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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

Thank you for the opportunity to comment on HUD's Notice of Proposed Rulemaking on a 30-day notice requirement prior to lease terminations for nonpayment of rent. Please accept this letter as the comments of the undersigned co-chairs of the Consortium for Constituents with Disabilities (CCD) Housing Task Force. CCD is the largest coalition of national organizations working together to advocate for federal public policy that ensures the self-determination, independence, empowerment, integration, and inclusion of children and adults with disabilities in all aspects of a society free from racism, ableism, sexism, and xenophobia, as well as LGBTQ+ discrimination and religious intolerance. The Housing Task Force works to ensure that all people with disabilities have safe, stable, accessible, affordable, and integrated housing that enables people to live in communities of their choosing, with full access to home and community-based services and supports.

We strongly support this proposed rule, which will prevent avoidable evictions in HUD-assisted housing. As articulated by HUD in the preamble, evidence is clear that eviction is linked to devastating short- and long-term consequences for families and individuals, including for people with disabilities. We also provide the following suggestions for improving the proposed rule.

HUD Should Clarify That This Rule Creates the Right to Cure Nonpayment of Rent Within 30 Days

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."¹ In these

¹ 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://cohio.org/ohio->

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 situations in order 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 laws.² 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. Therefore, 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 Require Housing Providers to Accept Reasonable Repayment Plans

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 even 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. In addition, 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.³ HUD should include this guideline in regulatory language of the final rule.

HUD Should Require Information on Reasonable Accommodations in 30-Day Notices

HUD should require housing providers to include information on reasonable accommodations in 30-day notices. In the proposed rule, HUD merely suggests that the “30-day notice advise individuals of their right to request reasonable accommodations, include information on how individuals with disabilities can request reasonable accommodation, and include a point of contact for reasonable accommodation requests.” We urge HUD to make this a requirement, not a suggestion. In a 2022 report⁴, HUD’s Office of Inspector General (OIG) determined that

[pay-to-stay-guide/](#).

² 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>.

³ HUD, Repayment Agreement Guidance, available at https://www.hud.gov/sites/dfiles/PIH/documents/Attachment4_Repayment_Agreement_Guidance.pdf.

⁴ 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>.

“HUD did not have adequate policies and procedures for ensuring that PHAs properly addressed, assessed, and fulfilled requests for reasonable accommodation.” OIG recommended that HUD “conduct additional outreach efforts to educate tenants and PHAs on their rights and responsibilities related to requests for reasonable accommodation...to inform PHAs about their responsibilities and how to evaluate requests for reasonable accommodation and help families understand their rights.” This rule offers an ideal opportunity to act on that recommendation and help ensure that housing providers and disabled tenants are aware of their rights and obligations around reasonable accommodations.

Below in **bold** is suggested language we urge HUD to adopt in each relevant regulation.

24 CFR Part 247.4 Termination

(e) *Notice requirements in rent*

nonpayment cases. In any case in which a tenancy is terminated because of the tenant’s failure to pay rent, a notice stating the dollar amount of the balance due on the rent account and the date of such computation shall satisfy the requirement of specificity set forth in paragraph (a)(2) of this section. All

termination notices in cases of nonpayment of rent must also include the following:

(1) Instructions on how the tenant can cure the nonpayment of rent violation; (2) Information on how the tenant can recertify their income and, for tenants residing in projects assisted pursuant to a housing assistance payments contract for project-based assistance under section 8 of the 1937 Act (42 U.S.C.

1437f), information on how the tenant can apply for a hardship exemption pursuant to 24 CFR 5.630(b); **information on how tenants with disabilities can request a reasonable accommodation pursuant to section 504 of the Rehabilitation Act of 1973 and the Federal Fair Housing Act Amendments of 1988**; and (3) In the event of a Presidential declaration of a national emergency, such information to tenants as required by the Secretary.

HUD Should Provide Required Notice Language on Reasonable Accommodations

HUD should provide housing providers with required – not just sample – notice language about reasonable accommodations to better ensure appropriate implementation of this rule. Issuing required language would be similar to implementation of *HUD Form 5380 Notice of Occupancy Rights under VAWA*, which is a HUD-drafted mandatory notice provided to all tenants in housing covered by the Violence Against Women Act.

Recommendations for Additional Information in 30-Day Notices

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.

Recommendations for Accessible Notices and Other Tenant-Directed Materials

We appreciate HUD's concern about ensuring effective communication for people with disabilities and developing accessible tenant-directed materials. Plain language materials – including applications, leases, and other agreements, as well as staff who can proactively facilitate access – can prevent negative outcomes (including evictions) brought about by ineffective communication. We recommend that HUD review how the U.S. Department of Health and Human Services seeks to achieve effective communication for people with disabilities, as outlined in NPRM Part 92, Nondiscrimination in Health Programs and Activities. We also recommend the following:

- Housing providers must ask applicants/tenants whether they have communication disabilities and record their needed auxiliary aid or service in their application or tenant file so that they can consistently receive effective communication from the covered entity.
- HUD should clarify that if an individual requests that all written communications be rendered in alternative formats or in other languages, then all future communications should be provided in the requested format or language.
- Captioning and audio descriptions: Captioning and description data should be preserved for re-exhibited programming; and audio description of open subtitles should be used to the extent practicable.
- Video conferencing: Housing providers should consider providing added support for visual image descriptive services; screen-reader and refreshable braille display support for presentations, videos, and interactive documents; simplified call initiating; meeting interfaces and plain-and-simple-language and iconography in instruction materials for people with cognitive disabilities; and hands-free technology and voice control technology (such as speech-to-text software) for people without finger function.
- Video playback apparatus: Devices used for video playback, such as remote controls and other interfaces used for activating captioning, etc. should also be accessible.
- Relay services: Housing providers should consider providing added support for Deaf interpreters; support for video conferencing interconnection; and one-number support for unified messaging and calling for relay users.
- Emerging technology: Housing providers should use emerging technology for people with speech disabilities (including users of augmentative and alternative communications (AAC)), people with cognitive disabilities, DeafBlind people, and people with multiple disabilities. Emerging technology also includes spatial computing and wireless technologies.
- There have also been technical advancements in communication access for Deaf and hard-of-hearing communities that must be available and used across federal housing programs. This includes video remote interpreting (VRI), as well as greater availability of

CART captioning. VRI and CART, however, cannot act as a replacement for an onsite interpreter.

- HUD should remind recipients that website and application accessibility compliance is mandatory under Section 508 of the Rehabilitation Act and Titles II and III of the ADA. HUD should also consider the Web Content Accessibility Guidelines (“WCAG”) as an instructive tool to make websites and applications accessible for users with disabilities. Although the WCAG standards have not been adopted by law, it has strong support, has served as a useful guideline to make websites accessible, and has been cited in numerous judicial decisions. We also note that HUD should improve the accessibility of its own websites.

HUD Should Apply This Rule to the Housing Choice Voucher Program

Lastly, 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 program, which serves as a lifeline for about 1.2 million older adults and people with disabilities across the country.⁵ These tenants should be afforded the same rights as other HUD-assisted tenants and the same opportunities to avoid eviction and homelessness.

Conclusion

We urge HUD to finalize this important proposed rule. Thank you for your consideration of our comments and your commitment to promoting housing stability for HUD-assisted tenants, including tenants with disabilities.

Sincerely,

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⁵ 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>.