

November 8, 2021

Sent via e-mail

The Honorable Marcia Fudge
Secretary
U.S. Department of Housing and Urban Development
451 7th Street S.W.
Washington, D.C. 20410

Re: Evictions in HUD-Assisted Housing and the Interim Final Rule, *Extension of Time and Required Disclosures for Nonpayment of Rent*

Dear Secretary Fudge,

The undersigned affordable housing and tenants' rights and other aligned organizations write to request that HUD immediately adopt policies that will prevent evictions and ensure housing stability among its residents. HUD's recently published Interim Final Rule (IFR), *Extension of Time and Required Disclosures for Nonpayment of Rent*, makes an attempt to protect families but does not ensure that HUD tenants – who are primarily African American and Latinx households with extremely low incomes, households headed by women, people with disabilities, and older adults – have access to federal emergency rental assistance. We are calling on HUD to use its authority to act more comprehensively to prevent evictions by amending the Interim Final Rule (IFR).

HUD does not collect data on evictions which means we do not know the full scale of evictions currently facing HUD tenants. However, a recent survey of legal services attorneys conducted by the National Housing Law Project revealed an alarming number of HUD evictions in communities across the country. For example, in northern/central Illinois, advocates reported that housing authorities and HUD landlords are initiating eviction proceedings and pursuing voucher terminations. In the past 60 days, legal aid attorneys have been contacted by 228 participants in federally assisted housing (including voucher participants) seeking legal help, primarily concerning evictions or voucher terminations. In Kentucky, advocates reported "too many HUD evictions to count," particularly in rural areas and even when emergency rental assistance is available. From Florida to California, HUD-funded landlords are putting tenants on the street, despite the billions of dollars the federal government has invested to keep Americans housed.

HUD's recent attempt to prevent evictions is insufficient.

HUD's most recent response to the eviction crisis, the IFR, *Extension of Time and Required Disclosures for Nonpayment of Rent*, appeared in the federal register on October 7 and goes into effect today. The notice reiterates owners' and PHAs' statutory obligation under the CARES Act to provide 30 days' notice to tenants prior to termination of tenancy (albeit adding that owners and PHAs inform residents of the potential availability of emergency rental assistance) for *some* covered tenants.¹ The rule improperly limits the 30-day notice requirement to only project-based section 8 and public housing tenants, when

¹ Dep't of Hous. and Urban Dev., The CARES Act Eviction Moratorium FAQs for HUD's Office of Public and Indian Housing 10 (May 26, 2021), https://www.hud.gov/sites/dfiles/PIH/documents/HUD_FAQs_06302021_CDC_Extension.pdf.

the 30-day notice requirement in fact applies to *all* HUD tenants including Housing Choice Voucher participants. Additionally, the rule creates a sunset date for the 30-day notice requirement (the end of a presidentially-declared disaster) where no such time limit exists under CARES Act. For tenants and landlords, the notice confuses and misrepresents a clear statutory obligation.

Further, the IFR does not, as HUD claims, ensure that tenants will have access to federal emergency rental assistance. The rule would only require that housing authorities and HUD landlords inform tenants of the existence of assistance and provide a list of local programs. This “fix” is completely disconnected from the reality of how most emergency rental assistance programs distribute funds on a local level and the barriers to accessing the funds faced by tenants. Only about 29% of all programs provide direct-to-tenant assistance and of those that do, most only allow it as a last resort after a landlord has declined to participate or not responded to program requests. Informing tenants of the assistance, which HUD proposes in the IFR, is important but it is just the first step. To actually help tenants access federal funds, HUD must *require* landlord cooperation in the emergency rental assistance application process and suspend *any* notice period during the application process (in some jurisdictions it takes well over 30 days to process an application for emergency rental assistance).

These and other concerns with the IFR will be addressed in formal comments submitted to HUD. Unfortunately, we believe that HUD needs to return to the drawing board before any final rule can provide meaningful protection to HUD residents.

HUD must act now to keep families housed.

In its rule, HUD refutes key tenant protection policies as “burdensome” for owners and PHAs. At the same time, the Administration is calling on state and local governments to act to protect the health and safety of their residents. Secretary Fudge recently stated in a press release:

*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.*

HUD has provided no detailed legal explanation as to why the agency is not fully utilizing its authority to safeguard families. In a memo dated [August 31, 2021](#), the National Housing Law Project outlined clear legal authority for HUD to implement a number of eviction prevention policies. To date, NHLP have not received a response, and HUD’s legal analyses on further action remain opaque. Until HUD takes more protective action, we will continue to hear about stories like these:

- In Pennsylvania, a HUD-subsidized landlord evicted and subsequently locked out a mother and her two children while they were quarantining with COVID. They were waiting for the emergency rental assistance they had already applied for. The lockout was a surprise and the family was forced to leave medication and pets behind.
- In Hamilton, OH, five tenants have been threatened with eviction by a HUD-subsidized landlord who refused to accept emergency rental assistance or failed to cooperate with the agency administering assistance.

- In Atlanta, GA, a tenant in HUD housing was denied emergency rental assistance because the property manager didn't respond to the verification request. The tenant is now being evicted.

In each of these cases, there is no legal remedy for the tenants and the IFR will do nothing to assist them and other tenants similarly situated. We request that HUD significantly amend its IFR to reflect the needs of families facing housing instability. Policies could include requiring HUD owners and PHAs to apply for rental assistance prior to termination for nonpayment of rent and to issue directives regarding rent policies that include \$0 minimum rent and retroactive recertifications. The National Housing Law Project outlines these and other policies in the August memo.²

We urge HUD to take these critical steps immediately to protect its residents from eviction. Thank you for your consideration. Please contact Deborah Thrope (dthrope@nhlp.org) with questions.

National Organizations

Alliance for Housing Solutions
 Americans for Financial Reform Education Fund
 Autistic Self Advocacy Network
 Center for Disability Rights
 Council of State Community Development Agencies
 Grounded Solutions Network
 NAACP Legal Defense and Educational Fund, Inc. (LDF)
 National Alliance of Resident Services in Affordable and Assisted Housing
 National Coalition for Asian Pacific American Community Development (CAPACD)
 National Coalition for a Civil Right to Counsel
 National Disability Rights Network (NDRN)
 National Fair Housing Alliance
 National Health Care for the Homeless Council
 National Homelessness Law Center
 National Housing Law Project
 National Legal Aid & Defender Association
 National Low Income Housing Coalition
 National NeighborWorks Association
 National Network to End Domestic Violence
 National Partnership for Women & Families
 National Women's Law Center
 NETWORK Lobby for Catholic Social Justice
 PolicyLink
 Poverty & Race Research Action Council
 RESULTS

State and Local Organizations

ArchCity Defenders, Inc. (MO)
 Bay Area Legal Aid (CA)

² Memorandum from Deborah Thrope, Bridgett Simmons, and Kate Walz, Nat'l Hous. Law Project to Peggy Bailey, Dominique Blom, and Ethan Handelman, Dep't of Hous. and Urban Dev. And Erika Poethig, Domestic Policy Council (Aug. 31, 2021).

Centro Legal de la Raza (CA)
Civil Justice, Inc. (MD)
Covid-19 Eviction Defense Project (CO)
Disability Rights Maryland (MD)
Fair Housing Advocates of Northern California (CA)
Homelessness Prevention Program (NC)
Housing Equality & Advocacy Resource Team (HEART L.A.) (CA)
Inner City Law Center (CA)
Lawyers' Committee for Better Housing (IL)
Legal Action Chicago (IL)
Legal Aid of Marin (CA)
Legal Aid Society of Metropolitan Family Services (IL)
Legal Services of Greater Miami, Inc. (FL)
Massachusetts Law Reform Institute (NY)
Mental Health Advocacy Services, Inc. (CA)
Public Interest Law Project (CA)
Public Justice Center (MD)
San Francisco Eviction Defense Collaborative (CA)
Texas RioGrande Legal Aid (TX)
Vermont Legal Aid, Inc. (VT)
Virginia Poverty Law Center (VA)
Western Center on Law and Poverty (CA)