June 4, 2020

Sent via e-mail

Hunter Kurtz, Assistant Secretary for Public and Indian Housing
Danielle Bastarache, Deputy Assistant Secretary for Public Housing and Voucher Programs
U.S. Department of Housing and Urban Development
451 7th Street S.W.
Washington, D.C. 20410

Re: Recommendations for Upcoming HUD Guidance

Dear Hunter and Danielle,

The National Housing Law Project (NHLP), the National Low-Income Housing Coalition (NLIHC), the Poverty and Race Research Action Council (PRRAC) and the Center on Budget and Policy Priorities (CBPP) write to provide recommendations to the Department of Housing and Urban Development (HUD) on its upcoming waiver guidance for Public Housing Authorities (PHAs), as a follow-up to conversations you’ve had with our respective organizations in recent weeks. We also offer suggestions regarding allocation of CARES Act funding and for additional HUD guidance in light of the ongoing pandemic.

HUD Notice PIH 2020-05 provides PHAs with important flexibility to administer their programs efficiently and implement tenant protections, pursuant to the CARES Act. We agree that communities across the country have been impacted differently by the Coronavirus and many programmatic decisions must be made on a local level. However, there are a handful of key PHA policies that are necessary to protect resident health and safety. Despite continuous advocacy on behalf of the undersigned organizations and our partners, **HUD has not mandated a single policy change to date.**

First, we reiterate that HUD should take the following steps to keep families housed and maximize precious affordable housing resources:

- Implement a uniform interim recertification rule for all of its housing programs that protects tenants from extreme rent burdens and evictions for nonpayment of rent.
- Direct PHAs and owners to establish a minimum rent of $0 and inform tenants of the right to a financial hardship exemption.
- Implement a uniform protocol that addresses emergency inspections for life-threatening conditions.
- Require owners and PHAs to continue to relocate tenants who are living in dangerously poor conditions.
- Require all PHAs and owners to prohibit subsidy terminations due to a family’s extended absence from the unit.
• Require that PHAs and owners waive space standards such as the subsidy standards for the Housing Choice Voucher program that would limit the number of people allowed to live in the family’s unit.
• Require PHAs and owners to lift tenant screening requirements for characteristics such as criminal and credit history when adding members to a household.
• Automatically toll the search period for all vouchers.
• Prohibit budget-related restrictions on portability.

**Recommendations for Subsequent Waiver Guidance**

Based on our experience consulting with tenants, advocates, and other stakeholders, we recommend the following additional waivers and clarification of existing waivers in subsequent guidance:

• **Waivers related to admissions policies.** Many PHAs are not issuing turnover vouchers. This is unacceptable during a public health crisis when housing is a key strategy to combat the spread of the Coronavirus. HUD should publish additional waivers related to admissions so that PHAs can lease up as quickly as possible. This should include providing housing agencies broad flexibility to use self-certification and other less burdensome forms of verifications at admission (as waivers PH and HC-3 and -4 in Notice PIH 2020-05 already do for annual and interim examinations) and waiving the requirement in 24 CFR 982.201(e) that the PHA receive information verifying that an applicant is eligible within 60 days before issuance of a voucher). HUD should also allow PHAs to lift both mandatory and discretionary applicant screening criteria (criteria related to criminal history, for example, in 24 C.F.R. 982.552). Last, we recommend that HUD rescind its recent FAQs that create barriers for families seeking to lease up.¹

• **Waivers related to repayment plans.** The federal eviction moratorium ends on July 25. We hope that tenants experiencing job loss or reduced work hours recertify their income during this time. However, without a doubt, a number of families will owe rental arrears at the expiration of the moratorium. And a number of these tenants will not qualify for emergency rental assistance, which in many cases categorically prohibits administering aid to people who receive federal housing assistance. And yet, repayment plans with the PHA and landlord are discretionary. HUD has urged PHAs to enter into repayment plans with public housing tenants. This is not enough. HUD should provide necessary waivers that allow the PHA to use its own funding to help pay tenants’ back rent. In addition, HUD should clarify that repayment of tenants’ rental arrears is an eligible use of Administrative funding for the voucher program.

¹ The recent FAQ#4 at OC55 acknowledges that some applicants might have trouble obtaining identifying documents such as Social Security numbers or birth certificates; yet PIH insists that a PHA cannot allow households to move in and verify documents later. The FAQ states that PIH will consider adjusting this policy. OC56 likewise does not permit PHAs to allow an applicant to self-certify their income when applying for public housing our voucher assistance. Waiver PH/HCV-3 in Notice PIH 2020-05 does allow self-certifications for annual income verification for households already assisted. These two FAQs seems to contradict Notice PIH 2020-05 that encourages PHAs to continue to conduct critical operations, including processing Requests for Tenancy Approvals (RFTAs) so families can be approved to move into a unit, as well as ensuring occupancy of Public Housing units.
• **Clarify requirements related to transparency**: In its waiver notice, HUD requires PHAs to provide notice to residents about pandemic-related policy changes, after the fact. The requirement is vague and the details are left to the discretion of the PHAs. It is therefore not a surprise that we have seen few notices that clearly inform tenants of their rights and obligations during the pandemic. HUD must require PHAs to inform residents of the PHA’s intent to use a waiver (and the proposed policy) before the waiver is used, at least by informing Resident Advisory Boards (RABs), Resident Councils, and any other tenant organizations. In addition, HUD must more closely oversee PHA waivers and make them publicly available. Tenants and advocates have had a difficult time gathering meaningful data about how PHAs are revising local policies and its impact on tenants.

• **HUD should extend certain waivers**. Waivers were introduced in response to the coronavirus pandemic in part due to public health considerations and in part due to the economic consequences of the pandemic. At some point the health crisis will subside and eventually dissipate; however, the economic recovery will not be coterminous – businesses will not rebound fully and some will fail. Consequently, tenant incomes will continue to lag much longer than the threat to their health while PHAs see an increasingly high volume of interim recertification requests. Waivers related to residents’ ability to pay rent must be extended based on local economic benchmarks that take into account not only short-term but also medium-term measures of the local economy, especially measures of the sectors of the economy that are significant employers of assisted residents.

• **HUD should consider extending HQS waivers only to the extent they promote public health and safety**. HUD should consider extending HQS waivers only to the extent they are necessary to advance public health and safety and assist PHAs in leasing people up. The interim inspection waiver that allows landlords to self-certify the condition of the unit, however, should be eliminated as soon as possible due to the risk of harm to current HUD residents.

**Recommendations for Cares Act Funding**

The supplemental public housing and voucher funding in the CARES Act will be crucial to PHAs’ ability to effectively assist low-income families. We appreciate that HUD has already allocated the public housing operating funds and a portion of the voucher administrative funds. We strongly encourage HUD to promptly allocate the remaining administrative funds and the renewal funds, and have several specific recommendations regarding those allocations.

• **HUD should permit housing agencies to use CARES Act administrative funds for HAP subsidies**. There is no statutory barrier to using the CARES Act administrative funds (or other voucher administrative funds) for voucher housing assistance payments, Congress intended the funds to be available for this purpose, and for many PHAs the administrative funds will be essential to their ability to cover HAP subsidies for both current and newly leased HUD tenants. HUD should act promptly to correct its erroneous prohibition on the use of CARES Act administrative funds for HAP subsidies.

• **HUD should target the remaining administrative funds on agencies that need them to cover increased HAP costs, that are maintaining or increasing voucher leasing, or face**
increased numbers of recertifications. HUD’s initial allocations of CARES Act administrative funds to all agencies based on the regular administrative fee formula should be adequate to enable all agencies to maintain basic operations. HUD should allocate the remaining funds in a manner that supports agencies with the greatest need and provides an incentive for agencies to conduct important activities such as leasing up new vouchers and conducting recertifications for tenants whose income decline.

• **HUD should allocate most renewal funds as quickly as possible.** In the current economic circumstances, it should be a high priority to allocate the supplemental renewal funds promptly to prevent any decline in voucher utilization. To that end, it’s urgent to allocate some supplemental HAP funding as quickly as possible. One way to do this would be to allocate $300 million in supplemental funds by formula to every PHA in proportion to its 2020 renewal eligibility, but significantly reduce (even down to zero) allocations for those PHAs with excess reserve balances. One advantage of targeting funds on PHAs that do not have excess reserve balances is that it will allocate more resources to those with very low balances, which will reduce the potential demand for shortfall funds later in the year.

Allocating a portion of the funds via the existing formula (with adjustments for reserve balances) appears to comply with the CARES Act’s provision allowing funds to be allocated to agencies facing cost increases due to extraordinary circumstances, since virtually all housing agencies meet those criteria. If HUD believes it is necessary for legal reasons, it could establish a set of simple criteria to identify significant cost increases (e.g., a recent uptick in PUCs) and extraordinary circumstances (e.g., a substantial increase in the state unemployment rate) that would make PHAs broadly eligible (again, with adjustments for those with large reserve balances). The downside of that approach is that it would take more time while HUD gathers and process the needed data.

**Recommendations for Additional Guidance**

HUD should take these additional steps to support housing stability and health among its residents at this critical time:

• **Publish guidance on the rights of survivors of domestic violence:** There has indisputably been an increase in the rates of domestic violence during this crisis. We are pleased that HUD will be meeting with NHLP and other advocates to discuss what HUD can do to protect the housing rights of survivors during this time. We urge HUD to publish stand-alone guidance on this important topic with the recommendations highlighted in our partner letter dated May 22, 2020.

• **Correct its guidance on Cares Act coverage:** We disagree with HUD’s interpretation of CARES Act coverage as stated in its FAQs (EM-13 in the most updated version dated May 29, 2020) that Sec. 4024 only applies to the exact unit participating in a federal housing program. The text of the CARES Act clearly provides that participation in a VAWA-covered program or acceptance of RD voucher subsidies on behalf of only some residents would makes the entire property a “covered property.” See CARES Act, § 4024(a)(2)(A)(i-ii). This means if a property has any participating tenants, then non-participating tenants in the same property would thereby qualify as occupants of “covered dwellings” entitled to protection against eviction for nonpayment of rent or other charges during the moratorium
period. See CARES Act, § 4024(b). HUD should amend its guidance or issue new guidance on the issue.

- **Improve data collection**: We were surprised to learn on NHLP’s advocate call on May 27 that HUD is not collecting data on rent payments in real time. This frustrates our efforts to understand the emergency rental assistance needs of HUD residents. We urge HUD to collect data on rent payments and evictions during the pandemic and subsequent economic downturn.

- **Active tracking of new voucher locations**: We anticipate that some PHAs, in spite of the increase in HAP funds and Administrative Fees, may relax their efforts to assist new voucher families in locating housing outside of higher poverty neighborhoods (consistent with the 2015 portability rule). It is especially important to assist families who wish to move out of areas with poor air quality, in light of the emerging research linking COVID outcomes to neighborhood air quality. We urge HUD to alert PHAs to its expectations that they will continue to comply with the rule, and to publish quarterly public reports for each PHA analyzing the neighborhood demographic characteristics of new family moves.

Thank you for your consideration of these recommendations. Please contact Deborah Thrope (dthrope@nhlp.org) with any questions.

Sincerely,

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Cc: Dominique Blom, General Deputy Assistant Secretary for Public and Indian Housing  
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