



July 17, 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) 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

Cc: Brian Montgomery, Deputy Secretary
Len Wolfson, Acting Assistant Secretary for Housing - Federal Housing Commissioner
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