

**U.S. Department of Housing and Urban Development's (HUD)**

**Office of Fair Housing and Equal Opportunity**

**Guidance for HUD Housing Providers and Housing Program Administrators**

**Regarding Fair Housing and Civil Rights Implications of Termination Actions**

**(Including Evictions) Related to the COVID-19 Pandemic**

**I. Introduction**

The federal eviction moratorium will expire after July 31, 2021, and several state and local eviction moratoriums established during the COVID-19 pandemic either have recently expired or will expire soon. This guidance applies to HUD Housing Providers and Program Administrators, which are defined for purposes of this guidance as public housing providers and programs, multifamily housing providers and programs that receive federal financial assistance from HUD. HUD issues this guidance reminding HUD Housing Providers and Program Administrators of the application of fair housing and civil rights laws to termination and eviction actions. Such HUD Housing Providers and Program Administrators are covered by the Fair Housing Act, Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act, and other related civil rights authorities that collectively prohibit discrimination on the basis of race, color, religion, sex (including sexual orientation and gender identity), national origin (including limited English proficiency), disability, familial status, and age.

HUD Housing Providers and Program Administrators also have the obligation under the Fair Housing Act to affirmatively further fair housing. HUD strongly encourages HUD Housing Providers and Program Administrators to consider all alternatives to prevent termination of assistance, eviction, or removal of households from public or federally assisted housing. When termination actions are taken, housing providers must not treat tenants differently because of protected characteristic or engage in practices that have an unjustified discriminatory effect on persons with these protected characteristics. Civil rights requirements apply to HUD Housing Providers and Program Administrators throughout any termination action.

**II. Background**

This guidance uses the term “termination action(s)” to refer to any action related to terminating assistance of a household, evicting a household, or removing a household from a federally assisted, federally funded, or public housing unit of HUD Housing Providers and Program Administrators. Examples of termination actions include but are not limited to, issuing a notice to vacate, initiating a judicial action for eviction, or engaging in constructive eviction through, for example, a failure to maintain units. Termination actions impose serious, long-lasting harms on impacted individuals and families, including potential separation of family

members, homelessness, reduced future housing opportunities, potential loss of housing assistance, and disruptions to school, work, healthcare, and community contacts. While HUD Housing Providers and Program Administrators are authorized to initiate termination action in limited circumstances, HUD encourages owners to work with tenants and utilize all possible actions and flexibilities to prevent termination actions. HUD also notes that persons with certain protected characteristics are disproportionately impacted by evictions. Studies show that non-white households, female-headed households, and households with children may be more likely to face eviction actions, even for the same housing history as other tenants.<sup>1</sup>

In considering fair housing and civil rights obligations regarding termination actions arising from non-payment of rent prior to, and any subsequent accrual during, the COVID-19 pandemic, it is important for HUD Housing Providers and Program Administrators to recognize that the pandemic has disproportionately impacted the health outcomes of persons with disabilities, Black, Hispanic, Native American and other indigenous persons, and those living in congregate settings. For instance, Centers for Disease Control and Prevention data indicate that Black, Hispanic/Latino, and indigenous people are at least three times more likely to be hospitalized and at least two times more likely to die from COVID-19 than White people.<sup>2</sup> Health outcomes are exacerbated based upon economic and social conditions that are disproportionately present in communities of certain racial and ethnic groups. While the severity, length, and long-term effects of COVID-19 can vary greatly by individual, persistent symptoms have been reported in individuals who initially had mild illness as well as people who had severe illness.<sup>3</sup> Some people with disabilities might be more likely to get infected or have severe illness due to COVID-19 because of underlying medical conditions, congregate living settings, or systemic health and social inequities.<sup>4</sup>

### **III. Fair Housing and Civil Rights Laws**

#### **A. Eviction Prevention**

Because of the harm that evictions impose on affected families and the disproportionate impacts on minority households and other protected classes described above, HUD Housing Providers and Program Administrators should make every effort to prevent evictions for non-payment of rent during the COVID-19 pandemic. This includes, for example, in public housing and housing choice voucher programs, HUD Housing Providers and Program Administrators may proactively advise tenants that they may be eligible for certain flexibilities. HUD Housing

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<sup>1</sup> Hepburn, Peter, Renee Louis, and Matthew Desmond. 2020. "Racial and Gender Disparities among Evicted Americans." *Sociological Science* 7: 649-662. ("[T]he threshold for filing against white renters is higher than the threshold for filing against black and Latinx renters;"; Desmond, Matthew and Gershenson, Carl. 2017. "Who Gets Evicted? Assessing Individual, Neighborhood, and Network Factors." *Social Science Research* 62:362-77. [https://sociologicalscience.com/download/vol-7/december/SocSci\\_v7\\_649to662.pdf](https://sociologicalscience.com/download/vol-7/december/SocSci_v7_649to662.pdf) ).

<sup>2</sup> *Risk for COVID-19 Infection, Hospitalization, and Death by Race/Ethnicity*, CENTERS FOR DISEASE CONTROL AND PREVENTION, <https://www.cdc.gov/coronavirus/2019-ncov/covid-data/investigations-discovery/hospitalization-death-by-race-ethnicity.html> (last visited Mar. 26, 2021).

<sup>3</sup> *Long-Term Effects of COVID-19*, CENTERS FOR DISEASE CONTROL AND PREVENTION, <https://www.cdc.gov/coronavirus/2019-ncov/long-term-effects.html> (last visited Mar. 26, 2021).

<sup>4</sup> *People with Disabilities*, CENTERS FOR DISEASE CONTROL AND PREVENTION, <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-disabilities.html> (last visited June 24, 2021).

Providers and Program Administrators should consult program specific materials such as the [Eviction Prevention and Stability Toolkit](#) and related materials<sup>5</sup> and the [Multifamily Housing COVID-19 Guidance](#) regarding such flexibilities.<sup>6</sup>

Such flexibilities may include rent reductions or hardship exemptions effective the first month following income loss. Housing providers may advise tenants that they may be eligible for assistance under the U.S. Department of Treasury's Emergency Rental Assistance Program (ERA) for rent, utility arrearages, internet, or other housing related expenses.<sup>7</sup> Housing providers also have the flexibility under the ERA to retroactively apply the rent reduction to the month income loss occurred.<sup>8</sup> In addition, public housing and housing choice voucher programs give certain HUD Housing Providers and Program Administrators discretion in determining what constitutes a hardship for hardship exemptions to the minimum payment standards.

Public housing agencies have discretion in determining what constitutes a hardship for hardship exemptions to the minimum rent. HUD encourages all housing providers to exercise their discretion to recognize tenant hardship in a wide variety of scenarios in which tenants are financially unable to pay rent. Housing providers should inform tenants where such flexibilities may be applied retroactively.

Housing providers may want to weigh the financial implications of eviction on the operation of the assisted program, including the cost of engaging in protracted legal processes, unit vacancy during turnover, applicant screening, unit preparation for new tenant occupancy, and the unlikely recoupment of rental arrears. Additionally, many applicant households will have incurred financial hardships, including the accumulation of rental arrears in their current housing, unfavorable changes in credit history, significant health care expenses, and unstable or lost employment during the pandemic. Under the CARES Act, HUD Housing Providers and Program Administrators may not include household stimulus checks or enhanced unemployment insurance in tenant income for program eligibility purposes.<sup>9</sup> Consistent with the goals of fair housing and civil rights laws, HUD Housing Providers and Program Administrators should consider flexibilities such as rental payment modifications to accommodate changes to income or emergency assistance, or extended repayment plans to help individuals and families remain housed while they pay toward rental arrears in reasonable payments over time. The use of payment flexibilities can help prevent homelessness and preserve family stability while also mitigating further financial loss to the housing provider.

Finally, HUD encourages HUD Housing Providers and Program Administrators to access any other available financial relief measures of federal assistance, as may be necessary. For multifamily providers, the [Multifamily Housing COVID-19 Guidance](#) outlines available financial relief measures to lessen the impact of lost rental income during this time.<sup>10</sup> In addition

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<sup>5</sup> [https://www.hud.gov/coronavirus/public\\_housing\\_agencies#3](https://www.hud.gov/coronavirus/public_housing_agencies#3).

<sup>6</sup> [https://www.hud.gov/program\\_offices/housing/mfh/Multifamily\\_Housing\\_COVID-19\\_Guidance](https://www.hud.gov/program_offices/housing/mfh/Multifamily_Housing_COVID-19_Guidance).

<sup>7</sup> [https://www.hud.gov/sites/dfiles/PIH/documents/ERAP\\_PIH\\_ERAP\\_FAQs.pdf](https://www.hud.gov/sites/dfiles/PIH/documents/ERAP_PIH_ERAP_FAQs.pdf) (Q2)

<sup>8</sup> [https://www.hud.gov/sites/dfiles/PIH/documents/ERAP\\_PIH\\_ERAP\\_FAQs.pdf](https://www.hud.gov/sites/dfiles/PIH/documents/ERAP_PIH_ERAP_FAQs.pdf) (Q8)

<sup>9</sup> [https://www.hud.gov/sites/dfiles/Housing/documents/HUD\\_Multifamily\\_Corona\\_QA\\_FINAL.pdf](https://www.hud.gov/sites/dfiles/Housing/documents/HUD_Multifamily_Corona_QA_FINAL.pdf) (Q5)

<sup>10</sup> [https://www.hud.gov/program\\_offices/housing/mfh/Multifamily\\_Housing\\_COVID-19\\_Guidance](https://www.hud.gov/program_offices/housing/mfh/Multifamily_Housing_COVID-19_Guidance).

many state and local governments also offer emergency rent relief programs that may assist tenants in meeting rent or utility obligations during the COVID-19 pandemic, and HUD Housing Providers and Program Administrators are encouraged to assist tenants who are in need of emergency assistance in their applications for assistance. Further, low-income tenants may be eligible for low-cost internet services. Interested owners and tenants should contact local internet service providers or visit <https://connecthomeusa.org/> for more information.

Notwithstanding the expiration of the federal eviction moratorium, the CARES Act 30-day notice to vacate requirement for nonpayment of rent, in Section 4024(c)(1), is still in effect for all CARES Act covered properties. HUD notes that a longer period may be required by state or local law.

### **B. Consistent Application of Policies**

When pursuing any termination action, HUD Housing Providers and Program Administrators must comply with all HUD policies and procedures, as well as all applicable state and local laws. HUD Housing Providers and Program Administrators must also ensure that termination actions do not discriminate on the basis of a protected class. To ensure consistent treatment, HUD Housing Providers and Program Administrators should have and apply clear policies governing termination actions including what constitutes lease violations, what lease violations prompt a termination action, what notice will be provided to tenants, and what opportunities to cure will be accorded – such as repayment plans or negotiated agreements.

For example, initiating termination action against a household or households of one protected characteristic while not taking such action against similarly situated households – when for instance, both households have missed rent payments – may violate the Fair Housing Act or other civil rights laws. Similarly, providing the opportunity to tender mitigation payments to tenants with one protected characteristic, but not similarly situated tenants of a different protected characteristic, may violate such laws. Targeting a household for any termination action because of a protected characteristic will violate civil rights laws.

Fair housing laws apply throughout any termination actions. HUD Housing Providers and Program Administrators must exercise their flexibility to recalculate income and to grant hardship exemptions to minimum payment standards fairly. Refusing a hardship exemption to a household because of protected class would violate civil rights laws. Moreover, how households are treated during tenancy, regardless of missed rent payments, may violate civil rights laws. For example, a housing provider who refuses to make repairs in a unit occupied by a limited English proficient household after they fall behind on rent would violate the law if done because of language status.

### **C. Effective Communication**

All tenants must receive proper notice of a termination action and an opportunity to respond. HUD Housing Providers and Program Administrators must also ensure that they communicate effectively with tenants with disabilities, including tenants with hearing, speech, and vision disabilities. HUD Housing Providers and Program Administrators are required to take appropriate steps that may be necessary to ensure that communications with individuals with

disabilities are as effective as communications with individuals without disabilities, unless providers can demonstrate that those steps would result in a fundamental alteration or undue financial and administrative burden. Effective communication is generally provided through the use of appropriate auxiliary aids and services, such as interpreters, computer-assisted real time transcription (CART), captioned videos with audible video description, accessible electronic communications and websites, documents in alternative formats (e.g., braille, large print), or assistance in reading or completing a form, etc.

This requirement applies to all oral, written, audible, visual, and electronic communications, including letters, notices, emails, forms, leases, rules, and other written documents, as well as oral communications that occur in person, over the telephone, over the internet, and in interviews, meetings, hearings, and public presentations, when communicating with an individual with a disability or when such communications are expected. It is also necessary to give primary consideration to the means of communication preferred by the individual with a disability. This is particularly important surrounding tenancy actions.

For example, HUD Housing Providers and Program Administrators must generally provide written materials in the format preferred by individuals who are blind or have low vision, including braille, large print, audio recording, an accessible electronic format such as MS Word, etc. Similarly, HUD Housing Providers and Program Administrators must provide a sign language interpreter for a tenancy action meeting or hearing with a deaf individual who uses a sign language interpreter to communicate. A housing provider does not meet its legal obligation to provide effective communication by requesting or requiring the deaf person's companion or child to serve as an interpreter.

#### **D. Language Access**

HUD Housing Providers and Program Administrators have an affirmative obligation under civil rights laws, including Title VI of the Civil Rights Act of 1964 (Title VI), to ensure language access in housing programs. HUD Housing Providers and Program Administrators must take reasonable steps to ensure meaningful access to assisted programs for persons with limited English proficiency (LEP). Reasonable steps include the provision of meaningful language assistance, including translation of documents and interpretation services.

HUD's Title VI LEP guidance emphasizes the importance of translating vital documents – defined as any document that is critical for ensuring meaningful access to the recipients' major activities. Notices and other documents associated with actual or potential termination actions and potential mitigation options or alternatives would be vital documents that need to be translated for LEP persons. For example, HUD LEP guidance specifically lists, as examples of vital documents, leases and tenant rules, written notices of rights, denial, loss, or decreases in benefits or services, and notices of eviction. The guidance also notes that whether or not a document (or the information it solicits) is “vital” depends upon the importance of the program, information, or service involved, and the consequence to the LEP person if the information in question is not provided accurately or in a timely manner.

In HUD's view, tenant notifications related to termination actions and available alternatives and flexibilities to avoid displacement are examples of written or electronic information that must be translated for LEP persons. Awareness of rights or services is an important part of "meaningful access." Lack of awareness that a particular program, right, or service exists may effectively deny LEP persons meaningful access. This includes translated written or electronic information about a tenant's right to request a recalculation or hardship exemption, or to mitigation alternatives. Termination actions clearly have severe consequences for affected households and language access to oral and written communications is critical at this stage.

Similarly, HUD Housing Providers and Program Administrators must have procedures in place to ensure that staff are able to communicate orally with LEP tenants who seek to respond to notices, request assistance, or obtain information that might assist tenants seeking to avoid any termination action. Those procedures include connecting tenants to demonstrably bilingual staff or having readily available, qualified interpreters, which may include telephonic interpreter services, to assist monolingual staff.

#### **E. Persons with Disabilities, Reasonable Accommodations, and COVID-19**

The Fair Housing Act prohibits discrimination against persons with disabilities in housing and requires housing providers to make reasonable accommodations by allowing a change, exception, or adjustment to a rule, policy, practice, or service that may be necessary for a person with a disability to have an equal opportunity to use and enjoy housing. Reasonable accommodations are a central component of civil rights laws protecting persons with disabilities because rules, policies, practices, and services that apply to all applicants and tenants may impose barriers to equal access for applicants and tenants with disabilities. Treating people with disabilities exactly the same as others will sometimes deny them an equal opportunity to use and enjoy their housing.

HUD Housing Providers and Program Administrators are covered by the Fair Housing Act, but have additional affirmative civil rights obligations under Section 504 of the Rehabilitation Act of 1973, as a condition of the receipt of federal funds or assistance. HUD Housing Providers and Program Administrators may not discriminate on the basis of disability and must also affirmatively ensure that their housing units are accessible to people with disabilities. These obligations apply to rules, policies, practices, and procedures, and often require alternatives and flexibilities to avoid displacement of tenants. The obligation to make reasonable accommodations applies throughout the interactions of HUD Housing Providers and Program Administrators with an applicant or tenant, including any termination actions.

Residents in public, federally assisted, or funded housing are among the millions of people affected by COVID-19. Many may be experiencing physical or mental impairments caused or aggravated by COVID-19, and perhaps of uncertain duration, which may substantially limit a major life activity or bodily function, such as their ability to breathe, care for oneself, interact with others, or work. If a person's disability is obvious, or otherwise known to HUD Housing Providers and Program Administrators, and if the need for a reasonable accommodation is also readily apparent or known, HUD Housing Providers and Program Administrators should

make such accommodations and ensure the housing unit is accessible in accordance with civil rights laws. Verification that an individual has a disability may only be sought if the individual's disability is not observable or otherwise known to the housing provider. Information that can be verified by HUD Housing Providers and Program Administrators is limited to the existence of a disability and disability-related need for a reasonable accommodation.

Persons with disabilities often face barriers in accessing and securing emergency housing assistance and in locating scarcely available affordable, accessible housing. HUD Housing Providers and Program Administrators must affirmatively work to eliminate barriers and offer and provide reasonable accommodations, such as enhanced flexibilities or waiving of requirements. An example may include assisting a person with a disability to remain in the housing because the person could not work due to paratransit or other public transit capacity being limited or unsafe during the COVID-19 pandemic. Such accommodations may, consistent with applicable regulations, include extended and reduced-obligation repayment plans, retroactive rent recalculations, waiver or reduction of late fees or other actions to address rental arrearages in multifamily housing, eligibility for emergency assistance programs, or other disability-related factors. Note that HUD is required under 24 CFR Part 9 to make reasonable accommodations to its own policies and programs. Based on the specific federal assistance program, HUD Housing Providers and Program Administrators are encouraged to contact HUD to determine what accommodations may be implemented to effectively prevent termination actions.

As one example of a reasonable accommodation, ordinarily, in HUD's Housing Choice Voucher Program, a single individual would be eligible for a voucher for a studio or one-bedroom unit. However, if the individual had a disability-related need for both a live-in aide and additional space to accommodate large medical equipment, such as a ventilator, the individual may obtain a reasonable accommodation to receive a voucher to live in a two-bedroom unit.

Finally, HUD Housing Providers and Program Administrators should also consider the likelihood that termination actions will contribute to homelessness, family separation, and institutionalization of persons with disabilities.

#### **F. Affirmative Obligations**

HUD Housing Providers and Program Administrators should be aware of these civil rights obligations and their own obligation under the Fair Housing Act to affirmatively further fair housing (AFFH). Termination actions that deepen inequities, increase or perpetuate segregation, deepen racially and ethnically concentrated areas of poverty, and otherwise limit access to health, employment, transportation, and environmental opportunities run counter to the obligation to AFFH. HUD grantees must take care to ensure that their actions, policies, practices, and procedures are not discriminatory, but also that they work to dismantle historic patterns of segregation and other disparities among protected class groups. Actions HUD grantees may take to AFFH in context of pandemic-related housing instability may include additional rent or utility support, increased assistance to low-cost tenant legal services and other social service providers, and the development of additional affordable housing in integrated areas of opportunity.

#### **IV. Conclusion**

In carrying out fair housing and civil rights obligations, it is important for HUD Housing Providers and Program Administrators and other HUD grantees to recognize that the COVID-19 pandemic has disproportionately impacted the health outcomes of Black, Hispanic, Native American and other indigenous persons, as well as individuals with disabilities, including individuals living in congregate settings. HUD strongly urges HUD Housing Providers and Program Administrators and other HUD grantees to exercise discretion and flexibility, whenever possible, to prevent termination actions. Applying policies and practices consistently to prevent termination actions will avoid the displacement of households and disruption of education, prevent homelessness, and help low-income households preserve their health, safety, security, and stability. It can also be an effective approach to avoiding potential violations of fair housing and civil rights laws.