



May 1, 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: HUD Guidance Misstates the Law – All LIHTC Properties Are Covered Under CARES Act Eviction Moratorium

Dear Secretary Carson:

The National Housing Law Project (NHLP)<sup>1</sup> and the National Low-Income Housing Coalition<sup>2</sup> write to urge the Department of Housing and Urban Development (HUD) to immediately revise its recent guidance on the CARES Act eviction moratorium to correctly state that the moratorium applies to all tenants of any LIHTC property. Both the PIH FAQs<sup>3</sup> and the Multifamily FAQs<sup>4</sup> provide misleading responses to the question of whether the LIHTC program is covered under the CARES Act eviction moratorium when the answer is unequivocally clear that it does.

The HUD PIH FAQ question EM13 states in relevant part:

EM13: Does the ban on evictions apply to... Low Income Housing Tax Credit (LIHTC) properties?

A: ... If the financing of a mixed financed project includes an FHA-insured mortgage or equity from an allocation of LIHTCs, the project is subject to the eviction moratorium. LIHTC projects

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<sup>1</sup> NHLP is a legal advocacy center focused on increasing, preserving, and improving affordable housing; expanding and enforcing rights of low-income residents and homeowners; and increasing housing opportunities for underserved communities. Our organization provides technical assistance and policy support on a range of housing issues to legal services and other advocates nationwide. NHLP hosts the national Housing Justice Network (HJN), a vast field network of over 1,500 community-level housing advocates and resident leaders. HJN member organizations are committed to protecting affordable housing and residents' rights for low-income families.

<sup>2</sup> National Low Income Housing Coalition (NLIHC) is solely dedicated to ensuring that the lowest income seniors, people with disabilities, families with young children and others in our country have safe, accessible and affordable homes. Its members include non-profit housing providers, homeless services providers, fair housing organizations, state and local housing coalitions, public housing agencies, faith-based organizations, residents of public and assisted housing and their organizations, low-income people in need of affordable homes, and other concerned citizens.

<sup>3</sup> HUD, Eviction Moratorium, COVID-19 FAQs for Public Housing Agencies (April 21, 2020).

<sup>4</sup> HUD, Questions and Answers for Multifamily Housing Stakeholders, Coronavirus (COVID-19) (Last Updated May 1, 2020).

are governed by individual state Qualified Allocation Plans and state landlord-tenant law. For units assisted with LIHTC only, evictions are limited to where the owner can demonstrate “good cause” in accordance with state or local law. HUD recommends that owners and management agents consult their State Housing Finance Agency or the IRS for guidance on “good cause” evictions under state legislation or rulemaking related to COVID-19.

The Multifamily FAQ Question Q13 states in relevant part:

Q13: Does the ban on evictions apply to ... Low Income Housing Tax Credit (LIHTC) properties?

A: ... Since the Internal Revenue Service administers the LIHTC Program, HUD recommends that owners and agents consult the IRS for guidance on evictions under the CARES Act.

HUD’s response must be revised to clarify that all tenants in LIHTC properties are covered by the CARES Act eviction moratorium protections. The eviction moratorium applies to “covered dwellings,” which includes those dwellings on or in “covered properties.”<sup>5</sup> The Act defines a “covered property” as a property that: (1) participates in a “covered housing program” as defined by the Violence Against Women Act (VAWA) (as amended through the 2013 reauthorization); (2) participates in the “rural housing voucher program under section 542 of the Housing Act of 1949”; (3) has a federally backed mortgage loan; or (4) has a federally backed multifamily mortgage loan.<sup>6</sup>

LIHTC properties are indisputably covered under VAWA at 34 U.S.C. Sec. 12491(a)(3)(J), and hence any tenancy in any property participating in the LIHTC program would be a covered dwelling for purposes of the CARES Act moratorium.<sup>7</sup> HUD must revise the FAQ responses so that tenants understand their rights during the pandemic.

We urge HUD to take immediate actions to revise its FAQ to ensure that tenants can maintain their housing in these uncertain times. Thank you for your consideration of these recommendations. Please contact Shamus Roller (sroller@nhlp.org) or Deborah Thrope (dthrope@nhlp.org) at NHLP or Dianne Yentel (dyentel@nlihc.org) with any questions.

Sincerely,



Shamus Roller  
Executive Director  
National Housing Law Project



Diane Yentel  
President & CEO  
National Low-Income Housing Coalition

Cc: Hunter Kurtz, Assistant Secretary for Public and Indian Housing  
Brian Montgomery, Assistant Secretary for Housing - Federal Housing Commissioner

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<sup>5</sup> CARES Act § 4024(a).

<sup>6</sup> CARES Act § 4024(a)(2).

<sup>7</sup> CARES Act § 4024(a)(2)(A)(i).

John Garvin, General Deputy Assistance Secretary for Housing  
Lamar Seats, Deputy Assistance Secretary for Multifamily Housing  
Danielle Bastarache, Deputy Assistance Secretary for Public Housing and Voucher Programs  
Steve Durham, Director, Housing Voucher Programs  
Todd Thomas, Director, Public Housing Program