



Date: March 26, 2020

To: Brian Montgomery, Assistant Secretary for Housing - Federal Housing Commissioner, and Hunter Kurtz, Assistant Secretary for Public and Indian Housing, U.S. Department of Housing and Urban Development

From: National Housing Law Project, National Alliance of HUD Tenants, and National Low Income Housing Coalition

Subject: HUD Must Take Immediate Action to Mandate and Streamline Interim Recertifications

Most tenants face a rental due date of April 1, 2020. Congress is finalizing a broad package of COVID-19 relief that includes both eviction protections and additional funding to provide prompt rent relief for HUD-assisted and public housing tenants. The account funding language provides the Department with broad waiver authority for each account that includes most otherwise applicable statutes. Thus, the Department has both the authority and the funding to fully protect the housing and rent security of all HUD-assisted and public housing tenants. The HUD March 24 MF FAQs provide helpful reminders to assisted owners, but fail to reflect sufficient urgency through mandatory action or, understandably, the imminent new funding and authorities.

Recommendations:

Currently, the regulations for both public housing and Section 8 programs require a tenant request to trigger an interim recertification, and allow PHAs and owners to adopt additional procedures governing processing. Since many tenants may be unaware of the “tenant request” requirement, and because of obvious limitations on PHA and owner capacity to send out an expeditious reminder notice and to process requests before April 1, HUD should issue emergency guidance waiving (per 24 C.F.R. § 5.100 and the COVID-19 relief authority) the tenant request requirement and establishing a clear emergency rent recertification policy, including the following:

- 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 (a “constructive request”) and begin the interim recertification process.
 - PHAs and owners should be immediately required to send those tenants a HUD-prepared form Notice in plain language that contains information about the tenant’s right to a prompt rent recertification that accounts for any income reduction, effective the first of the month following the income loss.
 - Additionally, the HUD-prepared form notice must be sent to all other tenants as soon as possible, and posted prominently in common areas of any project-based or public

housing property. HUD should initially provide this notice in English and Spanish, and then as expeditiously as possible in other widely spoken languages.

- Alternatively, HUD should consider just waiving tenant rent contributions (at least for those tenants not on fixed incomes) for the duration of the emergency, plus a reasonable period thereafter.
- HUD should suspend any regulatory text or Handbook guidance that impose additional impediments to making recertifications effective April 1, such as “reasonable time” periods for PHA or owner action, ordinary verification requirements, or any other provisions (e.g., Handbook 4350.3, ¶ 7-11) that permit denial or delay of prompt interim recertifications.
- As recognized by the March 24 MF FAQs, the Notice should make clear that tenants should provide whatever information they have about the income reduction (reduced hours or job loss), including their own statement if that is all that is available, and that PHAs or owners will take steps to request additional information or obtain third-party verification if necessary as soon as circumstances permit, following the termination of the emergency. To relieve unnecessary administrative burdens, PHAs and owners should be able to simply document that third-party verification is unavailable. As stated in the March 24 MF FAQs, owners and PHAs should be directed to process temporary recertifications electronically and collect original documents from tenants at a later date.
- When under public health guidelines the tenant should not attend the recertification interview, or appear in person to sign consent or other HUD forms, HUD should mandate that PHAs and owners:
 - delay the deadline for regular recertification by 90 days (or the duration of the emergency, if longer).
 - accept electronic signatures on consent forms, HUD forms, and any other forms necessary for regular and interim recertification.
 - conduct meetings with tenants over the phone or via teleconferencing.
- As required by the COVID-19 relief statute, HUD must prohibit late fees, “convenience” payment fees, or evictions for nonpayment of rent during the 120-day period. HUD should use its waiver authority to extend such coverage for any longer period of the emergency and a reasonable period thereafter.
- For any other rental arrearages accumulated during the emergency, HUD should instruct owners to first ensure proper application of the emergency rent recertification policy, and to execute reasonable repayment plans that recognize the need to keep total monthly rent burdens affordable (e.g., HUD Notice PIH 2018-18).
- HUD should clarify that any funds provided directly to tenants as part of federal stimulus efforts are not income for the purposes of calculating a tenant’s rent contribution.
- HUD should also direct PHAs to set minimum rents at \$0 and should set the minimum for project-based Section 8 programs at \$0. At a minimum, 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 any loss or interruption of income due to COVID-19, and to assume that COVID-19-related hardships are long-term in nature. If minimum rent is not paid when due for the duration of the emergency, PHAs and owners should presume the family has a hardship (a “constructive request”) and begin processing the hardship exemption.

- Although unrelated to recertifications, HUD should also encourage PHAs and owners to exercise flexibility regarding occupancy policies or house rules such as extended absences and length of guest stays during the pandemic. After the emergency has terminated, HUD should encourage owners and PHAs to give households a reasonable grace period in meeting any past-due programmatic requirements.
- To encourage compliance, HUD should also take steps to assure owners that additional assistance payments or operating subsidies will be provided promptly under the COVID-19 relief package.

These are exceptional times requiring exceptional measures to ensure that tenants remain housed and rents remain affordable as required by law. The Department will soon be provided all authority and sufficient funding to craft an expeditious response geared to the realities faced by assisted tenants, without many of the constraints ordinarily posed by issues concerning statutory and regulatory authority.

We recognize and deeply appreciate all your efforts to ensure comprehensive tenant protections during the emergency. Our organizations stand ready to assist the Department in developing the necessary policies and practices to ensure continued housing security and affordability for tenants in all HUD programs. Please contact James Grow (jgrow@nhlp.org) or Shamus Roller (sroller@nhlp.org) at NHLP, Michael Kane at NAHT (michaelkane@saveourhomes.org) or Diane Yentel at NLIHC (dyentel@nlihc.org).