



July 20, 2020

Sent via e-mail

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

Re: Expiration of the CARES Act Eviction Moratorium

Dear Secretary Carson,

The National Housing Law Project (NHLP) and the National Low Income Housing Coalition (NLIHC), joined by 168 undersigned organizations, write to provide policy recommendations to the Department of Housing and Urban Development (HUD) to address the expiration of the CARES Act eviction moratorium on July 24. **HUD has the legal authority to enact its own eviction moratorium and should do so to protect low-income renters.** HUD must be prepared to act both in the absence of additional legislation from Congress and if there is a gap between CARES Act coverage and renewed tenant protections in subsequent legislation. It is HUD's duty to protect tenants during this unprecedented global pandemic.

HUD Has the Authority to Enact an Eviction Moratorium

HUD has the legal authority to enact an eviction moratorium for its residents and the moral obligation to do so should the CARES Act eviction moratorium expire with no additional action by Congress. Congress has authorized the HUD Secretary to "make such rules and regulations as may be necessary to carry out his functions, powers, and duties." 42 USC Sec. 3535(d). In light of the declared public health emergency, HUD thus has the plenary power to declare a moratorium on eviction for all of its programs for the duration of the emergency. There is no statute for either the public housing or various HUD-assisted programs that specifically mandates the eviction of tenants by housing authorities or owners.

For public housing, Sec. 6 of the United States Housing Act requires a public housing Annual Contributions Contract (ACC) to establish "...satisfactory procedures designed to assure the prompt payment and collection of rents and the prompt processing of evictions in the case of nonpayment of rent." 42 USC Sec. 1437d(c)(4)(B). Section 6(l) also requires public housing leases to permit (but not mandate) evictions for certain specified "good causes." 42 USC Sec. 1437d(l)(5) to (9). 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." 12 USC Sec. 1715z-1b(b)(3). 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." 42 USC 1437f(o)(7)(C).

The public housing, HUD Multifamily, and voucher statutes create no mandate nor any right to evict and thus impose no bar to a moratorium. The above provisions also leave sufficient flexibility for HUD to impose an eviction moratorium during a public health emergency, because the various referenced "good cause" eviction provisions are defined by HUD regulations. Thus HUD can redefine good cause by rule in light of the emergency or waive (for "good cause," i.e., the declared public health emergency, per 24 CFR Sec. 5.110) any contrary regulatory eviction provisions or "good cause" definitions, since any right to evict is not mandated by statute.

Should Congress fail to provide additional protections for renters, HUD should prohibit the filing of any eviction actions based on notices to vacate that were served for a period (such as one year) following the expiration of the 30-day notice period in the CARES Act.

HUD Must Protect Tenants if There is a Gap in Federal Eviction Protections

HUD must prepare for a gap between CARES Act eviction protections and an extension of the eviction moratorium and/or emergency rental assistance in the HEROES Act. Any gap in coverage, even a few days, will leave tenants vulnerable to housing instability, evictions, and homelessness. Surely, Congress' intent in passing additional legislation will be to bridge the important tenant protections from the CARES Act to tenant protections in subsequent legislation.

In the event that there is an extended moratorium in the HEROES Act, upon expiration of the CARES Act eviction moratorium, HUD should prohibit the filing of any eviction actions based on notices to vacate that were served after the expiration of the CARES Act but before enactment of the extended moratorium.

HUD must also ensure that an eviction moratorium is in place up until the time that tenants can access emergency rental assistance. Even if the House version of the HEROES Act is passed by Congress, Sec. 110201 requires HUD to disburse emergency rental assistance via the ESG program beginning within 30 days of enactment, with a second tranche disbursed within 75 days. State and local jurisdictions will then need even more time to disburse funds on behalf of tenants. Thus, the total gap to when funds can actually flow on behalf of tenants could easily be at least 60 days after enactment of expanded assistance. Tenants protected under the CARES Act are subject to 30 day-notice at the end of the moratorium, leaving them vulnerable to an eviction on August 24, 2020. Without extension of the eviction moratorium to cover that gap, rental assistance alone will not prevent massive displacement.

Thank you for your consideration of these recommendations. Please contact NHLP's Deputy Director, Deborah Thrope (dthrope@nhlp.org), with any questions.

Sincerely,



Shamus Roller
Executive Director
National Housing Law Project



Diane Yentel
President & CEO
National Low-Income Housing Coalition

National Organizations

ACCESS
American Association of Service Coordinators
American Civil Liberties Union
Autistic Self Advocacy Network
Black Women's Health Imperative
Bodaken and Associates
Center for Community Progress
Center for Disability Rights
Center for Responsible Lending
Coalition of Labor Union Women
Consortium for Citizens with Disabilities
Housing Task Force
Corporation for Supportive Housing
Disability Rights Education & Defense Fund (DREDF)
Equal Rights Center
Freedom Network USA
Funders Together to End Homelessness
Grounded Solutions Network
Health Justice Innovations, LLC
Hip Hop Caucus
Housing and Homelessness Committee of the National Lawyers Guild
Housing Assistance Council
Housing Justice Center
Klein Hornig LLP
Low Income Investment Fund
Minnesota Housing Partnership
MomsRising
NAACP Legal Defense and Educational Fund, Inc (LDF)
National Action Network
National Alliance for Safe Housing
National Alliance of Community Economic Development Associations
National Alliance of HUD Tenants
National Alliance on Mental Illness
National Association for the Advancement of Colored People
National Association for County Community and Economic Development
National Association for Latino Community Asset Builder
National Association of Local Housing Finance Agencies

National Coalition for a Civil Right to Counsel
National Coalition for Homeless Veterans
National Coalition for the Homeless
National Community Development Association
National Employment Law Project
National Equality Action Team (NEAT)
National Fair Housing Alliance
National Health Care for the Homeless Council
National Housing Trust
National Multiple Sclerosis Society
National NeighborWorks Association
National Network to End Domestic Violence
National Women's Law Center
Natural Resources Defense Council
People's Action
PFLAG National
Poverty & Race Research Action Council
RESULTS
SPLC Action Fund
Technical Assistance Collaborative
The Arc of the United States
The National Resource Center on Domestic Violence
The United Methodist Church - General Board of Church and Society
Union for Reform Judaism
Woodstock Institute

California

California Housing Partnership
Disability Rights California
Disability Services and Legal Center
Disability Services and Legal Center
Eviction Defense Collaborative
Eviction Defense Collaborative
Family Violence Appellate Project
Housing California
Housing Leadership Council of San Mateo County
Law Foundation of Silicon Valley
Legal Aid of Sonoma County
Progress Noe Valley
Public Counsel
Western Center on Law & Poverty

Colorado

B-Konnected, LLC
Colorado Children's Campaign
Colorado Coalition for the Homeless
Golden United
Growing Home
Jefferson Unitarian Church Community Action Network (JUC CAN)
Lutheran Advocacy Ministry-Colorado
Mental Health Colorado
Rodfei Tzedek, social justice team of Congregation Rodef Shalom
Together Colorado
Violence Free Colorado

Connecticut

Connecticut Legal Services, Inc.
New Haven Legal Assistance Association

Delaware

Delaware Coalition Against Domestic Violence
Housing Alliance Delaware
National Council on Agricultural Life And Labor Research Fund (NCALL)

District of Columbia

Coalition for Nonprofit Housing and Economic Development
Legal Aid Society of the District of Columbia

Florida

Jacksonville Area Legal Aid, inc.
Florida Housing Coalition

Georgia

Georgia Advancing Communities Together, Inc.
Georgia Coalition Against Domestic Violence

Illinois

Access Living of Metropolitan Chicago
Alliance to End Homelessness in Suburban Cook County
Beds Plus Care
Chicago Area Fair Housing Alliance
Chicago Lawyers' Committee for Civil Rights
Chicago Rehab Network

Coalition for Equitable Community Development
Housing Action Illinois
Housing Choice Partners
Housing Choice Voucher Working Group
Lawyers' Committee for Better Housing
Legal Aid Society of Metropolitan Family Services
Together We Cope
North/Northwest Suburban Task Force on Supportive Housing for Individuals with Mental Illness
ONE Northside
State Representative Michelle Mussman
Supportive Housing Providers Association
WINGS Program Inc.
The Statewide Independent Living Council of Illinois

Indiana

Prosperity Indiana

Iowa

Iowa Coalition Against Domestic Violence

Kentucky

Homeless and Housing Coalition of Kentucky

Louisiana

Louisiana Fair Housing Action Center

Maryland

Disability Rights Maryland
Homeless Persons Representation Project, Inc.
Public Justice Center

Massachusetts

Greater Boston Legal Services
New England Housing Network

Michigan

The Community Economic Development Association of Michigan (CEDAM)

Minnesota

Mid-Minnesota Legal Aid

Missouri

Empower Missouri
Missouri Coalition Against Domestic and Sexual
Violence

Nebraska

Nebraska Housing Developers Association

New Hampshire

New Hampshire Coalition Against Domestic and
Sexual Violence

New Jersey

Fair Share Housing Center of New Jersey
Housing and Community Development Network
of New Jersey
Occupy Bergen County

New Mexico

New Mexico Coalition to End Homelessness

New York

Community Service Society of New York
New Destiny Housing Corporation

North Carolina

North Carolina Housing Coalition

Ohio

Applied Information Resources
Caracole, Inc.
Cincinnati for Affordable Housing, Inc.
Coalition on Homelessness and Housing in Ohio
Legal Aid Society of Southwest Ohio LLC
LSS CHOICES for Victims of Domestic Violence
Ohio Capital Corporation for Housing
Ohio CDC Association
Ohio Domestic Violence Network

Oklahoma

Mental Health Association Oklahoma

Oregon

Network for Oregon Affordable Housing
Oregon Housing Alliance

Pennsylvania

Community Legal Services
HELP: MLP
Mifflin - Juniata Regional Services Corporation

Rhode Island

Housing Network of Rhode Island
Rhode Island Coalition for the Homeless
Rhode Island Coalition Against Domestic
Violence
Rhode Island Homeless Advocacy Project

South Carolina

South Carolina Appleseed Legal Justice Center

Texas

Texas Housers

Vermont

Vermont Legal Aid, Inc.

Virginia

Legal Aid Justice Center
Piedmont Housing Alliance
RVA Eviction Lab
Shelter House, Inc.
Virginia Poverty Law Center

Wisconsin

End Domestic Abuse Wisconsin
New Day Advocacy Center

Cc: Brian Montgomery, Deputy Secretary
Len Wolfson, Acting Assistant Secretary for Housing - Federal Housing Commissioner
John Garvin, General Deputy Assistance Secretary for Housing
Hunter Kurtz, Assistant Secretary for Public and Indian Housing
Lamar Seats, Deputy Assistant Secretary for Multifamily Housing
Dominique Blom, General Deputy Assistant Secretary for Public and Indian Housing
Danielle Bastarache, Deputy Assistance Secretary for Public Housing and Voucher Programs
Steve Durham, Director, Housing Voucher Programs
Todd Thomas, Director, Public Housing Program
Tobias Halliday, Director, Office of Multifamily Asset Management and Portfolio Oversight
Bob Iber, Office of Multifamily Housing Programs Senior Advisor