April 21, 2020

Submitted 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: Protecting HUD Tenants and Maximizing Housing Opportunities in Response to COVID-19

Dear Secretary Carson:

The National Housing Law Project (NHLP)[1] and the National Low-Income Housing Coalition[2] write to urge the Department of Housing and Urban Development (HUD) to take additional steps to protect tenants and maximize existing resources to house as many families as possible during the COVID-19 public health crisis. The guidance provided by HUD Notice PIH 2020-05 regarding statutory and regulatory waivers for the Public Housing and Voucher programs, and the Multifamily FAQs, provide PHAs and owners with important flexibility to administer their programs efficiently and implement tenant protections, pursuant to the CARES Act. 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, and where HUD has not mandated a single policy change to date. Patchwork implementation of HUD waiver authority among thousands of owners and PHAs, with no enforceable standards, puts some tenants at risk of eviction and subsidy termination, impacting an already overburdened public health system. For example, if a PHA or owner

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[1] 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.
[2] 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.

fails to act on certain common-sense policies (for example, providing for timely interim income recertifications), a tenant could end up in arrears on rent and become homeless at the expiration of the federal eviction moratorium. This would occur even though income-based rents, fundamental to HUD housing programs, are intended to guard tenants against unaffordable housing costs. Streamlining resident protections would also minimize confusion for owners, PHAs, and other stakeholders and help coordinate available housing within a community.

To that end, HUD must **(1) issue policy directives to owners and PHAs on a number of key issues to keep families housed and lease families up as quickly as possible and (2) reserve at least a portion of the Administrative Fees appropriated under the CARES Act to PHAs that have implemented best practices.** The directives below will help families both maintain and obtain safe housing.

To keep families safely housed, HUD must:

1. Implement a **uniform interim recertification rule** for all of its housing programs that (1) states if rent is not paid when due for April and other months during the emergency (and a reasonable period thereafter), PHAs and owners should presume that the cause is a reduction in income and begin the recertification process (2) allows tenants to self-certify their change in income using a variety of methods and (3) requires PHAs to apply any decrease in rent due to loss of income to the month following the change in income, retroactively if necessary.

2. Direct PHAs and owners to **establish a minimum rent of $0**. HUD should direct PHAs and owners to immediately inform any tenants who pay a minimum rent of the ability to apply for a hardship exemption due to loss of income related to COVID-19. HUD should instruct PHAs and owners that all COVID-19 related hardships will be long-term in nature.

3. Implement **a uniform protocol that addresses emergency inspections for life-threatening conditions**. HUD is allowing PHAs to adopt a policy whereby a voucher landlord can self-certify through an email or text that a life-threatening condition does not exist (after a tenant reports unsafe conditions). An inspection by the PHA or a third party is not required. The Multifamily FAQS, on the other hand, provide that where there is "an exigent circumstance or reason to believe that there is a threat to life or property," inspections will be conducted by HUD inspectors (FAQs on Asset Management, last updated on 4/16, Q1 on page 12). HUD should adopt this protocol for all of its programs to protect tenants from harmful living conditions during the COVID-19 crisis.

4. Most conversions (such as RAD, demolitions/dispositions, owner opt-outs, etc.) should be halted due to shelter-in-place orders that preclude resident participation activities, but **HUD must require owners and PHAs to continue to relocate tenants who are living in dangerously poor conditions.** One way to accomplish this is to provide additional oversight of PHAs with troubled properties and/or properties that are going through the conversion process.

5. HUD should **require all PHAs and owners to prohibit subsidy terminations due to a family's extended absence from the unit.** This is especially important for assisted residents who

have combined households to care for an elderly or disabled family member during the COVID-19 crisis.

To help people obtain housing during the pandemic HUD should:

6. Require that PHAs and owners **waive space standards** such as the subsidy standards for the Housing Choice Voucher program that would limit the number of people allowed to live in the family's unit. HUD's PIH waiver notice includes a discretionary waiver (HQS-10) but does not mandate that owners or PHAs make this policy change. Families participating in all HUD programs would benefit from this rule.

7. Require PHAs and owners to **lift tenant screening requirements** for characteristics as criminal and credit history when adding members to a household. Under current HUD regulations, owners and PHAs have almost absolute discretion to set screening criteria. HUD should mandate removing discretionary restrictions for COVID-19-related additions to the household such as family reunification for people exiting jails and prisons and health care needs. Note that the PIH Waiver Notice included a waiver for the Public Housing program that would allow a PHA to revise its tenant screening policy, but no such waiver exists for the voucher program or Multifamily housing.

8. **Automatically toll the search period for all vouchers.** Social distancing protocols will make it very difficult for families who have been issued Housing Choice Vouchers, but have not yet leased up, to conduct a successful housing search. When families can't use their voucher they turn it back over to the PHA. Since many PHAs report that they are not issuing vouchers to new families at this time, tolling search times will both protect families looking for housing as well as maximize HUD resources during the crisis. Tolling voucher search times is important both for current voucher families and also families who have been awarded tenant protection vouchers to relocate due to a conversion because their housing is substandard.

CARES Act Funding Should Be Tied to the Above Standards

Title XII of the CARES Act provides much-needed funding for owners and PHAs to keep their programs running. HUD has stated that it will issue a funding implementation notice soon. HUD should require that at least some portion of the additional voucher funds only be allocated to agencies that are implementing the above policies to ensure the health and safety of residents and an efficient use of HUD resources. These standards could be measured by data on the number of interim recertifications performed by the PHA and voucher success rates, for example.

HUD should ensure that all additional funding is used to protect tenants and support the critical functions of a PHA, as stated in HUD Notice PIH 2020-05 (with respect to vouchers):

"Some critical functions for PHAs include, but are not limited to issuing vouchers so families can find housing, processing Requests for Tenancy Approvals (RFTAs) so families can be approved to move into a unit, processing requests for portability moves…and completing reexaminations for participants who have experienced a decrease in income."

In conclusion, we urge HUD to take immediate actions to ensure that tenants can maintain their housing in these uncertain times, and so that they can avoid housing insecurity and homelessness after COVID-19 has subsided.

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
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National Low-Income Housing Coalition

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