

JUSTICE IN AGING

FIGHTING SENIOR POVERTY THROUGH LAW

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Regulations Division
Office of General Counsel
U.S. Department of Housing and Urban Development
451 7th Street SW, Room 10276
Washington, D.C. 20410-0500

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

Justice in Aging appreciates the opportunity to provide comments on HUD's Notice of Proposed Rulemaking on a 30-day notice requirement prior to lease terminations for nonpayment of rent. Justice in Aging is a national legal advocacy organization with the mission of improving the lives of low-income older adults. We use the power of law to fight senior poverty by securing access to affordable housing, health care, and economic security for older adults with limited resources. We focus on the needs of low-income populations who have traditionally lacked legal protections, such as women, people of color, LGBTQI+ individuals, and people with limited English proficiency.

We strongly support this proposed rule and HUD's efforts to prevent unnecessary evictions in HUD-assisted housing. This proposed rule builds upon the current 30-day eviction notice requirement under the CARES Act and will help ensure that more tenants have the information and time they need to resolve nonpayment issues. We urge HUD to maintain at least a 30-day notice period in the final rule and offer recommendations for improving the rule for low-income older adults.

A longer notice period is critical for older adults

A longer notice period for nonpayment cases is especially important for older adults, who often need more time to manage issues and navigate complicated bureaucracies. For example, we hear from advocates about cases where older adults who live in subsidized housing and receive Supplemental Security Income (SSI) experience erroneous benefit reductions and terminations, which then spiral into them falling behind on rent and facing eviction. Older adults often have difficulty resolving these problems due to issues such as administrative barriers within both the SSI and subsidized housing programs that are especially burdensome for older adults with disabilities or health conditions. Many older adults also rely on assistance from friends, family members, or other third parties to understand and complete paperwork, which can lead to delays in responding to notices. A 30-day notice period will provide critical time for older adults to not only work with their housing provider, but also secure help from their support network and others, including legal services attorneys.¹

Having more time to secure legal counsel or other help from advocacy organizations is particularly important for older adult tenants given the immense power imbalance that exists in eviction cases. Tenants, who are often intimidated by the prospect of eviction and the judicial process, are

¹ As we discuss later in this comment, we urge HUD to require contact information for local legal services programs in 30-day notices.



unrepresented most of the time and frequently unaware of how to enforce their legal rights in negotiations or in court. This intimidation and confusion can be even more acute for older adults. Landlords, on the other hand, almost always benefit from representation by lawyers or agents. Research shows that landlords are represented in 83% - 90% of eviction cases, while tenants are only represented in 4% - 10% of cases.² Studies have also found that this representation makes a significant difference in outcomes: tenants with full representation are able to win or favorably settle their disputes in 96% of cases, and they are more than twice as likely to maintain their housing or secure more time to find alternative housing (rather than face immediate homelessness).³

HUD should finalize this proposed rule because any potential cost is outweighed by the benefits of preventing evictions

Although landlords may protest that they will lose income under this rule, any potential cost is far outweighed by the benefits of preserving the tenancy of more households and avoiding the catastrophic effects of evictions and homelessness. Preventing evictions is especially urgent now, when levels of homelessness have reached record highs. According to Part 1 of HUD's 2023 Annual Homeless Assessment Report, overall homelessness increased from the prior year by 12%, with over 653,000 people experiencing homelessness – the highest number ever recorded by HUD's annual Point-in-Time Count. More than a quarter of adults experiencing homelessness were also over the age of 54, with 20% aged 55-64 and 8% aged over 64.⁴

The loss of housing – particularly subsidized housing – is devastating for older adults. Studies show that becoming homeless later in life takes a particularly significant health toll on older adults – older adults who become homeless at age 50 or later are about 60% more likely to die than those who became homeless at younger ages.⁵ Once older adults enter homelessness, they experience worsening of previous health challenges or develop new ones, and they often end up with geriatric conditions, such as functional impairments, that more commonly occur in housed people who are 20 years older.⁶ These disabilities, along with other barriers to regaining housing that include limited options for increasing income and years-long waitlists for housing subsidies, result in many unhoused older adults becoming

² National Coalition for a Civil Right to Counsel, "Tenant Right to Counsel," available at http://civilrighttocounsel.org/highlighted_work/organizing_around_right_to_counsel.

³ Legal Services Corporation, "The Effect of State & Local Laws on Evictions: Cost to Provide Representation to Low-Income Tenants Facing Eviction" (July 2023), available at <https://lsc-live.app.box.com/s/547s54amibb35ya5mk0t0v7shh1vug6f>.

⁴ HUD, "2023 Annual Homelessness Assessment Report (AHAR) to Congress, Part 1: Point-in-Time Estimates of Homelessness in the U.S." (December 2023), available at <https://www.huduser.gov/portal/sites/default/files/pdf/2023-AHAR-Part-1.pdf>.

⁵ University of California San Francisco Department of Epidemiology & Biostatistics, "Older Homeless People Are at Great Risk of Dying" (August 2022), available at <https://epibiostat.ucsf.edu/news/older-homeless-people-are-great-risk-dying>.

⁶ Rebecca T Brown, et al., "Geriatric Conditions in a Population-Based Sample of Older Homeless Adults" (August 2017), available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5881727/>.

chronically homeless⁷ or institutionalized in nursing homes.⁸ Tenant protections that prevent homelessness are therefore crucial for low-income older adults.

Evictions are also a racial justice issue, disproportionately burdening renters of color. Researchers studying evictions in federally subsidized housing in Philadelphia (including public housing and properties with project-based rental assistance) found that nonpayment of rent is the most commonly cited reason for eviction filings, and eviction filing rates in subsidized properties are higher when a greater share of the subsidized tenants are Black and lower-income.⁹ Recent studies have also shown that between 2007 and 2016, about one in 10 Black adult renters across the country was evicted each year. In contrast, about one in 40 white adult renters was evicted per year during the same time period.¹⁰ This data supports the necessity of HUD’s proposed rule as a meaningful step towards advancing racial equity and reducing evictions among Black renters.

HUD should clarify that this rule creates the right to cure nonpayment within 30 days regardless of more restrictive state laws

HUD should strengthen the proposed rule by clarifying that tenants have a right to cure a lease violation for nonpayment within 30 days of receipt of the termination notice. In some states like Delaware and Ohio, tenants do not have a right to redemption under which they can avoid an eviction judgment by paying all of their rental arrears, i.e. they cannot “pay and stay.”¹¹ In these states, landlords pursue evictions even when tenants try to pay the amount they owe in full before the filing of an eviction action. Landlords may refuse to accept late payments, or worse yet, they may accept late payments but still proceed with eviction.

Landlords often seek evictions in these cases not because of money, but because of the opportunity to remove tenants they deem problematic. Attorneys representing tenants regularly see landlords wielding nonpayment of rent as a pretext for evicting tenants they dislike, and researchers have also observed that property owners view nonpayment as the easiest way to get rid of “problem tenants” and even as a way to evade bans on discriminatory and retaliatory evictions under housing

⁷ HUD data shows that between 2019 and 2021, the number of older adults experiencing chronic homelessness increased by 73%. HUD also concluded that more older adults are aging into chronic homelessness. HUD, “The 2021 Annual Homelessness Assessment Report (AHAR) to Congress, Part 2: Estimates of Homelessness in the United States” (July 2023), available at <https://www.huduser.gov/portal/sites/default/files/pdf/2021-AHAR-Part-2.pdf>.

⁸ Homelessness Policy Research Institute, “Older Adults Experiencing Homelessness” (August 2019), available at https://socialinnovation.usc.edu/wp-content/uploads/2020/02/Older-Adults-Literature-Review-Final_V2.pdf.

⁹ Gregory Preston & Vincent J. Reina, “Sheltered From Eviction? A Framework for Understanding the Relationship Between Subsidized Housing Programs and Eviction” (April 2021), available at <https://www.tandfonline.com/doi/full/10.1080/10511482.2021.1879202>.

¹⁰ The Eviction Lab, “Who is Evicted in America” (October 2023), available at <https://evictionlab.org/who-is-evicted-in-america/>.

¹¹ See Delaware Code Title 25 § 5502 (stating that if a tenant pays all rent due before or after the landlord has initiated action for nonpayment and the landlord accepts payment without a written reservation of rights, the landlord may not initiate or maintain that action. In Delaware, landlords commonly accept payments with a written reservation of rights that allows them to proceed with eviction); see also Affordable Housing Alliance of Central Ohio, et al., “Statewide Edition: Pay to Stay Technical Guide” (2022), available at <https://cohhio.org/ohio-pay-to-stay-guide/>.

laws.¹² People labeled as “problem tenants” often include, for example, older adults and people with disabilities who may be perceived as more challenging to serve because they ask for reasonable accommodations or have mental health or cognitive issues. Thus, HUD should make clear that this proposed rule prohibits housing providers from filing for eviction when a tenant cures the nonpayment within 30 days of receipt of the notice. HUD should also clarify that landlords must accept payments for rental arrears.

HUD should strongly discourage housing providers from filing eviction actions when tenants have taken steps to cure nonpayment within 30 days

We urge HUD to provide guidance that strongly discourages housing providers from filing for eviction when tenants who have not yet cured their nonpayment still make efforts to do so within the 30-day notice period. For example, if a tenant has requested an interim recertification/hardship exemption or applied for emergency rental assistance, the housing provider should refrain from initiating eviction proceedings and continue the informal resolution process. Once a landlord files for eviction, that eviction record – even if the tenant is not ultimately evicted – can greatly damage a household’s future housing prospects.¹³ Consequently, HUD should direct housing providers to avoid filing eviction actions to the greatest extent possible.

HUD should require housing providers to accept reasonable repayment plans

To maximize the impact of this rule, HUD should require housing providers to accept reasonable repayment agreements rather than merely recommend they do so. By giving landlords sole discretion to accept or reject repayment plans, HUD invites the risk that landlords will exercise this option in biased or discriminatory ways against tenants. Filing for eviction should only be a last resort when landlords have exhausted other viable options, including entering into reasonable repayment agreements. Also, as HUD notes in its guidance about repayment plans, repayment agreements should be affordable for tenants, with monthly payments for current and back rent not exceeding 40% of the household’s monthly adjusted income.¹⁴ HUD should include this guideline in regulatory language of the final rule.

HUD should require additional details in 30-day nonpayment notices, including information on reasonable accommodations

In addition to requiring information in notices about recertifications, hardship exemptions, and how to cure nonpayment, HUD should require details on how tenants can request reasonable accommodations (RAs). The preamble to the proposed rule explains that HUD “suggests” the 30-day notice advise tenants about their right to RAs and how to request them, but mere encouragement is not sufficient. Many older adults with disabilities are unaware of their legal rights under the Fair Housing Act and Section 504. Additionally, many housing providers fail to provide RAs, and requiring information

¹² University of Minnesota Center for Urban and Regional Affairs, “The Illusion of Choice: Evictions and Profit in North Minneapolis” (June 2019), available at <https://evictions.cura.umn.edu/sites/evictions.cura.umn.edu/files/2023-04/Illusion-of-Choice-full-report-web-v2.pdf>.

¹³ The Appeal, “Erasing the ‘Scarlet E’ of Eviction Records” (April 2021), available at <https://theappeal.org/the-lab/report/erasing-the-scarlet-e-of-eviction-records/>.

¹⁴ HUD, Repayment Agreement Guidance, available at https://www.hud.gov/sites/dfiles/PIH/documents/Attachment4_Repayment_Agreement_Guidance.pdf.

about RAs in notices will help keep landlords accountable for complying with their legal obligations. HUD's Office of Inspector General has already pointed out that HUD lacks adequate policies and procedures for ensuring that Public Housing Authorities (PHAs) properly address RA requests, stating that "[d]ue to HUD's inconsistent oversight...some PHAs may not be properly implementing existing requirements and may not understand all their responsibilities related to requests for reasonable accommodation."¹⁵ At the very least, HUD should include sample language about RAs in its model notice.

We also urge HUD to require the following in 30-day notices:

- How to request repayment plans (as part of the information on how to cure nonpayment);
- Information in different languages about the availability of language assistance services for people with limited English proficiency and auxiliary aids and services for people with disabilities (HUD should also require translated notices consistent with Title VI and HUD's language access guidance);
- Contact information for local legal services organizations;
- Contact information for Fair Housing Initiatives Programs; and
- If applicable, information about right to representation/counsel in eviction cases.

HUD should ensure that model leases and notices are accessible for older adults

We appreciate HUD's commitment to ensuring tenant-directed materials incorporate plain language and user-centered, equitable design. In order to be equitable, materials must meet the needs of older adults. The most recent national assessment on adult literacy found that adults age 65 and older had the lowest average prose, document, and quantitative literacy among all age groups. They were also more likely than younger individuals to have below basic literacy skills in all these areas.¹⁶

As HUD develops model leases and notices, HUD should share drafts and receive feedback from advocates and groups representing a cross-section of tenants, including older and disabled tenants themselves. We also encourage HUD to consult sources such as the Center for Disease Control and Prevention (CDC)'s guide to communicating effectively with older adults. Some of the CDC's suggestions include, for example, developing materials that emphasize directions and solution-oriented messages.¹⁷

HUD should include the Housing Choice Voucher program in this rule

Finally, HUD should extend this proposed rule to the Housing Choice Voucher (HCV) program. Doing so would prevent even more unnecessary evictions within HUD's largest rental assistance

¹⁵ HUD Office of Inspector General, "HUD Did Not Have Adequate Policies and Procedures for Ensuring That Public Housing Agencies Properly Processed Requests for Reasonable Accommodation" (February 2022), available at <https://www.hudoig.gov/reports-publications/report/hud-did-not-have-adequate-policies-and-procedures-ensuring-public>.

¹⁶ National Center for Education Statistics, "Literacy in Everyday Life: Results from the 2003 National Assessment of Adult Literacy" (April 2007), available at <https://nces.ed.gov/Pubs2007/2007480.pdf>.

¹⁷ See generally Centers for Disease Control and Prevention, "Understand Your Audience: Older Adults" (July 16, 2020), available at <https://www.cdc.gov/healthliteracy/developmaterials/audiences/olderadults/index.html> (While the CDC's materials focus on health literacy, its recommendations are also generally applicable in the housing context).

program, which serves as a lifeline for about 1.2 million older adults and people with disabilities across the country.¹⁸ Further, applying the proposed rule to the HCV program would result in more consistency across HUD's rental assistance programs and create less confusion for courts, tenants, housing providers, and advocates. The preamble to the rule notes the benefits of aligning and simplifying requirements for HUD's programs by creating "one clear floor and simple standards" for lease terminations due to nonpayment of rent. The HCV program should also benefit from this streamlining of requirements.

Although we understand HUD's concern that additional requirements in the HCV program may deter landlord participation, landlords who accept vouchers are already required under the CARES Act to provide a 30-day notice in nonpayment cases.¹⁹ This proposed rule therefore reinforces existing requirements that voucher landlords should already be following, and it does not unreasonably add to their administrative burdens. Moreover, while we support finding ways to incentivize landlord participation, HUD should not pursue reducing landlord burdens at the expense of strengthening critical tenant rights that can make the difference between housing and homelessness.

Conclusion

Thank you for your consideration of Justice in Aging's comments. We urge HUD to finalize this important proposed rule, which is a vital step towards preventing evictions and homelessness for low-income older adults and other HUD-assisted tenants. If you have any questions about this submission, please contact Jennifer Kye, Senior Attorney, at jkye@justiceinaging.org.

Sincerely,



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¹⁸ Center on Budget and Policy Priorities, "Policy Basics: The Housing Choice Voucher Program" (April 2021), available at <https://www.cbpp.org/research/policy-basics-the-housing-choice-voucher-program>.

¹⁹ 15 U.S.C. 9058(c).