



August 21, 2020

Sent via e-mail

The Honorable Steven Mnuchin
Department of the Treasury
1500 Pennsylvania Ave.
NW Washington, DC 20220

Re: The Treasury Must Act Immediately to Protect Tenants

Dear Secretary Mnuchin,

The National Housing Law Project (NHLP) and the National Low Income Housing Coalition (NLIHC) write to urge the Department of the Treasury (“Department”) to respond to the President’s Executive Order and enact an eviction moratorium immediately to protect renters during the global pandemic. **The Department has the legal authority to enact an eviction moratorium for the Low Income Housing Tax Credit (LIHTC) program.**

Time is running out. More than 2.3 million households in LIHTC units, previously covered by the eviction moratorium in the CARES Act, lost protections on July 24th. The Department can curb the devastating impact evictions will have on communities, particularly those that were hit hardest by Covid-19, by enacting an eviction moratorium.

The Department Must Act on the President’s Executive Order

On August 8, President Trump issued an Executive Order on Fighting the Spread of Covid-19 by Providing Assistance to Renters and Homeowners. The order itself does nothing to expand protections previously enacted by the CARES Act or bar evictions moving forward. Housing providers, courts, and other entities can still seek to evict tenants. The Order requires that the Department consult with the Federal Housing Finance Agency to “...review all existing authorities and resources that may be used to prevent evictions and foreclosures for renters and homeowners resulting from hardships caused by COVID-19. Section 3(d). For the Order to be meaningful, The Department must act. In fact, to date, **the Department has not mandated that LIHTC housing providers change a single policy to protect tenants in the wake of the Coronavirus.**

The Treasury has the Legal Authority to Enact an Eviction Moratorium

The LIHTC Program is housed in section 42 of the Internal Revenue Code and is administered and overseen by the Department. 26 USCA § 42. Congress has given the Secretary of the Treasury the authority to administer and enforce the Internal Revenue Code and to enact “all needful rules and regulations for the enforcement of this title, including all rules and regulations as may be necessary by reason of any alteration of law in relation to internal revenue.” 26 USCA § 7801(a) and § 7805(a). Congress has also authorized the Secretary of Treasury to enact immediate and temporary

regulations when there is “good cause” to do so. 26 USCA § 7805(e); 5 USCA § 553 (b)(3)(B). Therefore, the Department has the plenary power to create an immediate regulation calling for an eviction moratorium in LIHTC properties.

Thank you for your consideration of these recommendations. Please contact NHLP’s Executive Director, Shamus Roller (sroller@nhlp.org), with any questions.

Sincerely,



Shamus Roller
Executive Director
National Housing Law Project



Diane Yentel
President & CEO
National Low-Income Housing Coalition