



RENO & CAVANAUGH PLLC

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

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

To Whom It May Concern:

The Council of Large Public Housing Authorities (“CLPHA”) and Reno & Cavanaugh, PLLC (“Reno & Cavanaugh”) are pleased to submit comments to HUD’s proposed rule entitled “30-Day Notification Requirement Prior to Termination of Lease for Nonpayment of Rent” published on December 1, 2023 (the “Proposed Rule”).

CLPHA is a non-profit organization that works to preserve and improve public and affordable housing through advocacy, research, policy analysis, and public education. We support the nation’s largest and most innovative public housing authorities (“PHAs”) by advocating for policies and programs that most effectively serve low-income residents and provide them with long-term economic opportunities. Our members own and manage nearly half of the nation’s public housing program, administer a quarter of the Housing Choice Voucher (“HCV”) program, and operate a wide array of other housing programs. CLPHA members collectively serve over one million low-income households.

Reno & Cavanaugh has represented hundreds of PHAs throughout the country. The firm was founded in 1977, and over the past three decades the firm has developed a national practice that encompasses the entire real estate, affordable housing, and community development industry. Though our practice has expanded significantly over the years to include a broad range of legal and legislative advocacy services, Reno & Cavanaugh’s original goal of providing quality legal services dedicated to improving housing and communities still remain at the center of everything we do.

As major affordable housing providers in their communities, PHAs are fully aware of the nationwide eviction crisis which has persisted for a number of years now. PHAs are confronted on a daily basis by the problem of operating their developments without adequate funding while keeping low-income families and seniors housed despite their financial challenges. Therefore, we certainly understand and appreciate HUD’s motivation in issuing the Proposed Rule and we

do not object to it. However, PHAs believe that HUD and other actors must address this problem holistically and collectively. Among other things, we note that generally available sources document the dramatic increase in renters nationwide who are rent burdened, which leads to a greater number of households at risk of eviction. If policymakers are serious about addressing this problem in assisted housing programs, then perhaps it is time to revisit some basic rent setting policies, such as the level of tenant rent contributions which these programs now require.

We are concerned that HUD's stated purpose in issuing the Proposed Rule to "curtail preventable and unnecessary evictions" by requiring PHAs to provide "tenants with time and information to help cure nonpayment violations" does not fully recognize the extensive efforts and outreach PHAs currently undertake to do just that. PHAs are on the front lines, working with tenants to prevent loss of housing and to ensure that tenants have access to available tools and information to mitigate rent arrears.

Further, while we support curtailing "preventable and unnecessary evictions," the burdens imposed on PHAs by the Proposed Rule highlights the fundamental federal policy conflict between HUD's efforts to prevent evictions and keep families housed and HUD's assessment systems and enforcement actions that penalize PHAs for high rent arrears, delays in rent collections, and delays in turning units for re-occupancy. HUD must address this fundamental policy conflict in a more holistic way and in the context that ensures PHA operations, and the desperately needed housing services PHAs provide to our communities, are not negatively impacted.

Despite chronic underfunding, even for routine operations, and the lack of additional resources necessary, PHAs continue to serve our communities and undertake extensive efforts and outreach to prevent loss of housing where possible.

PHAs across the nation stand on precarious financial ground, their capacity to serve vulnerable communities increasingly strained by a confluence of challenges. Insufficient funding, escalating costs, and persistent rent arrears leave PHAs grappling with dwindling reserves and struggling to maintain operational stability. It is within this context that the Proposed Rule looms, potentially exacerbating existing vulnerabilities and further jeopardizing the critical safety net that public housing provides.

The chronic underfunding of the public housing operating fund stands as a primary culprit. Despite the documented \$375 million shortfall in FY23, HUD's allocation of only \$25 million falls far short of what is needed to bridge the gap. This disparity leaves PHAs grappling with a stark reality: less than three months of financial reserves on average. Further compounding the fiscal strain are skyrocketing insurance premiums, which have surged by as much as 110% in some states. These unexpected cost increases eat away at already scarce resources, leaving PHAs scrambling to make ends meet. Yet, in the face of this fiscal reality, HUD has taken steps to claw back unspent COVID funds rather than exploring creative ways and issuing additional authority to allow PHAs to use these funds to address operating shortfalls.

Equally concerning are persistently high tenant accounts receivable (TARs). The inability to collect rents at pre-pandemic levels casts a long shadow over operational capacity. Tenants

across the country continue to struggle with financial hardships due to pandemic-related economic disruptions, resulting in continued rent arrears. These financial hardships are further exacerbated by the ending of pandemic-related emergency rental assistance at the federal, state, and local levels. It is unsurprising that HUD reports in the Proposed Rule that “legal service providers for low-income tenants have reported an uptick in eviction cases for non-payment of rent in public housing compared to pre-pandemic levels.” However, we are concerned that HUD’s solution to this increase in evictions is to mandate that PHAs defer enforcement actions rather than provide additional rental assistance to resolve the rent arrears that are the basis for such enforcement actions.

Further, while we understand HUD’s assessment 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 nonpayment of rent,” such cost efficiency can only be reached if appropriate options are available to cure such non-payment of rent. HUD’s emphasis on repayment agreements and hardship exemptions ignore the fact that (a) PHAs already pursue these options with tenants and (b) without new and additional funding sources, repayment agreements and hardship exemptions only temporarily address the reality that some tenants simply are unable or unwilling to pay their rent.

The Proposed Rule creates unnecessary administrative burdens and additional liabilities for PHAs.

The Proposed Rule imposes a HUD-mandated mechanism on all PHAs that is intended to provide tenants with additional time to address rent arrears. However, for those PHAs who already have comparable policies in place, the Proposed Rule not only results in additional administrative burdens but creates additional liabilities for PHAs for technical violations. For example, the Proposed Rule requires that PHAs “amend all current and future leases to properly incorporate the 30-day notice requirement,” and provide notice to tenants of these amendments. These procedural requirements apply regardless of whether PHAs currently have comparable policies in place. HUD’s failure to recognize that the Proposed Rule unfortunately focuses on form over substance is concerning.

The Proposed Rule will likely result in higher net rent arrears and longer vacancy turnover times for PHAs across the country, unnecessarily exposing PHAs to additional penalties under HUD’s assessment systems.

While the intent to offer tenants additional time to address rent arrears may seem laudable, the unintended consequences could be dire for a PHA’s performance assessment. It is therefore deeply concerning that HUD does not address the Proposed Rule’s likely negative impact on a PHA’s Public Housing Assessment System (“PHAS”) score.

HUD uses PHAS to assess a PHAs’s performance across four categories – Physical Assessment, Financial Assessment, Management Assessment, and Capital Fund Program. Implementation of the Proposed Rule will likely result in higher net rent arrears for PHAs across the country, thereby negatively impacting a PHA’s Management Assessment score since that category focuses, among other things, on a PHA’s ability to collect rents on time and lower TARs. Implementation of the Proposed Rule will also likely delay unit turnover and prolong wait times

to get units occupied, thereby negatively impacting a PHA's Capital Fund Program score since that category focuses, among other things, on occupancy rates. Low PHAS scores may result in PHAs being designated as "substandard" or "troubled," which designations subject PHAs to remedial actions, oversight, and monitoring by HUD. HUD's failure to address the likelihood that the Proposed Rule will result in lower PHAS scores for PHAs must be remedied.

Further, with respect to HUD's example of the non-profit affordable housing provider in Boston with "approximately \$14 billion of largely affordable and military housing [who] was able to successfully use tenant supports that included affordable, longer-term, fee-free repayment plan options to prevent formal judicial eviction filings," it is important to note that the provider is not a PHA and is therefore not subject to the negative scoring which would result for PHAs that pursue the same options. It is also worth noting that HUD's recommended best practice of entering into repayment agreements ignores the reality that such repayment agreements do not immediately address the rent delinquency, especially since HUD does not contemplate providing additional rental assistance funding to residents. Even when tenants are able to address their rent arrears, those payments are not reflected for the current month and therefore do not address the TARs issues and negative scoring PHAs face.

HUD should provide additional supports and remedies to PHAs.

It is into this precarious financial landscape and these conflicting policy and assessment goals that the Proposed Rule is poised to be introduced. It is therefore critical to CLPHA members that HUD not only provide additional funding resources to both PHAs and tenants to address rent arrears and avoid evictions, but also incorporate the following in its revisions to the Proposed Rule to mitigate the operational impact on PHAs:

1. Create the ability for PHAs to request a general waiver of the 30-day notice requirement for good cause based on local circumstances;
2. Provide an automatic waiver for compliance with the Proposed Rule for those PHAs that already have robust tenant protections and comparable notice requirements in place;
3. Create waivers or carve-outs for PHAs from all metrics and scoring that are negatively impacted by rent arrears and unit turnover, including but not limited to PHAS scores;
4. Amend the TARs scoring metrics so that:
 - a. Rent arrears for which repayment agreements are in place shall not be counted against a PHA's accounts receivable total;
 - b. Rent arrears for which settlement agreements are under negotiation shall not be counted against a PHA's accounts receivable total;
 - c. Settlement agreements for rent arrears shall be credited to the PHA's accounts receivable for the full amount due, regardless of whether the settlement was for less than the total amount owed;

5. Provide additional funding to PHAs to address the administrative burden that would result in implementation of the Proposed Rule, as well as ERAP-type housing assistance funds to assist residents in repaying accrued rent arrears;
6. Provide technical assistance and other resources to support training/oversight of third-party owners/management companies, as well as PHAs, in implementing the Proposed Rule; and
7. Grant PHAs the authority to forgive rent arrears or otherwise use federal funds to address rent shortfalls.

CONCLUSION

The Proposed Rule cannot be considered in isolation from the broader financial challenges and performance assessments facing PHAs. Without addressing the underfunding crisis, rising insurance costs, and persistent rent arrears, the Proposed Rule risks inflicting unintended harm on both tenants and PHAs. While we do not object to the 30-day notice requirement contained in the Proposed Rule, we hope that HUD will consider these comments and recommendations in its forthcoming revisions to the Proposed Rule.

Thank you for the opportunity to submit these comments to the Proposed Rule. CLPHA and Reno & Cavanaugh look forward to working with HUD on this and future rulemaking.

Sincerely,



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