CHAN SCHOOL OF PUBLIC HEALTH, *The Impact of the Coronavirus on Households by Race/Ethnicity*, p. 3 (Sept. 2020), https://cdn1.sph.harvard.edu/wp-content/uploads/sites/94/2020/09/NPR-Harvard-RWJF-Race-Ethnicity-Poll_091620.pdf.

¹⁷ Lake, *supra* note 40.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² Erin Einhorn, *Covid is having a devastating impact on children – and the vaccine won't fix everything*, NBC NEWS (Dec. 15, 2020), <https://www.nbcnews.com/news/education/covid-having-devastating-impact-children-vaccine-won-t-fix-everything-n1251172>.

²³ Shweta Singh et al., *Impact of COVID-19 and lockdown on mental health of children and adolescents: A narrative review with recommendations* (Aug. 24, 2020), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7444649/>.

²⁴ Paul Hill, *What Post-Katrina New Orleans Can Teach Us About Addressing COVID Learning Losses* (April 20, 2020), <https://www.crpe.org/thelens/what-post-katrina-new-orleans-can-teach-schools-about-addressing-covid-learning-losses>; Einhorn, *supra* note 52.

²⁵ COVID-19 Eviction Defense Project, *Tabulation of Rental Arrears in Late-Oct, Early-Nov.* (Nov. 20, 2020), https://drive.google.com/file/d/1IB_X5e8xy6bIwmZFIWTbgYSv8qEmVKub/view (relying on U.S. Census Bureau Household Pulse Survey data that shows that 38% of families with children have little or no confidence they can pay this month's rent on time, as compared to 21% of households without children).

²⁶ See Sandstrom et al., *supra* note 4.

adulthood and decreased life expectancy.²⁷ Children whose mothers are evicted during pregnancy are more likely to have adverse birth outcomes, such as low birthweight or preterm pregnancies.²⁸ Families of children born with adverse birth outcomes are substantially more likely to be evicted in the first five years of their child’s life.²⁹ The evidence is clear: child health and housing security are closely intertwined.³⁰ For these reasons, HUD should consider and deploy necessary steps to prevent the evictions of HUD assisted households, including by implementing a moratorium and by requiring all of the pre-conditions on terminations assistance measures described above.

III. The Brooke Amendment to the U.S. Housing Act provides HUD the legal authority to prevent evictions and involuntary displacement of its residents.

Pursuant to 42 U.S.C. §1437a(a) (commonly known as the “Brooke Amendment”), families residing in public housing must pay no more than 30% of their adjusted income towards rent or the minimum monthly rental amount. For its lowest income households paying the minimum rent, the Brooke Amendment also requires PHAs to immediately grant an exemption to the minimum rent requirement when a household experiences financial hardship, including the threat of eviction. 42 U.S.C. § 1437a(a)(3)(B)(i). These protections against unaffordable rents and eviction also extend to residents in the Section 8 voucher, project-based Section 8, and Section 8 moderate rehabilitation programs. Under this law, housing providers:

“...shall immediately grant an exemption from application of the minimum monthly rental... to any family unable to pay such amount because of financial hardship, which shall include situations in which (I) the family has lost eligibility for or is awaiting an eligibility determination for a Federal, State, or local assistance program, including a family that includes a member who is an alien lawfully admitted for permanent residence under the Immigration and Nationality Act who would be entitled to public benefits but for title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996; (II) the family would be evicted as a result of the imposition of the minimum rent requirement under subparagraph (A); (III) the income of the family has decreased because of changed circumstance, including loss of employment; (IV) a death in the family has occurred; and (V) other situations as may be determined by the agency....”³¹

²⁷ Maxia Dong et al., *Childhood Residential Mobility and Multiple Health Risks During Adolescence and Adulthood: The Hidden Role of Adverse Childhood Experiences*, 159 *ACHIEVES OF PEDIATRICS & ADOLESCENT MED.* 1104, 1107 (2005).

²⁸ Kathryn Leifheit et al., *Severe Housing Insecurity during Pregnancy: Association with Adverse Birth and Infant Outcomes*. *INTERNATIONAL JOURNAL OF ENVIRONMENTAL RESEARCH AND PUBLIC HEALTH* (Jan. 2020), <https://apha.confex.com/apha/2019/meetingapp.cgi/Paper/444457>.

²⁹ Gabriel L Schwartz, *Cycles of Disadvantage: Eviction & Children’s Health in the United States* (2020) (doctoral dissertation, Harvard University), <https://dash.harvard.edu/handle/1/37365869>.

³⁰ AMERICAN ACADEMY OF PEDIATRICS, *Providing Care for Children and Adolescents Facing Homelessness and Housing Insecurity* (2020), <https://bit.ly/3dbi0CT>.

³¹ 42 U.S.C. § 1437a(a)(3)(B)(i) (emphasis added).

In sum, the Housing Act and its implementing regulations recognize that many families are unable to pay the minimum rent because of financial hardship. But many housing providers fail to comply with the hardship exemption policy by failing to inform households of their eligibility to request a hardship exemption and by failing to automatically grant a hardship exemption when a household qualifies, including when they are threatened with eviction.³² HUD must issue immediate guidance informing housing providers of the obligation to notify tenants, in a form and manner that is accessible and that will encourage eligible tenants to act, of eligibility for the hardship exemption. HUD should also make clear that in cases where the providers know such hardship exists (whether or not family requests one), including whenever a family would face eviction for imposition of the minimum rent, providers must immediately grant an exemption from the minimum rent or, if the provider determines the hardship is temporary, suspend the minimum rent. In cases where the hardship arises and the provider does not already know about it, the tenant must be given a meaningful opportunity to request the suspension and exemption. HUD must also exercise its authority under (V) and consider what other situations may be eligible for the hardship exemption.³³

IV. The CARES Act provides HUD the legal authority to prevent evictions and involuntary displacement of its residents.

The Coronavirus Aid, Relief and Economic Security (CARES) Act provided funding to HUD to address challenges related to the Coronavirus. The CARES Act provided broad authority to the Secretary to “...waive, or specify alternative requirements for, any provision of any statute or regulation that the Secretary administers in connection with the use of the [funds] made available” in the CARES Act. With this authority, HUD provided a number of discretionary waivers and alternative requirements for its programs; most of which, if not all, accepted CARES Act funds. HUD explicitly states in its operations notice governing these waivers that it reserves the right to add new waivers to the list. Pursuant to this waiver authority, HUD could revise termination and eviction procedures such as changing the definition of good cause to exclude COVID-related nonpayment of rent, require housing providers to seek emergency rental assistance, require housing providers to offer families reasonable repayment plans prior to termination, mandate retroactive interim recertifications, require housing providers to determine if the household requires a reasonable accommodation, including from certain program requirements including recertification, determine if a household should automatically receive the hardship exemption to the minimum rent, and any other reasonable steps necessary to prevent a household from losing their home and housing assistance. These policies could be easily implemented via sub-regulatory guidance that updates the existing waiver notice.

³² See Letter to The Honorable Maxine Waters, Chairwoman, Committee on House Financial Service from Domonique Blom and C. Lamar Seats, HUD re: certification of enforcement of the hardship and tenant protection provisions in the U.S. Housing Act required by Section 102(b) of the Housing Opportunity Through Modernization Act of 2016 (HOTMA). “In the public housing program, excluding Moving to Work (MTW) agencies, there were 3,787 families who had been granted a minimum rent exception out of 893,306 households nationwide (.4%). In the HCV program, excluding MTW agencies, there were 13,137 households who had been granted a minimum rent exception out of 1,951,197 families nationwide (.7%). In Multifamily Housing, there were 4,696 households who had been granted a minimum rent exception out of 1,206,741 families nationwide (.4%). The data for all programs reflects activity for calendar year 2017.”

³³ 42 U.S.C. § 1437a(a)(3)(B)(i).

V. The public housing, voucher, and HUD multifamily statutes provide HUD legal authority to prevent evictions and involuntary displacement.

The statutes authorizing the public housing program or the various HUD-assisted programs do not mandate that housing providers evict tenants for nonpayment of rent. Rather, these laws and implementing policies focus squarely on protecting tenants from evictions without good cause. For public housing, section 6(l) of the United States Housing Act requires public housing leases to permit, but not mandate, evictions for lease violations and certain specified "good causes."³⁴ 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."³⁵ 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."³⁶ Thus, the laws governing the HUD housing programs impose no bar to HUD reinterpreting the definition of "good cause" to exclude COVID-related nonpayment of rent during the current public health crisis.

HUD's regulations, not the statute, define the various referenced "serious or repeated lease violations" and "good cause" eviction provisions.³⁷ Congress has authorized the Secretary to "make such rules and regulations as may be necessary to carry out [their] functions, powers, and duties."³⁸ Thus, HUD can redefine "serious or repeated lease violation," "material breach," or "good cause" by rule in light of the emergency, or waive any contrary regulatory eviction provisions or definitions, since the right to evict for nonpayment of rent is not mandated by statute.³⁹ Public policy dictates that COVID-related nonpayment of rent should not be good cause to evict.

HUD can also amend the regulations regarding housing providers' obligations to families during the pandemic. HUD has encouraged housing providers to "work with families" and to provide families with payment plans...⁴⁰ HUD can require housing providers to seek emergency

³⁴ 42 USC § 1437d(l)(5)-(9).

³⁵ 12 USC § 1715z-1b(b)(3).

³⁶ 42 USC § 1437f(o)(7)(C).

³⁷ Compare 42 U.S.C. §§ 1437f(d)(B)(ii),(o)(7)(C), 12755(b) with 24 C.F.R. §§ 966.4(l)(2) (public housing), 982.310 (housing choice vouchers), 983.256(f) (project-based vouchers), 247.2, 886.128, 886.328, 891.430, 891.630, 891.770 (multifamily). Not all the relevant regulations defining "good cause" is listed.

³⁸ 42 U.S.C. § 3535(d).

³⁹ HUD could use emergency rulemaking to amend its regulations in response to the expected expiration of the Center for Disease Control and Prevention's eviction moratorium. 5 USC § 553(b)(3)(B). The Secretary can waive, subject to statutory limitations, any provision of Title 24 upon a determination of "good cause," such as a declared public health emergency. 24 CFR § 5.110.

https://www.hud.gov/sites/dfiles/Housing/documents/MF_Tenant_Concerns_COVID-19_Brochure.pdf.

15 42 USC § 1437d(c)(4)(B); Fighting the Spread of COVID-19 by Providing Assistance to Renters and Homeowners, 85 Fed. Reg. 49935, 49936 (Aug. 8, 2020).

⁴⁰ DEP'T OF HOUS. AND URBAN DEV., EVICTION PREVENTION AND STABILITY TOOLKIT (2021), https://www.hud.gov/sites/dfiles/PIH/documents/Eviction_Prevention_Stability_Toolkit_Summary_Sheet.pdf;

rental assistance and offer families payment plans by amending HUD's obligation requirements for housing providers.

VI. HUD contracts with housing providers anticipate changes to statutory and regulatory law, recognizing that any new law applies to existing contracts.

HUD's actions to prevent evictions, such as amending the definition of good cause, requiring landlords to apply for rental assistance, or enforcing minimum rent hardships, would not require the agency to amend its current contracts with housing providers. HUD contracts with housing providers such as the public housing Annual Contributions Contract (ACC) parrot applicable statutory and regulatory requirements. Those contracts and agreements also generally include a clause that explicitly makes the contract or agreement subject to changes in applicable statutory and regulatory law.⁴¹ The inclusion of this clause in the contracts and agreements reflect the parties' intent to govern their relationship and the administration of the program subject to changes in applicable laws.⁴² This intent is further demonstrated by the frequency in which HUD has updated its contracts and agreements in comparison with the greater frequency

DEP'T OF HOUS. AND URBAN DEV., ADDRESSING TENANT CONCERNS DURING THE COVID-19 NATIONAL EMERGENCY 2 (2021).

⁴¹ *E.g.*, Annual Contributions Contract, HUD-53012 § 3 (Apr. 2018) (requiring PHA compliance with HUD requirements, including as amended from time to time); HUD Housing Assistance Payments Contract (HAP Contract) Section 8 Tenant-Based Assistance Housing Choice Voucher Program, HUD-52641 § 17 (Aug. 2009) (requiring the contract to be interpreted and implemented in accordance with all statutory and HUD requirements, including program regulations at 24 CFR part 982), https://www.hud.gov/sites/documents/DOC_11737.PDF; Section 8 Project-Based Voucher Program Agreement to Enter into a Housing Assistance Payments Contract New Construction or Rehabilitation, HUD-52531A, pt. 1, § 1.29 (Jul. 2019) (requiring the contract to be interpreted and implemented in accordance with all statutory and HUD requirements, including amendments and changes in HUD requirements), <https://www.hud.gov/sites/documents/9641.PDF>; Project-based Section 8 Housing Assistance Payments Basic Renewal Contract Multi-year Term, HUD-9637 § 9 (Nov. 2007); Interim (full) Mark-To-Market Renewal Contract, HUD-9640 § 9 (Oct. 2009) (requiring the contract to be interpreted and implemented in accordance with all statutory and HUD requirements, including amendments and changes in HUD requirements, except those changes inconsistent with the renewal contract), <https://www.hud.gov/sites/documents/9640.PDF>; Interim (Lite) Mark-To-Market Renewal Contract, HUD-9641 § 9 (Nov. 2007) (requiring the contract to be interpreted and implemented in accordance with all statutory and HUD requirements, including amendments and changes in HUD requirements, except those changes inconsistent with the renewal contract), <https://www.hud.gov/sites/documents/9641.PDF>.

⁴² *See Firestone Tire & Rubber Co. v. United States*, 444 F.2d 547, 551 (Ct. Cl. 1971) (parties intentions control the interpretation of the contract); *Kenneth Reed Constr. Corp. v. United States*, 475 F.2d 583, 586 (Ct. Cl. 1973) (parties intent is determined from the examination of the instrument as a whole); *Tilley Constructors v. United States*, 15 Cl. Ct. 559, 562 (1988) (parties intent is determined from the examination of the instrument as a whole); *In re Motors Liquidation Co.*, 460 B.R. 603, 619-20 (Bankr S.D.N.Y. Nov. 28, 2011) ("giving effect to the expressed intentions of the parties" is "the cardinal rule of contract interpretation"); *British Int'l. Ins. Co. Ltd. v. Seguros La Republica, S.A.*, 342 F.3d 78, 82 (2d Cir.2003) (interpreting contracts "to give effect to the intention of the parties as expressed in the unequivocal language they have employed."); *Syncora Guar. Inc. v. EMC Mortg. Corp.*, 2012 WL 2326068 (S.D.N.Y. Jun. 19, 2012); *Gould, Inc. v. United States*, 935 F.2d 1271, 1274 (Fed. Cir. 1991) ("Contract interpretation begins with the plain language of the contract); *accord Hol-Gar Mfg. Corp. v. United States*, 169 Ct. Cl. 384, 390 (1965); *Aleman Food Services, Inc. v. United States*, 994 F.2d 819, 822 (Fed. Cir. 1993) (employing a "plain meaning" analysis in any contract dispute).

in which it promulgates rules.⁴³ Thus, changes made to regulatory law and other HUD requirements would be applicable to HUD's current contracts and agreements with housing providers and would not necessitate changes.⁴⁴

HUD has the authority, opportunity, and obligation to protect its households from longstanding harm resulting from evictions for nonpayment of rent while billions of rental assistance remain unused. Please let us know what additional information or assistance we can provide to move these changes forward.

⁴³ DEP'T OF HOUS. AND URBAN DEV., CONSOLIDATED ANNUAL CONTRIBUTIONS CONTRACT, FORM HUD-53012A AND FORM HUD-53012B PIH NOTICE 95-44 2-3 (Jun 23, 1995) (stating in part "The revised ACC eliminates the recitation of the specific statutory, regulatory and executive order requirements to which a HA is subject with respect to its public or Indian housing projects. Instead, the HA is made subject to 'all applicable laws, executive orders and regulations,' whether or not these authorities are specifically incorporated by reference in the ACC. The purpose of this revision is to minimize the scope of the requirements contained in the ACC, so that this document can remain a living and vital contract even after statutes, executive orders and regulations to which a HA is subject are enacted, promulgated, amended or repealed.").

⁴⁴ *E.g.*, 30-Day Notice of Proposed Information Collection: Public Housing Annual Contributions Contract for Capital and Operating Grant Funds: 30-Day Notice of Proposed Information Collection: Agency Information Collection Activities: Public Housing Annual Contributions Contract for Capital and Operating Grant Funds, 84 Fed. Reg. 60410, 60411, 60414-15, 60422 (Nov. 8, 2019) (restating the PHAs obligation "...to administer its Public Housing Funds in compliance with all 'Public Housing Requirements,' which include the United States Housing Act of 1937 (1937 Act), HUD regulations at Title 24 CFR, the Uniform Guidance, appropriations acts, and 'other federal statutes, regulations and executive orders applicable to Public Housing Funds and Public Housing Projects,' as they exist now and amended in the future, whether or not those requirements are incorporated by reference in the ACC."); *see also* PUBLIC HOUSING ASSOCIATION DIRECTORS ASSOCIATION, SETTING THE RECORD STRAIGHT ON THE ANNUAL CONTRIBUTIONS CONTRACT, https://www.phada.org/Portals/21/pdf/publications/ACC_whitePaper.pdf (last visited Aug. 26, 2021) (stating "HAs must comply with requirements published as regulations...."). And in an attempt to prevent "unnecessarily repet[ition of] statutory or regulatory requirements," HUD removed specific regulatory language from the ACC. 84 Fed. Reg. at 60412, 14; PIH Notice 95-44 at 2-3. However, HUD explicitly states PHAs are obligated to all regulatory and subregulatory requirements by virtue of previous ACCs and the agency's proper administration of their housing programs (stating the inclusion of HUD-issued notices, forms, and agreements as HUD requirements "...was added to the ACC as a reminder.")