



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410

Special Attention of:

Multifamily Asset Management Division
Directors
Multifamily Contract Administrators
Multifamily Project Owners
Multifamily Regional Center Directors
Public Housing Agencies
Public Housing Hub Directors
Public Housing Program Center Directors
Public Housing Regional and Field Office
Directors
Resident Management Corporations

**Notice PIH 2021–29
H 2021-06**

Issued: October 7, 2021

This Notice remains in effect until amended,
superseded, or rescinded

Subject: Supplemental Guidance to the Interim Final Rule “*Extension of Time and Required Disclosures for Notification of Nonpayment of Rent*”

1. Purpose

This Notice’s purpose is to provide supplemental guidance to implement the requirements included in the Interim Final Rule titled “*Extension of Time and Required Disclosures for Notification of Nonpayment of Rent.*” This notice also serves as the required determination by the Secretary of the Department of Housing and Urban Development that the existence of a national emergency necessitates the activation of the required minimum 30-day notification period and other required actions to support families at-risk of eviction for non-payment of rent.

2. Background

Since the first case of coronavirus disease 2019 (COVID-19) was discovered in the United States in January 2020, the disease has infected over 40 million Americans and killed over 704,233.¹ On January 31, 2020, the Secretary of Health and Human Services (HHS) issued a determination under section 319 of the Public Health Service Act,² that a national public health emergency existed as of January 27, 2020, because of the COVID-19 pandemic.³ On March 13, 2020, the President declared a nationwide emergency pursuant to Section 501(b) of the Stafford

¹ Centers for Disease Control and Prevention (CDC), *COVID Data Tracker*, <https://covid.cdc.gov/covid-data-tracker/#datatracker-home> (last visited Oct. 7, 2021).

² 42 U.S.C. 247d.

³ The HHS Secretary renewed this determination several times since then, most recently on July 19, 2021 (effective July 20, 2021). HHS, *Renewal of Determination That A Public Health Emergency Exists*, July 19, 2021, <https://www.phe.gov/emergency/news/healthactions/phe/Pages/COVID-19July2021.aspx>.

Act.⁴ All 50 states, the District of Columbia, and 5 territories were approved for major disaster declarations to assist with additional needs identified under the nationwide emergency declaration for COVID-19. On February 21, 2021, the President extended the national emergency, stating that the COVID-19 pandemic remains a significant risk to the United States.⁵

CARES Act

In response to the national emergency, the Coronavirus Aid, Relief, and Economic Security Act, 2020 “CARES Act,” a \$2.2 trillion economic stimulus bill, was signed into law on March 27, 2020.⁶ The CARES Act also put a halt on all evictions from covered dwelling units for nonpayment of rent from the date of enactment through July 31, 2020, and provided that tenants in covered dwelling units must be provided 30 days’ notice to vacate.⁷

CDC Eviction Moratorium

Due to the ongoing public health emergency, on September 4, 2020, the Director of the Centers for Disease Control and Prevention (CDC) issued an Order temporarily halting evictions in the United States. That Order expired on December 31, 2020, subject to extension, modification, or rescission. The Consolidated Appropriations Act, 2021,⁸ extended that Order until January 31, 2021. That Order was extended multiple times due to the continued national emergency; most recently, the Order was extended on August 3, 2021, for an additional 60 days. However, on August 26, 2021, the Supreme Court of the United States issued a decision resulting in the Order being vacated nationwide, stating that the CDC lacked the statutory authority to issue it.⁹

As of the date of this Notice’s publication, the CARES Act provision requiring 30-days notice to vacate for nonpayment of rent remains in effect for all CARES Act-covered properties, including both public housing and properties assisted under HUD’s project-based rental assistance programs.

Emergency Rental Assistance Program

The Emergency Rental Assistance (ERA) program, administered by the U.S. Department of Treasury, makes funding available to assist households that are unable to pay rent or utilities. Two separate programs have been established: ERA1 provides up to \$25 billion under the Consolidated Appropriations Act, 2021, which was enacted on December 27, 2020, and ERA2 provides up to \$21.55 billion under the American Rescue Plan Act of 2021, which was enacted on March 11, 2021. The funds are provided directly to states, U.S. territories, local governments, and (in the case of ERA1) Indian tribes or Tribally Designated Housing Entities,

⁴ 42 U.S.C. 5121 *et seq.*

⁵ See The White House, *A Letter on the Continuation of the National Emergency Concerning the Coronavirus Disease 2019 (COVID- 19) Pandemic*, Feb. 24, 2021, <https://www.whitehouse.gov/briefing-room/statements-releases/2021/02/24/a-letter-on-the-continuation-of-the-national-emergency-concerning-the-coronavirus-disease-2019-covid-19-pandemic/>.

⁶ Pub. L. 116–136, 134 Stat. 281, enacted March 27, 2020.

⁷ § 4024.

⁸ Pub. L. 116-260, enacted Dec. 27, 2020.

⁹ *Alabama Assn. of Realtors v. Department of Health and Human Servs.*, 594 U.S. ___ (2021), https://www.supremecourt.gov/opinions/20pdf/21a23_ap6c.pdf.

as applicable, and the Department of Hawaiian Home Lands. Grantees use the funds to provide assistance to eligible households through existing or newly created rental assistance programs.

Public Housing Authorities (PHAs), Housing Choice Voucher (HCV) landlords, other owners of HUD-assisted properties, and utility providers may accept funds from the ERA program for rental and most utility arrearages for HUD-assisted families. HUD-assisted families may be eligible for assistance from the ERA program, as long as ERA funds are not applied to costs that have been or will be reimbursed under any other federal assistance, including Housing Assistance Payments in the HCV Program, Operating Fund assistance in the Public Housing program, or rental assistance in Multifamily Housing programs. More information on this program can be found at [Treasury's Emergency Rental Assistance Program](#).

From January to May 2021, \$1.45 billion was delivered under ERA for rent, utilities, and arrears out of a total of \$25 billion.¹⁰ In June 2021, more than \$1.5 billion from ERA was paid directly to households, which was more than all previous months combined.¹¹ July 2021 data demonstrate that there has been steady improvement in funds distribution, particularly by States and local agencies following the Department of Treasury guidance.¹² However, ERA funding still has not reached many eligible tenants at risk of eviction for non-payment. This creates an increased risk that evictions will occur simply because funding that is specifically meant to help pay much or all of the back rent in question is not secured in time. While there are multiple causes for the slow payment of ERA assistance, those reasons include overly complex application processes, inability to share information due to privacy concerns, and the failure of tenants to timely apply for funding opportunities or be aware of this funding's availability.

HUD Requirements for Notifications of Lease Termination for Nonpayment of Rent

Current HUD regulations on required advanced notification of lease terminations for nonpayment of rent differ between the multifamily and public housing programs. HUD generally does not prescribe specific language to be included in such notifications; rather, HUD establishes basic requirements for what must be included in such notification, that are then tailored to meet additional State and local notification and lease requirements. For each program, the required notification for nonpayment of rent is intended to be the minimum notification required and is superseded by State and local notification requirements if such requirements provide for additional advanced notification to vacate.

Public Housing

For the public housing program, HUD requires that all public housing leases include provisions stating the procedures to terminate the tenancy of a family, which may only be for serious and

¹⁰ Congressional Research Service, *Emergency Rental Assistance through the Coronavirus Relief Fund*, (July 9, 2021) <https://crsreports.congress.gov/product/pdf/R/R46688>.

¹¹ U.S. Department of the Treasury, *Treasury Data: Amount of June Emergency Rental Assistance Resources to Households More Than All Previous Months Combined* (July 21, 2021) <https://home.treasury.gov/news/press-releases/jy0284>.

¹² U.S. Department of the Treasury, *Treasury Announces Seven Additional Policies to Encourage State and Local Governments to Expedite Emergency Rental Assistance* (Aug. 25, 2021) <https://home.treasury.gov/news/press-releases/jy0333>.

repeated violations of the lease, including nonpayment of rent.¹³ Although PHAs have flexibility as to whether and when to terminate the tenancy of a household for nonpayment of rent, if a PHA includes nonpayment of rent as a serious and repeated lease violation in the lease, the lease must provide at least a 14-day notification of lease termination for nonpayment of rent.¹⁴ This notification requirement may be combined with or run concurrently to any notice to vacate required by State and/or local law.¹⁵ If the PHA's Admissions and Continued Occupancy Policy (ACOP) references a lease termination process for nonpayment of rent of less than 30 days, the PHA must update the ACOP.

Project-Based Rental Assistance

The regulations governing HUD's various Multifamily Housing programs state that owners must use leases that are in an acceptable form to HUD. In practice, owners must use one of the four model leases prescribed by HUD. The lease an owner uses depends on the program being administered.

HUD's model leases provide without exception that any termination of tenancy by the landlord must be carried out in accordance with HUD regulations, state and local law, and the terms of the lease. The leases apply different standards to terminations for "material noncompliance with the terms of the lease" (such as nonpayment of rent) and terminations for "other good cause," as described below:

- *Material noncompliance with the terms of the lease.* An owner must provide a tenant with a notice of proposed termination that complies with timeframes set forth in state and local law. The notice must advise the tenant that the tenant has 10 days within which to discuss the proposed termination with the landlord, beginning on the earlier of the date the notice was hand-delivered to the tenant's dwelling unit or the day after the notice is mailed. If the tenant requests such a meeting, the lease specifies that the landlord agrees to discuss the proposed termination with the tenant and advise the tenant of his/her right to defend the action in court.
- *Other good cause.* Terminations for "other good cause" may be effective only as of the end of any initial or successive lease term, following notice to the tenant at least 30 days prior to the date on which the tenant will be required to move from the unit. The termination notice must be mailed to the tenant and hand-delivered to the tenant's dwelling unit.

No lease modifications will be required as a result of the new rule. As stated above, any termination of tenancy by the landlord must be carried out in accordance with HUD regulations.

Interim Final Rule

Recognizing the challenges presented by the end of the CDC eviction moratorium paired with the slow payment of ERA funding that would support families at risk of eviction for nonpayment of rent, on October 7, 2021, HUD published in the Federal Register an Interim Final Rule titled "Extension of Time and Required Disclosures for Notification of Nonpayment of Rent." This Interim Final Rule amends HUD regulations to require that during a national

¹³ 24 CFR § 966.4(1)(2).

¹⁴ 24 CFR § 966.4(1)(3)(i)(A)

¹⁵ 24 CFR § 966.4(1)(3)(iii).

emergency, if the Secretary of HUD determines that additional time is necessary for families to secure available funding due to the national emergency, that PHAs administering a public housing program and owners of project-based rental assistance properties must provide no less than 30 days advanced notification of lease termination due to nonpayment of rent. Further, the rule also requires that within that notification, PHAs and owners must provide information to affected tenants as necessary to support tenants in securing such available funding. Finally, for the public housing program only, the rule requires PHAs to inform all public housing tenants that the extended timeframe for notification of lease termination due to nonpayment of rent is in effect, and that families will be provided information on available funding in that 30-day notification. The Interim Final Rule is effective 30 days after publication in the Federal Register, or November 8, 2021.

3. Applicability

This notice applies to PHAs administering the Public Housing program, including PHAs participating in the Moving to Work (MTW) Demonstration, and applies only to families residing in public housing units under an Annual Contributions Contract (ACC), including those under a Mixed-Finance ACC. This notice does not apply to PHAs that administer only the Housing Choice Voucher (HCV) program, or to families assisted by the HCV program, including Project-based Vouchers (PBV).

This notice also applies to the following Multifamily Housing programs:

- A. Section 8 Project Based Rental Assistance (PBRA)
 - 1. New Construction
 - 2. State Housing Agency Program
 - 3. Substantial Rehabilitation
 - 4. Section 202/8
 - 5. Rural Housing Services Section 515/8
 - 6. Loan Management Set-Aside (LMSA)
 - 7. Property Disposition Set Aside (PDSA)
 - 8. Rental Assistance Demonstration (RAD)
- B. Section 202/162 Project Assistance Contract (PAC)
- C. Section 202 Project Rental Assistance Contract (PRAC)
- D. Section 202 Senior Preservation Rental Assistance Contract (SPRAC)
- E. Section 811 Project Rental Assistance Contract

4. Determination by the Secretary to Activate 30-Day Notification

The Interim Final Rule requires that, pursuant to a determination by the Secretary, “tenants must be provided adequate notice to secure funding that is available due to a Presidential declaration of a National emergency.” This Notice serves as the determination required by the interim final rule that an extension of time is necessary to provide tenants notice of available funding and to increase the likelihood that tenants will be able to secure such funding prior to any lease termination. This determination remains in effect until a subsequent HUD notice is issued rescinding the determination.

5. Minimum 30-Day Lease Termination Requirements for PHAs and Owners of Project-Based Rental Assistance Properties

The Interim Final Rule extends the notification of nonpayment of rent for affected programs to at least 30-days during the period for which HUD determines that a national emergency requires additional time for families to be able to secure available funding. Further, this notification must also include information, as determined necessary by HUD, to support families in securing such funding.

As described in Section 2 of this Notice, HUD does not prescribe specific language that PHAs or owners of Project-Based Rental Assistance properties must include in notifications of termination of tenancy for nonpayment of rent. For the purpose of the changes in the timing of the notifications to at least 30 days, HUD requires no specific language be included in notices; rather affected landlords must ensure that such notification is provided no less than 30 days prior to any actions to terminate the lease of the affected family.

For the additional information required related to available funding, however, HUD is requiring all such notifications to include, at a minimum, the language as provided in the Appendix to this notice, updated to reflect the entity issuing the notification and with the appropriate link to the local ERA grantee.

HUD reminds PHAs, owners and managers covered by this Notice that all materials, notices, and communications to tenants must be clearly communicated and provided in a manner that is effective for persons with hearing, visual, and other communication-related disabilities consistent with Section 504 of the Rehabilitation Act (Section 504) and HUD's Section 504 regulation, and Titles II or III of the Americans with Disabilities Act (ADA) and implementing regulations. Section 504 and the ADA require recipients to ensure effective communication with applicants, participants, and members of the public and to provide appropriate auxiliary aids and services where necessary to afford individuals with hearing, vision, and other communication-related disabilities an equal opportunity to access information. PHAs must provide appropriate auxiliary aids and services necessary to ensure effective communication in all notices and communications, which includes ensuring that information is provided in appropriate accessible formats as needed, e.g., Braille, audio, large type, assistive listening devices, and sign language interpreters, accessible websites and other electronic communications (see 24 CFR 8.6, 28 CFR 35.160, and 28 CFR 36.303).

PHAs, owners and managers covered by this Notice must also continue to take reasonable steps to ensure meaningful access to their programs and activities to Limited English Proficient (LEP) individuals. As an aid to recipients, HUD published Final Guidance to Federal Financial Assistance Recipients: Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons (LEP Guidance) in the Federal Register on January 22, 2007 (72 FR 2732). LEP guidance and information is available through the [Federal Register](#).

PHAs and owners can find necessary links to the local ERA grantee to be included in the required [notification](#).

HUD strongly encourages PHAs and owners to familiarize themselves with the information available on the Department of Treasury website to be able to answer questions that affected families may have.

Additionally, the Office of Public Housing has published specific FAQs related to how ERA interacts with its programs that can be found at the [PIH COVID-19 resources page](#).

The Office of Multifamily Programs has published Q&As related to how ERA interacts with its programs that can be found beginning on [page 51](#).

Further, the Office of Public Housing has additional [guidance](#) on eviction prevention and stability.

The Office of Multifamily Programs has published a [brochure](#) to support families and landlords.

Finally, to the extent that there are available State and local eviction prevention resources available, HUD encourages that information be shared with affected households as well.

6. Other Considerations and Requirements for Public Housing

As described in Section 2 of this notice, PHAs are generally required to incorporate language into the public housing lease related to notifications for lease terminations, including notifications of lease terminations related to nonpayment of rent. However, the new regulations at 24 CFR § 966.8(b) do not require PHAs to incorporate the minimum 30-day notification requirement and availability of emergency rental assistance notification requirements into the lease. Because it would be administratively infeasible to update all public housing leases to immediately protect families at-risk of eviction, HUD will require PHAs to, instead, notify all public housing families that the 30-day notification requirements associated with the national emergency are in effect as it relates to non-payment of rent. PHAs may comply with this notification requirement by providing such notifications in writing or through electronic communications.

As described in Section 5, all materials, notices, and communications to families must be clearly communicated and provided in a manner that is effective for persons with hearing, visual, and other communication-related disabilities consistent with Section 504 of the Rehabilitation Act (Section 504) and HUD's Section 504 regulation, and Titles II or III of the Americans with Disabilities Act (ADA) and implementing regulations. PHAs must also continue to take reasonable steps to ensure meaningful access to their programs and activities to Limited English Proficient (LEP) individuals.

7. Further Information

Public housing agencies: Send an email to PIH-COVID@HUD.GOV or contact the local HUD Field Office.

Multifamily owners: Send an email to MFCcommunications@hud.gov.

8. Paperwork Reduction Act

The information collection requirements contained in this notice have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C.3520) and assigned OMB approval numbers 2502-0178, 2577-0006 and 2577-0230. In

accordance with the Paperwork Reduction Act, HUD may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid OMB number.

9. Penalty for False Claims and Statements

HUD will seek civil, criminal, or administrative action against individual and entities who either make, present, submit, or cause to be submitted a false, fictitious, or fraudulent statement, representation, or certification. 18 U.S.C. §§ 287, 1001, 1010, 1012, 1014, and 31 U.S.C. §§ 3729, 3802.

/s/

Dominique Blom
General Deputy Assistant Secretary
Office of Public and Indian Housing

/s/

Lopa P. Kolluri
Principal Deputy Assistant Secretary
Office of Housing — Federal Housing
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Appendix: Information for Tenants

The U.S. Department of Treasury's ("Treasury") Emergency Rental Assistance (ERA) program makes funding available to assist households that are unable to pay rent or utilities. The funds were provided directly to states, U.S. territories, local governments, and (in the case of the first program, ERA1) to Indian tribes or Tribally Designated Housing Entities, as applicable, and the Department of Hawaiian Home Lands. Grantees use the funds to assist eligible households through existing or newly created rental assistance programs.

In guidance and [FAQs](#), Treasury advised that participants in HUD-assisted rental programs (including the Housing Choice Voucher (HCV), Public Housing, or Project-Based Rental Assistance programs) are eligible for the ERA program and may receive assistance for the tenant-owed portion of rent or utilities that is not subsidized. In [FAQs](#) for PHAs and HCV landlords, PIH clarified that this assistance can include rent arrearages and utilities owed over the utility allowance. The FAQs include additional guidance on interim reexaminations, income calculations, and additional considerations for private landlords participating in the HCV program.

To learn more about how to apply for ERA go to [INSERT LINK and contact information for APPROPRIATE LOCAL ERA GRANTEE].

State and local ERA grantees can also be accessed from [Treasury's website](#) using the link "[Find rental assistance in your area.](#)"

Leases may not be terminated due to nonpayment of rent until at least 30 days have passed after a tenant receives this notice.