January 30, 2024

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U.S. Department of Housing and Urban Development
Office of General Counsel
Regulations Division
451 7th Street SW
Room 10276
Washington, DC 20410-0500

Re: Docket No. FR–6387–P–01 30-Day Notification Requirement Prior to Termination of Lease for Nonpayment of Rent

Thank you for the opportunity to provide feedback on the Department of Housing and Urban Development's Notice of Proposed Rulemaking *30 Day Notification Requirement Prior to Termination of Lease for Nonpayment of Rent.*[1] The following comments are submitted on behalf of the National Housing Law Project (NHLP) and members of the Housing Justice Network (HJN). We strongly support the proposed rule, which takes a much-needed step toward preventing evictions in HUD housing.

NHLP's mission is to advance housing justice for people living in poverty and their communities. NHLP achieves this by strengthening and enforcing the rights of tenants and increasing housing opportunities for underserved communities. Our organization also 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 2,000 community-level housing advocates and resident leaders. HJN member organizations are committed to protecting affordable housing and residents' rights for low-income families across the country.

I. HUD's 30-day notice requirement is an important tool for preventing evictions in public housing and the PBRA program.

HUD's proposed rule is necessary to address the pervasive problem of evictions for public housing and PBRA tenants. In 2016, 3.7 million households, or 8 out of every 100 renter households in the U.S., were subject to an eviction filing.[2] Today, eviction filings are up an

[1] 30-Day Notification Requirement Prior to Termination of Lease for Nonpayment of Rent (Docket No. FR–6387–P–01), (December 1, 2023) (hereinafter NPRM).
[2] Office of Policy Development and Research, Prevalence and Impact of Evictions, Department of

estimated 50% compared to pre-pandemic averages.[3] The vast majority of evictions – at least 77.3% in 2017 – are for nonpayment of rent.[4] Evictions cause significant increases in homelessness and housing instability, and research shows these effects can persist years after an eviction filing.[5] They can also have a devastating effect on a person's employment security, as well as their health and educational outcomes.[6] Evictions are especially harmful for families in HUD housing, because these families have the lowest incomes and are therefore the most likely to be forced into substandard conditions or homelessness if they lose affordable housing in the midst of a market with skyrocketing rents. These households also tend to be the most vulnerable to discrimination – older adults, people with disabilities, Black and Latino families, and other families of color.

The proposed rule is also a helpful tool for addressing problematic eviction practices by PHAs. For example, PHAs are more likely than their private market counterparts to use serial eviction filings against tenants, especially in communities with a higher number of Black residents.[7] HJN members have also reported an increase in PHAs in some jurisdictions issuing mass eviction notices to residents, especially since the end of pandemic-era interventions such as eviction moratoria and emergency rental assistance. In Omaha, Nebraska, the eviction filing rate of the Omaha Housing Authority in 2023 was at least 60% higher than its annual average during the pandemic. Most of the 400-plus filings were for nonpayment of rent, with dozens of residents owing less than $300.[8] In New York City, NYCHA sent eviction notices to 1250 households in

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Housing and Urban Development (2021), (https://www.huduser.gov/portal/periodicals/em/Summer21/highlight2.html).

[3] Michael Casey and R.J. Rico, Eviction filings are 50% higher than they were pre-pandemic in some cities as rents rise, ASSOCIATED PRESS (Jun. 16, 2023), https://apnews.com/article/evictions-homelessness-affordable-housing-landlords-rental-assistance-dc4a03864011334538f82d2f404d2afb.

[4] Michele Lerner, Does Your City Rank High or Low When it Comes to Evictions? (Dec. 28, 2017) (https://www.washingtonpost.com/news/where-we-live/wp/2017/12/28/does-your-city-rank-high-or-low-when-it-comes-to-evictions/) This number may be even higher because many eviction notices that are given for no cause or lease expiration are motivated by a current rental arrearage or past late payments.

[5] Eviction Prevention: Reducing Harm to Households and Society, Fast Focus Policy Brief No. 61-2023 (Feb. 2023), https://www.irp.wisc.edu/resource/eviction-prevention-reducing-harm-to-households-and-society/#:~:text=Eviction%20causes%20significant%20increases%20in,an%20eviction%20case%20is%20filed.

[6] Matthew Desmond and Carl Gershenson. 2016. Housing and Employment Insecurity among the Working Poor, Social Problems 63:1, 46–67; Hugo Vásquez-Vera, Laia Palència, Ingrid Magna, Carlos Mena, Jaime Neira, and Carme Borrell. 2017. The threat of home eviction and its effects on health through the equity lens: A systematic review, Social Science and Medicine 175, 199–208; Matthew Desmond and Rachel Tolbert Kimbro. 2015. Eviction's Fallout: Housing, Hardship, and Health, Social Forces 94:1, 295–324; Yerko Rojas and Sten-Åke Stenberg. 2016.

[7] Lillian Leung, Peter Hepburn, James Hendrickson, and Matthew Desmond, Public Housing and the Threat of Eviction (Aug. 26, 2023), https://evictionlab.org/public-housing-and-the-threat-of-eviction/.

[8] Jeremy Turley & Yanqi Xu, Omaha's Public Housing Residents Are Facing Eviction More Often and Sometimes Over Small Debts, FLATWATER FREE PRESS (Dec. 7, 2023), https://flatwaterfreepress.org/omahas-public-housing-residents-are-facing-eviction-more-often-and-sometimes-over-small-debts/.

the first half of 2023.[9] And in Baltimore, Maryland, the Housing Authority of Baltimore City (HABC) had nearly 200 eviction cases on the housing court docket in one day, which were ultimately dismissed as a result of tenant organizing and HABC's failure to comply with the CARES Act 30-day eviction notice requirement.[10] Mass evictions have also been a problem in PBRA properties, such as Georgetown Homes in Massachusetts, where over 110 residents received notice in the span of two weeks.[11] A 30-day notice requirement may help to curb such practices and help tenants avoid an eviction record and its consequences for future housing.

This uptick in eviction filings has consequences for individual households and the communities they live in because an increase in the eviction filing rate correlates with an increase in the rate of sheltered homelessness,[12] and in some jurisdictions, unsheltered homelessness as well. At the community level, therefore, mass eviction notices against public housing tenants risk a surge in homelessness that would require significantly more resources than local governments may be equipped to handle.

A detailed termination notice with a 30-day notice period provides tenants with time to avoid the eviction and fix the underlying problem, an important resource in a legal and economic environment where "housing too often can be lost quickly and acquired slowly."[13] However, as HUD notes in the preamble to this proposed rule, tenants in HUD housing across the country are subject to vastly different notice periods under state law, leading to different results for residents in the same federal housing program.[14] Such inconsistencies harm both tenants and housing providers. An advocate from North Carolina described to NHLP how "notice and an opportunity to cure would be hugely helpful. I used to practice in a jurisdiction that provided a more robust right to notice and an opportunity to cure, and it was a much better dynamic for communication." Meanwhile, an advocate from Minnesota noted that when "a tenant has notice and an opportunity to cure before an eviction is filed, it will often result in the tenant curing the problem and the landlord will not have to file an eviction. This is good for both the landlord and the tenant."

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[9] Greg B. Smith, NYCHA Sends Eviction Notices to Tenants Who Stopped Paying Rent, THE CITY (Aug. 8, 2023), https://www.thecity.nyc/2023/08/08/nycha-eviction-notices-stopped-paying-rent/

[10] Hallie Miller, Baltimore Housing Authority Dismisses 200 Eviction Cases After Tenants Allege Violations, BALTIMORE BANNER, May 24, 2023, https://www.thebaltimorebanner.com/community/housing/baltimore-housing-authority-dismisses-200-eviction-cases-after-tenants-allege-violations-6DI3Y5SF5JG4DNTQUIDHYDJHV4/.

[11] Yawu Miller, A Rash of Evictions in Georgetowne, The Bay State Banner (June 9, 2021), https://www.baystatebanner.com/2021/06/09/a-rash-of-evictions-in-georgetowne/.

[12] Dan Treglia, Thomas Byrne, Vijaya Tamla Rai, Quantifying the Impact of Evictions and Eviction Filings on Homelessness Rates in the United States (Mar. 2023), https://www.tandfonline.com/doi/full/10.1080/10511482.2023.2186749.

[13] Noah M. Kazis, Can Affordable Housing Be a Safety Net? Lessons from a Pandemic, YALE LAW JOURNAL FORUM, 32 (Nov. 7, 2022), https://www.yalelawjournal.org/forum/can-affordable-housing-be-a-safety-net.

[14] 88 Fed. Reg. at 83880.

The proposed rule creates consistency for public housing and PBRA residents living in different jurisdictions, giving them all more time to pay back rent, cure the lease violation, and therefore stay housed.

II. In addition to public housing and PBRA tenants, the rule should apply to voucher tenants.

A. Public policy & fairness

HUD should extend the rule to the Housing Choice Voucher (HCV) and Project-Based Voucher (PBV) programs so that all HUD-assisted tenants receive the benefit of a 30-day notice period. HJN members have reported that the differing notice periods under the 2021 Interim Final Rule *Extension of Time and Required Disclosures for Notification of Nonpayment of Rent* (IFR) have resulted in confusion among tenants, housing providers, attorneys, and even judges, about the notice requirement, thus undermining this important tenant right. Including voucher tenants in the 30-day notice requirement would create consistency across HUD housing programs, putting tenants in a better position to know and enforce their rights.

Including voucher tenants in the rule should not impose an unreasonable burden on voucher landlords. Federal law – specifically, the CARES Act – currently requires voucher landlords to provide a 30-day notice to tenants.[15] Voucher landlords with Low Income Housing Tax Credit (LIHTC) properties or properties with a federally-backed mortgage are similarly subject to the CARES Act 30-day notice requirement.[16] A 30-day notice is also required where there is housing assistance through the HOME Investment Partnership Program (HOME).[17]

Additionally, extending the 30-day notice requirement may help effectuate existing protections in the voucher program. When voucher tenants experience a loss in income, for example, they may request an adjustment of their share of the rent and the subsidy amount. HUD Handbook 4350.3 prohibits the owner from filing an eviction for nonpayment of rent during the period that the PHA considers the tenant's adjustment request.[18] Formalizing a 30-day notice period in the voucher programs would help ensure that voucher tenants seeking such adjustments maximize their opportunity to pay the rent they actually owe and avoid an eviction for nonpayment of rent, in alignment with the overall eviction prevention goals of the NPRM.

Furthermore, voucher landlords should be familiar with the practice of satisfying notice requirements that may not otherwise obligate private landlords. For example, the Violence Against Women Act requires that all covered housing providers provide prospective and current tenants with a notice of occupancy rights, a requirement that voucher landlords have long had to

[15] 15 U.S.C. 9058(c) (2022).
[16] *See* 15 U.S.C. 9058(a)(2) (2022).
[17] 42 U.S.C.A. § 12755(b); 24 C.F.R. § 92.253(c) (2022).
[18] HUD Multifamily Occupancy Handbook, Chapter 7: Recertification, Unit Transfers, and Gross Rent Charges, ch. 7, p 25, https://www.hud.gov/sites/documents/43503c7HSGH.PDF.

comply with.[19] Given the existence of similar notice requirements, expanding the 30-day notice requirement to the voucher program will help solidify the rights of voucher tenants without unreasonably burdening landlords.

B. RAD Considerations

The differential treatment between PBRA and voucher programs has specific implications for the Rental Assistance Demonstration (RAD) program. Through RAD, public housing converts to either PBRA or Project-Based Vouchers (PBVs). Under the proposed rule, only RAD tenants living in PBRA properties will be entitled to a 30-day notice. RAD tenants receiving PBVs would not receive the notice, even though they also came from public housing where they would have received the 30-day notice. The proposed rule would essentially create different tenant protections for former public housing residents depending on what type of subsidy is applied at the property post-conversion.

This inconsistency serves no real purpose. Indeed, it contradicts HUD's commitment to provide uniform, fair and equitable due process treatment of persons displaced from federally-assisted or -funded projects.[20] It also violates the statutory provisions authorizing RAD, which mandates that regardless of whether public housing converts to PBRA or Project-Based Vouchers (PBVs), all former public housing residents "shall, at a minimum, maintain the same rights under the conversion as those provided under sections 6 and 9 of the Act."[21] Contrary to this provision, the proposed rule would result in disparate treatment of tenants based on conversion of assistance, something that is entirely out of their control. The exclusion of voucher tenants may also have the unintended consequence of influencing the conversion choice since tenants in PBV-converted properties would be deprived of the 30-day notice protection whereas tenants in PBRA-converted properties would not.

HUD should therefore ensure all RAD tenants, regardless of their current subsidy, receive the same right to a 30-day notice that they would have otherwise had in public housing. Such a result would be consistent with the RAD statute. To achieve this result and ensure equal tenant protections across programs, therefore, HUD would ideally extend the proposed rule to voucher tenants. If, however, HUD chooses not to broadly include voucher tenants, HUD should take steps to ensure that all former public housing residents get the benefit of the 30-day notice requirement and that future RAD-converted public housing residents, at minimum retain all their prior existing rights applicable to public housing, including the 30-day Notice.

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[19] *See* 34 U.S.C. § 12491(d); 24 C.F.R. § 5.2005(a).

[20] (e.g., as with regard to the notice requirement under the Uniform Relocation Act except in cases of emergency).

[21] Consolidated and Further Continuing Consolidated and Further Continuing Appropriations Act of 2012, Pub. L. No. 112–55, div. C, tit. II, 125 Stat.552, 673-675 (Nov. 18, 2011), as amended and currently authorized (under proviso 5 of the amended RAD authorizing appropriation acts).

C. Legal authority

Regardless of the outcome of this rulemaking, the CARES Act will continue to apply to voucher landlords. However, as we did when HUD promulgated the IFR, NHLP recommends that HUD extend the requirements of this proposed rule to the Housing Choice Voucher (HCV) and Project-Based Voucher (PBV) programs. Just as it did with the IFR, HUD has the statutory authority to include both the Housing Choice Voucher (HCV) and Project-Based Voucher (PBV) programs in this proposed rule.

HUD notes in the proposed rule that it has "general rulemaking authority . . . to implement its statutory mission, which is to provide assistance for housing to promote 'the general welfare and security of the Nation and the health and living standards of [its] people.'"[22] Indeed, Congress has broadly authorized the Secretary to "make such rules and regulations as may be necessary to carry out [their] functions, powers, and duties." Section 2 of the Housing Act of 1949 ("The National Housing Act"), provides in part:

> The Congress hereby declares that the general welfare and security of the Nation and the health and living standards of its people require ... realization as soon as feasible of the goal of a decent home and a suitable living environment for every American family… The Department of Housing and Urban Development ... shall exercise [its] powers, functions, and duties under this or any other law, consistently with the national housing policy declared by this Act and in such manner as will facilitate sustained progress in attaining the national housing objective hereby established…[23]

These housing goals are binding upon HUD and other federal agencies with housing responsibilities, requiring them to exercise policies consistent with the 1949 declaration. Courts have explicitly stated that these policies are mandatory in nature, not precatory.[24] HUD is thus obligated to follow these policies and to take actions consistent with these policies.[25] The National Housing Act provides HUD with the authority to exercise its power, functions, and duties under any law it is subject to further the goal of ensuring that "the goal of a decent home and suitable living environment for every American family" is met. These statutes, interpreted evenly across all HUD programs, provide HUD the legal authority to extend the 30-day notice requirement to HCV and PBV tenants.[26]

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[22] 88 Fed. Reg. at 83883.
[23] 42 U.S.C. § 1441.
[24] *Lee v. Kemp*, 731 F. Supp. 1101, 1110 (D.D.C. 1989) (housing goals are mandatory on HUD); *United States v. Winthrop Towers*, 628 F. 2d 1028, 1035-36 (7th Cir. 1980)(HUD's decisions were reviewable to determine whether they were consistent with the national housing goals); *Walker v. Pierce*, 665 F. Supp. 831, 838 (N.D. Cal. 1987)("Secretary's actions must be invalidated if he acts to obtain maximum financial return for HUD and he fails to consider and implement alternatives … to effect the objectives and priorities of the Act.").
[25] *Commonwealth of Pa. v. Lynn*, 501 F. 2d 848, 855 (D.C. Cir. 1974).
[26] 42 USC § 1437f(o)(7)(C) & (F).

In addition to its general rulemaking authority, HUD has program-specific statutory authority to expand the 30-day notice requirement under the voucher statutes. In the notice of proposed rulemaking, with respect to the PBRA program, HUD cites the Secretary's authority to establish requirements related to good cause for eviction and lease terms as authority to revise the notice requirement.[27] The Secretary can also regulate good cause for eviction[28] and lease terms[29] in the voucher program. In some cases, the statutory language is identical.[30] Thus, the laws governing the voucher program, like public housing and PBRA, impose no bar to HUD reinterpreting the notice period required before termination of voucher tenants. The program statutes, coupled with the broad authority granted to the Secretary in the National Housing Act, allow HUD to make the proposed rule applicable to the HCV and PBV programs.

D. Alternative path forward

Should HUD choose not to exercise its statutory authority to include the voucher programs in the final rule and create consistency across HUD housing programs, we strongly urge HUD to develop and execute an aggressive outreach plan to voucher landlords educating them about their obligation to provide tenants with a 30-day notice under the CARES Act.

Despite the fact that, as HUD points out, the CARES Act 30-day notice requirement remains in effect,[31] landlord compliance is inconsistent. According to a survey conducted by NHLP in 2022, 72% of advocates who have encountered barriers to enforcing the CARES Act 30-day notice report that landlords refused to comply with the law.[32] The strange disregard of this federal statute perhaps reached its apex in the 2023 case of *Arvada Gardens v. Garate,* in which the Colorado Supreme Court was forced to reverse a trial court judge who declined to enforce the CARES Act notice provision for the reason that the notice requirement had

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[27] 88 Fed. Reg. at 83884.
[28] 42 USC § 1437f(o)(7)(C). For Housing Choice Vouchers, requires 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" and "…that any termination of tenancy under this subsection shall be preceded by the provision of written notice by the owner to the tenant specifying the grounds for that action…"
[29] 42 U.S.C. § 1437f(o)(7)(F) (authorizes the Secretary to require a lease addendum).
[30] 88 Fed. Reg. at 83884; compare 42 UCS § 1437f(d)(1)(B)(ii) with 42 USC § 1437f(o)(7)(C), 42 USC § 1437f(d)(1)(B)(iv) with 42 USC § 1437f(o)(7)(E).
[31] *See, e.g. Moumouni v. Weedall*, No: 2023-LT-0001786 (Mich.Dist.Ct. 2023); *Arvada Vill. Gardens L.P. v. Garate,* 2023 CO 24 (Colo. 2023); *Andrews Plaza Hous. Assoc. LP v. Rodriguez*, (N.Y. 2023); *West Haven Hous. Auth. v. Armstrong* No. NHHCV0206013057S, 2021 WL 2775095 (Conn. Super. Ct. Mar. 16, 2021); *Nwagwu v. Dawkins*, 2021 WL 2775065 (Conn. Sup. Ct. Mar. 2, 2021) (unpublished); *Newcastle Lake LLC v. Carmichael*, No. 2020-005609-CC-20 (Fla. Cir. Ct. 11th Cir. Miami-Dade County Oct. 21, 2020); *MIMG CLXXII Retreat on 6th LLC, v. Miller*, No. SCSC261751 (Iowa Dist. Ct. Mar. 26, 2023); *Grendahl Park II LLC, v. _____*, No. 27-CV-HC-23-3932 (Minn. Dist. Ct. 4th Dist. June 30, 2023); *The Redwell LLLP v. ___*, No 27-CV-HC-22-6607 (Minn. Dist. Ct. 4th Dist. Feb. 13, 2023); *Bazer v. Hammon*, No. CI 20-6908 (Neb. Dist. Ct. Nov. 20, 2020); *Watson v. VICI Community Development Corp.*, No. CIV-20-1011-F, 2022 WL 910155 (W.D. Okla. Mar. 28, 2022); *Tolstoi v. Davis*, No. 21-CV-03673 (Vt. Sup. Ct. Jan. 26, 2022).
[32] Data on file with author.

supposedly expired.[33] More robust implementation is needed to ensure that HUD tenants receive the benefit of this protection.[34] As part of its implementation of the final 30-day notice rule, HUD should issue guidance to voucher landlords reminding them of their obligation to provide all their tenants with 30 days' notice of eviction under the CARES Act as well as monitor landlord compliance.

III. HUD should clarify the meaning and scope of the right to cure in the regulation.

The final rule should clarify that in non-payment cases, tenants have the full 30 days to cure the violation. Although the rule requires the notice to provide "instructions on how the tenant can cure the nonpayment of rent violation," the rule does not explicitly state whether the tenant has 30 days to vacate or cure the nonpayment of rent violation, which could unintentionally result in arguments that the tenant has 30 days simply to vacate the property.[35] This is especially important because not all state landlord-tenant schemes include a right to cure.[36] In the preamble, HUD recognized that "it is generally more cost-efficient for housing providers to assist tenants in curing their non-payment of rent [...] as opposed to evicting tenants for non-payment of rent."[37] Ensuring that tenants have the full 30 days to pay furthers HUD's goals of preventing evictions and giving tenants adequate time to access financial resources, such as state and local emergency rental assistance as well as homelessness prevention services.[38] For these reasons, we strongly recommend that, pursuant to its general authority to "make such rules and regulations as may be necessary to carry out [its] functions, powers, and duties," 42 USC

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[33] *Arvada Vill. Gardens LP v. Garate,* 2023 CO 24, ¶ 16, 529 P.3d 105, 108 (Colo. 2023).

[34] HUD action to implement the CARES Act would align with similar efforts by other federal agencies. In August 2022, the Federal Housing Finance Authority (FHFA) required Fannie Mae and Freddie Mac (collectively, the government sponsored enterprises, or GSEs) to include in both existing and future loan agreements a 30-day notice to vacate at multifamily properties with mortgages backed by the GSEs. Letter from Sandra L. Thompson, Federal Housing Finance Agency to Diane Yentel, National Low Income Housing Coalition and Shamus Roller of National Housing Law Project (Sept. 14, 2022); See also FHFA.gov, "Tenant Protections for Enterprise-Backed Rental Properties in Response to Covid-19" (rev'd Sept. 14, 2021). Similarly, in March 2021, USDA notified its multifamily housing providers in the Rural Development program that the 30-day notice "protection is not time limited by the CARES Act and does not expire." Email from RD, "Multifamily Housing Leasing Policies and Emergency Rental Assistance" (Mar. 12, 2021) (on file with author). The announcement also advised that, in states without a state 30-day notice for evictions, property managers must implement the federal requirement "immediately." *Id*.

[35] Although the proposed rule does not derive its authority from the CARES Act, court cases interpreting the CARES Act's analogous 30-day notice provision to give tenants 30 days to vacate or cure are instructive. *See, e.g.,* Sherwood v. Auburn LLC v. Pinzon, 24. Wash.App.2d 664, 675 (2022) ("If the CARES Act … simply prevented the eviction of tenants for 30 days following notice, without providing tenants an ability to cure the breach … during that [same] period, the notice provision would be rendered meaningless.").

[36] *See* Freddie Mac Multifamily, *A National Survey of Tenant Protections Under State Landlord Tenant Acts, "*Consolidated Table" (January, 2023), https://mf.freddiemac.com/docs/tenant-protections-white-paper.pdf.

[37] 88 Fed. Reg. 83877, 83883.

[38] Ensuring that tenants have the right to a reasonable notice and an opportunity to cure before facing eviction for a lease violation is also consistent with the American Bar Association's Ten Guidelines for Residential Eviction Laws (Mar. 11, 2022).

3535(d), HUD amend the proposed rule to make clear that tenants have the right to cure their non-payment of rent violation during the 30-day period.

In addition, HUD should clarify that the 30-day notice requirement applies in cases where the eviction filing is based on an allegation of chronic late payments. HJN members have reported that some PHAs and PBRA owners have filed eviction based on such allegations as an end-run around policies to protect tenants and prevent evictions for non-payment of rent.

IV. In addition to nonpayment cases, HUD should impose the 30-day notice requirement in all cases involving evictions for lease noncompliance.

We would also recommend that HUD consider applying the 30-day notice requirement beyond nonpayment cases to include evictions for lease noncompliance. Many states already require longer notice periods for noncompliance than they do for nonpayment,[39] so standardizing the notice period for both types of evictions would not be meaningfully disruptive and would promote consistency and predictability for both landlords and tenants.

V. HUD should clarify that the termination notices for all programs covered by the proposed rule must include the amount of rent due free from extra fees or charges.

Of the regulations included in the proposed rule, only one imposes a specificity requirement.[40] 24 CFR 247.4 requires that the notice in termination cases for nonpayment of rent "stat[e] the dollar amount of the balance due on the rent account and the date of such computation." The other regulations listed in the NPRM, however, do not require specific information about the rental amount due and when it was calculated. Such information can help provide tenants covered by the proposed rule with the information necessary to defend themselves against an eviction for nonpayment of rent. We recommend, therefore, HUD amend 24 CFR §§ 880.607, 884.216, 966.4, and any other relevant regulations to include a similar specificity requirement for the other programs.

In requiring that notices of eviction for nonpayment of rent state "the dollar amount of the balance due on the rent account,"[41] HUD should restrict this amount to rent and ensure that housing providers not include fees or extra charges.

Late fees, for example, should be excluded. Late fees put additional financial pressure on low and very-low income tenants who are already overly rent-burdened. Making matters worse, many landlords apply a tenant's monthly rental payment first to past late fees rather than the current rent due, thus increasing a tenant's rental arrearage and causing the total amount due to

[39] Freddie Mac Multifamily, *A National Survey of Tenant Protections Under State Landlord Tenant Acts,* "Consolidated Table" (January, 2023), https://mf.freddiemac.com/docs/tenant-protections-white-paper.pdf.
[40] 88 Fed. Reg. at 83886.
[41] *Id*.

balloon rapidly.[42] It is important, therefore, for HUD to ensure that the "balance due on the rent account" excludes late fees.

HUD should also ensure that rent does not include other rental housing junk fees, such as attorneys' fees, pet fees, processing or administrative fees, insurance fees, and high-risk fees.[43] Additionally, HUD should clarify that any tenant who brings that "rent" amount current, within the notice period, preserves the tenancy, and any nonpayment of other charges outside rent is a distinct issue that landlords must pursue separately.

VI. HUD should limit the housing provider's ability to file an eviction notice for nonpayment of rent while a process to resolve the nonpayment issue is pending, such as an application for emergency rental assistance or a request for an interim recertification.

Given HUD's intent to give tenants time to access resources to avoid evictions for nonpayment of rent, HUD should consider limiting a housing provider's ability to file an eviction notice while a tenant is engaged in a process to resolve the nonpayment issue. There is precedent for such a pause in the multifamily housing context. HUD Handbook 4350.3 provides that in situations where the owner decides to delay processing a tenant's request for an interim recertification, the owner must not evict the tenant for nonpayment of rent.[44] This pause allows the tenant to remain housed until the landlord ascertains the amount that the tenant owes and whether there is a basis for a nonpayment eviction. Similarly, Massachusetts law requires a continuance in nonpayment eviction cases when an application for financial assistance is pending.[45] These policies support the idea that tenants should be given the time to resolve the nonpayment issue, which saves resources for both the tenant and the housing provider in the long run. HUD should, therefore, consider incorporating a similar provision in the proposed rule.

VII. HUD should include disasters in the threshold for additional discretionary information as required by the HUD Secretary.

The current language unnecessarily limits information that PHAs and owners would need to provide tenants in the event of a presidentially declared national emergency. Given the number of renters who face eviction due to nonpayment following large scale disasters, this provision should also cover presidentially declared disasters. This would give HUD the ability, for example, to require owners to disseminate disaster relief and recovery resources to impacted tenants.

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[42] NCLC, *Too Damn High: How Junk Fees Add to Skyrocketing Rents* 13 (March 2023), https://www.nclc.org/wp-content/uploads/2023/03/JunkFees-Rpt.pdf.
[43] For a more comprehensive list of rental fees, *see Id.* at 3-4.
[44] HUD Multifamily Occupancy Handbook, Chapter 7: Recertification, Unit Transfers, and Gross Rent Charges, ch. 7. p. 25,https://www.hud.gov/sites/documents/43503c7HSGH.PDF
[45] M.G.L. c.239 §15(b)(i) (2024).

HUD should edit the text of the rule, in every instance it appears in the regulations, as follows: "In the event of a Presidential declaration of a **disaster or national emergency or a state disaster or emergency declaration**, such information to tenants as required by the Secretary."

HUD should track the language in the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("Stafford Act"), 42 U.S.C. § 5121 et seq., with regard to Presidential disaster declarations (PDD). Under the Stafford Act, the President may issue two types of disaster declarations to trigger federal assistance to state and local jurisdictions: emergency declarations and major disaster declarations. The issuance of a national emergency declaration during COVID-19 was an unprecedented event that is unlikely to occur frequently in our nation. More likely to impact HUD tenants are natural and environmental disasters that trigger the need for the issuance of a major disaster declaration.

The PDD is significant for tenants in impacted disaster areas as it triggers the authorization of federal disaster assistance. The PDD is only issued following a request by the Governor of the affected state.[46] As a result, the amount of time between when the disaster occurs and when the PDD is issued varies widely.[47] During that time, HUD tenants in impacted areas are at an increased risk of losing their housing. This is especially true for tenants who evacuate prior to an emergency and are unable to return immediately following the disaster, or for tenants whose units are rendered uninhabitable as a result of the disaster.[48] Without immediate financial assistance, families may be evicted and become homeless while waiting for the assistance. Thus, to prevent unlawful displacement of HUD tenants and provide them ample time to access FEMA assistance, HUD should require that the tenant eviction protections go into effect for any covered property located in an area under disaster declaration issued by the Governor where the property is located.

VIII. HUD should strengthen protections discussed in the preamble by incorporating them into the regulatory text

A. Defenses to eviction grounded in civil rights law

The preamble to the proposed rule names several statutes that give HUD authority to investigate and enforce civil rights violations for tenants living in HUD housing, including the

[46] 42 U.S.C. §§ 5170(a), 5191(a).
[47] For example, for Louisiana Hurricane Ida (4611-DR-LA) the major disaster declaration was declared during the disaster incident period, whereas for Maryland Tropical Storm Isaias (4583-DR-MD) the major disaster declaration was declared 6 months after the disaster incident period.
[48] See e.g., Emily Enfinger, Hundreds of Elderly, Low-income Residents Displaced after Ida Damaged Houma Public Housing Complexes, Houma Today (September 18, 2021), https://www.houmatoday.com/story/news/local/2021/09/19/bayou-towers-senator-circle-residents-displacedhurricane-ida/8363404002/.

Fair Housing Act, the Americans with Disabilities Act, Section 504 of the Rehabilitation Act, Title VI of the Civil Rights Act, and the Violence Against Women Act (VAWA).[49]

HUD should include this list of anti-discrimination protections in the notice and reiterate which groups of HUD tenants they protect in the regulatory text. While these protections do represent existing law, requiring compliance with them as part of the regulation itself could help increase compliance among PHAs and owners, which can be irregular at best. Unfortunately, covered housing providers often do not view their obligations under civil rights laws as connected to actions they may take with respect to not accepting rent or terminating a tenancy allegedly due to non-payment. Yet the two issues— alleged non-payment and civil rights violations— are often inextricably tied together or connected as a direct result of the landlord's discrimination.

The easiest and quickest path to cutting off a tenant's assertion of their civil rights is to threaten to evict. In cases involving sexual harassment, the landlord often refuses rent in order to file an eviction for nonpayment and then weaponizes the eviction case either to force a tenant into submitting to the landlord's sexual advances or to punish tenants who rebuff.[50] Landlords can weaponize nonpayment evictions against tenants facing other forms of discrimination in violation of the Fair Housing Act, such as a landlord threatening to evict a family with a new baby, or a survivor presenting an order of protection. Landlords also often respond to requests for reasonable accommodations with a threat to evict. Given the potential for abuse of nonpayment evictions, it is incumbent upon HUD to ensure that tenants and landlords know of the connection between civil rights protections and evictions.

This is especially true in the VAWA context. While VAWA requires a notice of occupancy rights,[51] many landlords erroneously interpret this requirement as applying only when they can see explicit evidence of gender-based violence. This harmful interpretation stems from the failure of many housing providers to view economic abuse as domestic violence despite the fact that economic abuse occurs in nearly all relationships where there is domestic violence.[52] Financial abuse and coerced debts contribute to survivors' indigence as an estimated 99% of survivors of domestic violence experience financial abuse.[53]

Eviction cases for nonpayment are the quickest and easiest way to evict a survivor from a housing program because they often require shorter eviction notices and less proof than other

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[49] 88 Fed. Reg. at 83880.
[50] *See* Kate Sablosky Elengold, *Structural Subjugation: Theorizing Racialized Sexual Harassment in Housing*, Yale L. J. & Feminism 227, 269 (2016).
[51] 34 U.S.C. § 12491(d); 24 C.F.R. § 5.2005(a).
[52] *See* Adams, *Measuring the Effects of Domestic Violence on Women's Financial Well-Being*, Center for Financial Security, University of Wisconsin-Madison (2011), *available at* https://centerforfinancialsecurity.files.wordpress.com/2015/04/adams2011.pdf.
[53] Adams et al. *Development of the Scale of Economic Abuse,* 14 Violence Against Women 5, 571 (2008).

eviction or termination cases under the federal housing programs. *Boston Housing Authority v. Y.A.*, 482 Mass. 240 (2019), illustrates how evictions can support economic abuse and harm survivors. In this case, the survivor fell behind on her rent payments due to the economic abuse she was experiencing, and the housing authority repeatedly attempted to evict her. The survivor explained to the judge that her abusive partner would "take everything from [her]" and that, as a result of the abuse, she had "lost everything already" and was afraid of losing her apartment. *Y.A.*, 482 Mass. at 243. *Y.A.* is a poignant example of how devastating economic abuse can be in the landlord/tenant setting, especially because it often results in survivors not having the resources to tender their rent or pay for other essential services (including keeping utilities on), which may also lead to termination from housing programs. *See, e.g.,* Chicago Housing Authority Housing Choice Voucher Administrative Plan for FY2024 at 12- I.D (16) ("The participant is responsible for keeping the unit in compliance with HQS, including maintaining appliances, paying utility bills and ensuring continuous utility service for any appliances and utilities that the owner is not required to provide under the lease and HAP contract.").

Likewise, in *Fuentes v. Revere HA,* 84 Mass, Appeals Court 1119, 2013 WL 5951527 (Nov. 8, 2013), one of the grounds for the Section 8 termination was a serious lease violation of nonpayment of rent. Even though the survivor testified that she had lost control of her funds to the abuser and had only recently gotten him out of her life, the hearing officer concluded that since the domestic violence had ended, VAWA was irrelevant (surmising that it would only be relevant if he were still abusing her), and the Superior Court followed the housing authority decision. Fortunately, the Appeals Court did not, and remanded the case back for a new hearing.

Without explicit language from HUD in the 30-day notice, housing providers will simply treat nonpayment cases as unrelated to VAWA and seek to terminate assistance and/or evict the survivor. In the preamble of the NPRM, HUD recognized that non-payment cases and VAWA protections are connected because they implicate one of the most common forms of violence, economic abuse.[54] HUD should explicitly reference this in the regulatory text as well to reinforce the mandatory nature of the VAWA notice requirement. Otherwise, covered housing providers and survivors will continue to view VAWA as a separate law to enforce, unrelated to non-payment cases. HUD must also provide strong guidance so that housing providers connect it to gender-based violence and understand that non-payment cases, and even prior to that when a family falls behind on rent, must be evaluated for potential abuse.

B. Translation and best practices for language access

In announcing the proposed rule, HUD emphasizes another protection grounded in civil rights law: language access. In the preamble, HUD repeatedly discusses the importance of ensuring that PHAs and subsidized owners provide adequate language access service to limited English proficient households facing lease termination. NHLP is in strong agreement with this

[54] 88 Fed. Reg. at 83880.

assertion and applauds HUD for ensuring that the needs of LEP households are not overlooked in the implementation of the 30-day notice rule.

Yet unfortunately, this critical recognition of the need for language access services in connection with eviction notices does not appear in the actual proposed text of the revised regulations. HUD should correct this omission by adding text to the appropriate regulations making clear that appropriate steps shall be taken to ensure that lease termination notices and other associated vital documents are translated and that backup oral interpretation is available for such materials, so that LEP households are not denied the full benefit of the 30-day notice period and other protections such as administrative grievance procedures and the right to cure noncompliance.

As HUD references, the lodestar for language access services in HUD-supported programs is Federal Register Notice, FR–4878–N–02, Final Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons—commonly referred to as the "LEP Guidance." The LEP Guidance specifically identifies "[n]otices of eviction," as well as "[w]ritten notices of rights, denial, loss, or decreases in benefits or services, and other hearings," among the types of materials likely to constitute "vital documents," the non-translation of which effectively denies meaningful access to members of LEP groups.[55] HUD should state in the final 30-day notice rule that PHAs and subsidized owners must translate eviction notices and associated vital documents into the receiving household's primary language.

The heart of the LEP Guidance directs HUD-supported entities to individually assess the need for and develop a plan for delivering language access services appropriate to their particular activities based on a four-factor analysis.[56] Translating eviction notices and similar vital documents is all but mandatory under any reasonable application of that analysis, which balances resource considerations and connects the greatest need for language access services to those programs of the greatest importance to peoples' lives. The deep rental subsidies available in public housing and subsidized multifamily housing programs tend to make those properties the only housing truly affordable to the lowest-income households, and thus eviction from a HUD-subsidized dwelling unit causes a devastating and often irrecoverable outcome for affected tenants. PHAs and subsidized owners also tend to have greater resources than many other HUD-supported entities, and eviction notices and accompanying materials largely consist of form documents that may be translated a single time for the benefit of entire language groups.

[55] See 72 Fed. Reg. 2732, 2744 (Feb. 22, 2007).

[56] The four factors are: (1) The number or proportion of LEP persons eligible to be served or likely to be encountered by the program or grantee; (2) the frequency with which LEP persons come in contact with the program; (3) the nature and importance of the program, activity, or service provided by the program to people's lives; and (4) the resources available to the grantee/recipient and costs. 72 Fed. Reg. 2732, 2740 (Feb. 22, 2007).

Indeed, many PHAs already require translation of eviction notices and related materials under their language access plans. Yet NHLP staff and Housing Justice Network members know from long experience working with tenants in HUD programs that PHAs differ widely in the quality of their language access plans, and compliance with those plans is highly inconsistent even when the text is strong. Specifically requiring translation of eviction notices in the final rule would therefore make a real, positive difference in ensuring LEP tenants do not face the loss of subsidized housing without the due process of being meaningfully informed of the proceedings against them and having an appropriate opportunity to respond.

HUD also cautions in the LEP Guidance that "back-up availability of oral interpretation is always advantageous," for the reason that many LEP individuals may not be able to read in their native languages.[57] This is also important for non-LEP households where literacy may be an issue. Therefore, while we primarily urge written translation as the most frequent means by which to ensure LEP households receive fair notice of lease termination, ideally HUD should craft additional text to encompass the full range of language access services that may be needed to convey adequate information to both LEP households and non-LEP households facing language access challenges.

C. Requiring reasonable repayment plans

To meet its stated goals— to prevent evictions, minimize the frustration of HUD's mission, and resolve rental arrears— HUD must require (rather than simply encourage) PHAs and owners to offer families accessible, affordable repayment agreements that allow families to pay down their debt while maintaining their housing.

Although the proposed rule requires housing providers to inform tenants about the process for curing the alleged nonpayment and how they can seek any potential rent adjustment,[58] it does not address families' need for reasonable and affordable repayment terms. The inability to pay a lump sum or a large portion of the debt within a short period will be a barrier to families negotiating and receiving a repayment agreement that they can realistically maintain throughout the agreement's term.[59] The proposed rule does not change who is offered a repayment agreement. Instead, HUD leaves the decision to each housing provider,[60] which only strengthens housing providers' bargaining position to the detriment of tenants. As HUD notes, the harm of evictions is not equally distributed, placing assisted families at a heightened risk of

[57] *Id.* at 2743-44.
[58] *See* 88 Fed. Reg. at 83881-82.
[59] HUD acknowledges most families have limited financial resources to cover a financial emergency, such as a lump sum rental arrears payment. This understanding is one of the contributing reasons why HUD is choosing to make the interim final rule "generally applicable." 88 Fed. Reg. at 83880.
[60] *See* 88 Fed. Reg. at 83881-82.

homelessness.[61] Further, tenants' ability to find alternative housing is diminished if they're simply named in a filed eviction.[62]

To be affordable, repayment agreements must cap the monthly amount paid by the tenant for current and back rent to forty percent of their adjusted income. Additionally, the agreements must have the ability to be adjusted or restructured to reflect changes in the tenant's income. These principles are already reflected in HUD's repayment agreement guidance[63] and should be memorialized in the final rule.

Furthermore, HUD should provide PHAs and project owners a model repayment agreement template. The template should use plain language that makes clear to the tenant the amount of back rent owed; the amount of current rent, plus the portion of back rent owed to be paid that does not exceed forty percent of the tenant's adjusted income; the anticipated period of the repayment agreement; and a clause requiring renegotiation and restructuring in the event that the tenant's income changes.

By limiting the amount paid by the tenant to forty percent of their adjusted income, the affordability requirement sets families up for success by allowing families to make debt payments commensurate with their ability to pay, while the housing provider collects the rental arrears over an extended period. Further, families may remain housed, placing less stress on infrastructure serving our unhoused neighbors. Additionally, requiring affordable repayment agreements will minimize the number of evictions filed in the HUD housing programs by diverting parties to a standardized process that requires housing providers to seek resolution of the alleged debt.

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[61] 88 Fed. Reg. at 83878.

[62] Kristin Ginger, *Eviction Filings Hurt Tenants, Even If They Win*, SHELTERFORCE, Jul. 30, 2018, https://shelterforce.org/2018/07/30/eviction-filings-hurt-tenants-even-if-they-win/; Jaboa Lake & Leni Tupper, *Eviction Record Expungement Can Remove Barriers to Stable Housing*, CENTER FOR AMERICAN PROGRESS, Sept. 30, 2021, at ns. 27-37 and accompanying text, https://www.americanprogress.org/article/eviction-record-expungement-can-remove-barriers-stable-housing/; Miriam Axel-Lute & Brandon Duong, *Fixing the Harms of Our Eviction System: An Interview with Emily Benfer*, SHELTERFORCE, Mar. 4, 2021, https://shelterforce.org/2021/03/04/fixing-the-harms-of-our-eviction-system-an-interview-with-emily-benfer/.

[63] U.S. Dep't of Hous. and Urban Dev., Enterprise Income Verification (EIV) System, H 2009-20 VII.C.3 (Dec. 7, 2009), https://www.hud.gov/sites/documents/09-20hsgn.doc (requiring repayment agreements with terms agreed to by both owners and tenants, total monthly payments not to exceed 40 percent of the family's monthly adjusted income, include a renegotiation clause, and reference to the applicable lease provision); U.S. Dep't of Hous. and Urban Dev., Administrative Guidance for Effective and Mandated Use of the Enterprise Income Verification (EIV) System, PIH 2018-08 14-15 (Oct. 26, 2018), https://www.hud.gov/sites/dfiles/documents/PIH-2018-18%20-%20Administrative%20Guidance%20for%20Effective%20and%20Mandated%20Use%20of%20the%20Enterprise%20Income%20Verification%20%28EIV%29%20System.pdf (requiring repayment agreements to reference the applicable public housing lease provision, include a term to amend due to family income changes, limit total monthly payment to forty percent of the family's adjusted income); U.S. Dep't of Hous. and Urban Dev., Attachment 4: Repayment Agreement Guidance, https://www.hud.gov/sites/dfiles/PIH/documents/Attachment4_Repayment_Agreement_Guidance.pdf.

Further, repayment agreements do not have the same documented harmful impacts as filing evictions. As HUD notes, the harm of evictions falls more heavily on tenants and their families than on housing providers.[64] As HUD notes, many assisted families have limited financial reserves, leaving them especially vulnerable to increases in living costs,[65] including paying accrued debts and moving costs. Although tenants benefit from additional time to resolve nonpayment issues with housing providers, that additional time should be paired with a mandate for housing providers to offer tenants a repayment agreement. The current power imbalance gives housing providers decisive control in determining whether to grant this critical eviction prevention intervention to a tenant.[66] And when evictions are filed, housing providers are far more successful than not in securing a judgment against tenants. HUD must examine how its proposed structure would further entrench those imbalances. HUD must require housing providers to enter into repayment agreements before seeking to evict.

IX. HUD should require additional information in the 30-day termination notices.

The proposed rule requires that PHAs and owners provide supplementary information in termination notices about how to cure a nonpayment and how to recertify income. We applaud HUD for taking these steps to promote transparency and awareness of HUD tenants' rights. To further these goals, we recommend HUD also require that notices include the following:

A. Information about how tenants may request a reasonable accommodation, such as an extension on rental payments

B. Along with the amount of rent that is due, the name, telephone number, and address of the person to whom rent will be paid and the hours during which tenants can pay rent in person

C. Contact information for local legal services offices, including information about right to counsel as applicable

D. Information about all HUD tenants' right to a 30-day notice under the CARES Act

E. Information about where to apply for rental assistance, as applicable, including when there is not a state of emergency or disaster

F. A list of civil rights protections that may be constitute a defense to a nonpayment eviction, including the Fair Housing Act, the Americans with Disabilities Act, Section 504 of the Rehabilitation Act, Title VI of the Civil Rights Act, and the Violence Against Women Act (VAWA)

[64] 88 Fed. Reg. at 83878.
[65] 88 Fed. Reg. at 83880.
[66] *See* 88 Fed. Reg. at 83881-82.

We also recommend that HUD remind PHAs in the regulatory text of this rule of their obligations to include key information to tenants in notices of eviction, such as their rights to a grievance hearing.[67]

In addition, HUD should ensure that only signatories of the lease are named in the lease termination notice (and any subsequent court papers, if a court case is required.) Although the law in some states prohibits housing providers from naming minors in eviction cases, HJN members have reported that in HUD multifamily housing, owners sometimes name adult children in the eviction filing even if they are not co-signatories of the lease/contract (but may be signatories of recertification paperwork due to requirements under the Privacy Act). This in turn hurts the credit of these adult children in the future. HUD should help end this practice by providing that the lease termination notice should only include tenants who are signatories of the lease.

X. HUD should ensure meaningful implementation of key provisions of the proposed rule.

A. Minimum rent hardship exemptions

Federal law requires PHAs to immediately grant an exemption when a family is unable to pay the minimum rent because of a "financial hardship." The law provides a nonexclusive set of situations that meet the definition of "financial hardship," including: families that have lost or are waiting for benefits; families would be evicted as a result of the imposition of a minimum rent; families' circumstances change, for reasons such as the loss of employment; a death in the family occurs; and other situations that HUD or the PHA may determine.[68]

We are pleased that HUD requires owners and PHAs to include in the notice information on how the tenant can apply for a hardship exemption pursuant to 24 CFR 5.630(b). Research and experience suggest, however, that hardship policies for HUD tenants are severely underutilized.[69] Despite the requirements under the law, PHAs rarely grant the exemptions. In 2019, the HUD Office of Public and Indian Housing reported to Congress that, excluding Moving To Work Authority agencies, for calendar year 2017, exemptions were granted to only 0.4% of public housing families and 0.7% HCV program participants.[70] Because tenants on the

[67] *See* 24 CFR 966.4(l)(3).
[68] 24 CFR 5.630(b).
[69] HUD, Study of Rents and Rent Flexibility (May 26, 2010); *see also Wilkins v. New Haven Hous. Auth.*, No. 3:ll-CV-01796-CSH (D. Conn. filed Oct. 31, 2013) (requiring reforms to the PHA's minimum rent hardship procedures and some rent credits); *Chastain v. Northwest Georgia Hous. Auth*., 2011 WL 5979428 (N.D. Ga. April 28, 2011) (ordering PHA to grant hardship exemption to minimum rent based on claims that PHA's grievance decision was inadequately specific in violation of statute and due process, and that denial of exemption violated statute and regulations).
[70] Letter from HUD Office of Public and Indian Housing to Committee on Housing Financial Services, (Feb. 15, 2019).

minimum rent are, by definition, extremely low income, a failure to extend the hardship exemption to them virtually guarantees they will be evicted and rendered homeless.

In order to lend real meaning to the hardship exemption requirement, HUD should clarify how and when tenants must be informed of the policy. HUD should require PHAs to provide accessible notices of the hardship policy to every adult in the household: during admissions, at any recertification, in all termination notices and grievance documents; and in the PHA's planning documents. In all of these documents, the process for applying should be easy to understand and to execute and not require tenants to assert "magic words" i.e., "I believe I am eligible for the hardship exemption to the minimum rent policy."

HUD should also require that PHA planning documents report on the number of minimum rent households, the number of hardship exemption requests, and the outcomes of those requests. These metrics could inform when PHAs are not making any effort to implement and let tenant households know of the hardship exemption.

HUD should also require owners and PHAs to explicitly state what might qualify a family for a hardship exemption in the notice. HUD lists conditions that may constitute grounds for a financial hardship, including when the family experiences a decrease in income or an increase in expenses due to changed circumstances. There are a range of other potential hardships and each application should be considered on a case-by-case basis.

NHLP has also asked HUD in the past to provide guidance to PHAs on additional circumstances that would lead to a hardship such as: any issues related to a person's status as a survivor of domestic violence or sexual assault; short-term disability that impacts ability to work or comply with program rules (even if not disabling in the long term); health crisis of any family member; residential or outpatient treatment that creates barriers to work; application of a policy would cause a family break-up. It is important that HUD informs and reminds PHAs, owners, and tenants of these qualifying events explicitly and regularly to ensure effectiveness of this important policy.

Finally, HUD should make clear that PHAs should not be evicting minimum rent households for failure to pay the minimum rent. In those cases, the hardship exemption must be applied in order to avoid the eviction.[71]

B. Incorporating the notice requirement into leases

We support HUD's requirement that PHAs and project owners amend current and future leases to properly incorporate the 30-day notice requirement. Although the 30-day notice requirement should not be a significant change for PHAs and owners given the ongoing requirements under the IFR and the CARES Act, we recognize that incorporating these changes

[71] 42 U.S.C. 1437a(a)(3)(B)(i)(II) (2022).

into the lease may raise some questions regarding implementation. We recommend that HUD provide guidance and technical assistance to PHAs and owners by providing model language for PHAs and owners as well as ample support for PHAs and owners as they incorporate this requirement into their leases and, where appropriate, lease addendums. This will be especially important given that PHAs and owners are experiencing concurrent changes due to the HOTMA regulations and HUD's pending model lease for PBRA tenants.

C. Oversight and enforcement

For tenants to receive the benefit of the 30-day notice requirement, we strongly recommend that the final rule indicate the compliance process that HUD will undertake to ensure that PHAs and project owners give tenants the notice to which they are entitled. The final rule should also outline the actions that HUD will take in the event of a PHA or project owner's non-compliance. HUD could accomplish this by updating its existing oversight systems (e.g., PHAS for public housing, TRACs for multifamily housing). Alternatively, it could assess compliance through a random pull of tenant files, a process similar to what HUD will undertake for assessing VAWA compliance.

Thank you for issuing the Notice of Proposed Rulemaking and taking action to make permanent the 30-day eviction notice requirement for certain HUD-assisted housing units. For questions, please contact Marie Claire Tran-Leung, Evictions Initiative Project Director, National Housing Law Project [redacted]

Sincerely,

National Housing Law Project

American Civil Liberties Union
Bay Area Legal Aid
Blue Ridge Legal Services, Inc.
Center for Arkansas Legal Services
Central Virginia Legal Aid Society
Community Change
Community Justice Project, Inc.
Community Legal Services of Philadelphia
Connecticut Fair Housing Center
Connecticut Legal Services, Inc.
Delaware Community Legal Aid Society
Disability Rights Advocates
Disability Rights California
Everyone for Accessible Community Housing Rolls! Inc.
Fair Housing Advocates of Northern California

Greater Boston Legal Services
Greater Hartford Legal Aid
Heartland Center for Jobs and Freedom
Housing Justice Project
Justice in Aging
Land of Lincoln Legal Aid
Legal Aid Justice Center
Legal Aid Society of Roanoke Valley
Legal Aid Works
Legal Services of New York City
Legal Services of Northern Virginia
Louisiana Fair Housing Action Center
Michigan Poverty Law Program
National Consumer Law Center (on behalf of its low-income clients)
National Homelessness Law Center
National Legal Aid & Defender Association
National Low Income Housing Coalition
New Haven Legal Assistance Association
Pisgah Legal Services
Public Justice Center
Regional Housing Legal Services
Shriver Center on Poverty Law
Southwest Virginia Legal Aid Society
St. Mary's Elderly Housing Corp.
Texas RioGrande Legal Aid
The Kelsey
The Public Interest Law Project
Three Rivers Legal Services, Inc.
Western Center on Law & Poverty
William E. Morris Institute for Justice