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Office of General Counsel
Regulations Division
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 [Docket No. FR–6387–P–01]

To Whom It May Concern:

On behalf of the National Association of Housing and Redevelopment Officials (NAHRO), I would like to offer the following comments in response to the proposed rule titled "30-Day Notification Requirement Prior to Termination of Lease for Nonpayment of Rent" published in the *Federal Register* on December 1, 2023.

Formed in 1933, NAHRO represents over 19,500 housing and community development individuals and agencies. Collectively, our members manage over 970,000 public housing units, 1.7 million Housing Choice Vouchers (HCVs) and receive over $1.5 billion in Community Development Block Grant (CDBG) and HOME Investment Partnerships (HOME) Program funding. NAHRO members also frequently utilize the Low-Income Housing Tax Credit (LIHTC) program to develop new affordable housing units across the country. NAHRO has the unique ability to represent public housing agencies, local redevelopment agencies, and other affordable housing developers of all sizes and geography. We support our members who work every day to support their communities.

This comment letter provides feedback on the proposed rule and aims to address potential impacts and unintended consequences.

1. Background

On December 1, the Department of Housing and Urban Development (HUD) published the proposed rule, which would require PHAs/owners that administer public housing and or project-

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based rental assistance (PBRA) to provide tenants with 30-day notice prior to the commencement of a formal judicial eviction procedure for lease termination. The rule would also require PHAs and owners to provide tenants with instructions in regard to resolving lease violations for nonpayment of rent.

The Coronavirus Aid, Relief, and Economic Security Act (CARES Act) introduced the 30-day notice to vacate requirement for nonpayment of rent, which is still in effect for all CARES Act covered properties. Currently, HUD requires 30-day notice as it relates to certain types of evictions in PIH and Multifamily programs, however they are unrelated to nonpayment of rent. Concurrently, states and local jurisdictions each have their own set of requirements as it relates to evictions.

Households that face eviction within HUD-assisted properties may request a minimum rent hardship exemption that may exempt them from paying the minimum rent. As stated by HUD, these exemptions may be temporary or long term and PHAs may not evict a family for non-payment of minimum rent during the 90-day period beginning the month following the family's request for exemption. Households may also request an interim recertification, which can also take additional time and delay the eviction process and payment of rent.

2. Comments

NAHRO acknowledges HUD's commitment in seeking to improve and update the evictions process for HUD-assisted households. Additionally, NAHRO supports finding solutions that prevent evictions while also ensuring that PHAs/owners are not intentionally or unintentionally impacted financially due to nonpayment of rent.

In reviewing the questions asked by HUD, NAHRO offers the following thoughts (while many of the thoughts below emphasize PHAs and public housing, they can also be applied to PBRA housing providers):

The 30-day Requirement May Harm Future Residents on the Waiting List

The proposed 30-day requirement may harm future public housing residents on waiting lists at PHAs. The cumulative impact of the 30-day requirement is that new residents will wait even longer than they currently do. It would take 9.3 years, on average, to provide assistance to every family currently waiting for a voucher or a public housing unit.[1] The long-term effect of this rule will mean that additional people will be cost-burdened or to live in substandard conditions without federal rental assistance for longer as the turnover rate for units is impacted.

Additionally, federal rental assistance only reaches one out of every four people that qualify.[2] Those households currently in public housing units that may not be able to pay their rent may request an income recertification that would lower their rent. Evictions sometimes occur because households do not follow these recertification rules, even though PHAs work diligently to ensure that residents are aware of these rules and often provide additional help, including repayment plans, to assist residents. In conditions of federal rental assistance scarcity, this rule

[1] "Housing Agency Waiting Lists and the Demand for Housing Assistance," p. 8, https://www.housingcenter.com/wp-content/uploads/2017/11/waiting-list-spotlight.pdf.

[2] Erika C. Poethig, "One in four: America's housing assistance lottery," https://www.urban.org/urban-wire/one-four-americas-housing-assistance-lottery."

would prioritize households that do not follow the recertification rules--but currently have a unit--over households on the waiting list.

The 30-Day Notification Requirement Will Financially Burden Households

The proposed 30-day requirement will harm certain residents who are currently residing in public housing units—specifically those who have not been income recertified and are not paying their rent. It will result in those households continuing to accumulate rental arrearages. This will burden the household with additional debt that the PHA does not have the authority to cure. This additional debt will impact the financial viability of the household moving forward by impacting the household's credit rating in certain instances. The additional time before the eviction will have the effect of lowering the household's long-term credit without any concomitant benefit.

Enforcement of the 30-day Requirement May Incentivize Faster Evictions

In many cases, PHAs do not file for evictions until after they make every effort to work with the resident to find a solution to cover back rent. Creating payment plans and providing more time to the resident is preferred over the eviction process. The process can be slow, expensive, and hurts both the tenant and PHA. However, enforcement of a longer notice period may incentivize PHAs to file for evictions sooner due to the slow pace of the court process and the costs it will incur on the agency due to the additional time required of the notification period.

The 30-Day Notice May Increase the Financial Burden on Agencies

According to HUD, the Tenant Account Receivable (TAR) ratio has risen since at least 2015. This ratio increase indicates that the amount of rent owed by residents has been increasing over the course of a decade. TARs saw significant increases due to the pandemic and the national eviction moratorium put in place. Although it was critical to find a way to ensure families remained housed during the pandemic, certain agencies are still feeling the impact of the eviction moratorium today. Nearly 1,300 PHAs saw an increase in TARS between 2019 and 2022.

While the 30-day notice to vacate requirement for nonpayment of rent is still in effect for all CARES Act covered properties, the policy requirement was initially intended to be temporary. The proposed rule intends to make this temporary change permanent without considering the potential unintended consequences to PHAs in the future. With steady increases to TARs in the past decade, the potential impact on PHAs could be devastating. This not only impacts PHAs, but the residents they serve as well. Many agencies are struggling financially. The pandemic exacerbated the operating burden on many agencies and made everyday job functions more challenging. Insurance rates have also significantly increased as have the cost of materials and labor for contracted work. Additionally, many PHAs already face delays in the process of evicting tenants for nonpayment of rent even while providing tenants ample opportunity and additional time. It is important to mention that NAHRO is in full support of preventing evictions. PHAs regularly empathize that evictions are the last resort they take. However, factoring in hardship exemptions, interim recertification, and the court process to evict—delays in nonpayment of rent can last months or even longer. Formula income and resident rent payments play a critical role in the Operating Fund Formula. However, resident rent payments are critical funding that PHAs often go without. This is particularly important as the Operating Fund formula considers rents charged, not rents collected. This means that in determining funding levels for PHAs each year, HUD assumes that all rents charged are paid. Extending nonpayment of rent by families in the public housing program only exacerbates this discrepancy.

May Result in Harm to Public Housing Infrastructure

According to some estimates, the public housing capital backlog is at least $70 billion.[3] Absent a capital infusion, PHAs need every possible revenue stream to maintain the quality of their units and developments. Every family deserves the opportunity to live in a safe and decent unit. The 30-day requirement will make it harder for PHAs to maintain the quality of their units, while already facing extreme financial pressures. This loss in revenue may lead to less funding being available for maintenance, which means that other residents in public housing will have to wait longer to have their routine maintenance needs met.

Varying State and Federal Eviction Notice Requirements May Create Confusion

Traditionally, requirements and timelines for the notification period for evictions have been set at the state level. As mentioned in the proposed rule, each state has different requirements around eviction notices and the amount of time that PHAs/owners must provide to tenants before eviction. While some states require a 30-day notice before eviction, this is not always the case, and many states differ. HUD's 30-Day notification requirement will lead to further confusion with federal and state policies regarding notice requirements being drastically different for many. Instead, NAHRO recommends that the Department provide guidance to states so that states may make their own changes. This could better align the varying requirements and timelines making it less confusing for a PHA/owner when moving forward with the evictions process.

For these reasons, NAHRO recommends that HUD reevaluate imposing this rule on agencies and consider the long-term impacts to agencies and tenants as well.

3. Conclusion

NAHRO supports efforts to prevent evictions. This would be better accomplished by encouraging residents to recertify their incomes, than by permanently instituting this 30-day requirement. PHAs work tirelessly to provide safe and affordable housing to their residents and will go through hoops to ensure stability. By making the 30-day notice requirement permanent, HUD harms future residents, current residents, and puts agencies in a difficult financial position.

NAHRO appreciates the opportunity to comment on this topic. Thank you for your consideration of our recommendations and comments.

Sincerely,

Steven Molinari

Steven Molinari
Policy Analyst

[3] See Rod Solomon, "The 2023 Public Housing Inventory Update," https://www.nahro.org/journal_article/the-2023-public-housing-investment-update/."