



Submitted electronically via www.regulations.gov

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Regulations Divisions
Office of General Counsel
Department of Housing and Urban Development
451 7th Street SW, Room 10276
Washington, DC 20410-0500

Re: Industry Associations' Comments to the Proposed Rule for the 30-Day Notification Requirement Prior to Termination of Lease for Nonpayment of Rent – FR-6387-P-01.

Dear Secretary Fudge,

On behalf of the National Apartment Association, Institute of Real Estate Management, Manufactured Housing Institute, National Affordable Housing Management Association, National Association of Home Builders, National Association of Housing Cooperatives, National Leased Housing Association, and National Multifamily Housing Council (“the Associations”), we submit these comments in response to the Department of Housing and Urban Development’s (“HUD”) Proposed Rule for the 30-day Notification Requirement Prior to Termination of Lease for Nonpayment of Rent – FR-6387-P-01 (“Proposed Rule”).

The Associations represent for-profit and non-profit owners, operators, developers, property managers, housing agencies, and advocacy organizations involved in the provision and promotion of both affordable and conventional housing. Over one-third of American households rent, and over 20 million U.S. households live in apartment homes (buildings with five or more units). Our members are acutely aware of the impact of housing costs on renters and strive to improve housing affordability every day and are committed to working with their residents in the most equitable and transparent manner. Therefore, we appreciate the opportunity to share our perspective on the Proposed Rule’s impact on our members’ efforts to create and maintain successful communities for the nation’s renters.

BACKGROUND ON PROPOSED RULE

On December 1, 2023, HUD issued the Proposed Rule entitled “30-Day Notification Requirement

Prior to Termination of Lease for Nonpayment of Rent,”¹ which would require public housing agencies (“PHAs”) and owners of properties receiving project-based rental assistance (“PBRA”) to provide tenants who face eviction for nonpayment of rent “with written notification at least 30 days prior to the commencement of a formal judicial eviction procedure for lease termination.”² According to HUD, the Proposed Rule will “curtail preventable and unnecessary evictions by providing tenants with time and information to help cure nonpayment violations.”³

The Proposed Rule would codify the temporary 30-day eviction notice requirement imposed by the Coronavirus Aid, Relief, and Economic Security (CARES) Act, which provided financial assistance and economic relief in response to the COVID-19 pandemic.⁴ The CARES Act required housing providers of federally-backed and federally assisted housing to provide notice to their residents 30 days before filing for eviction due to nonpayment of rent following the termination of the CARES Act eviction moratorium in July 2020. HUD also published an interim final rule (“IFR”) titled “Extension of Time and Required Disclosure for Notification of Nonpayment of Rent,” which has been in effect since November 2021.⁵ The IFR requires PHAs and PBRA owners to provide tenants facing eviction with certain information and a minimum of 30 days between notification and lease termination when HUD determines that Federal funding is available to assist tenants during a national emergency. The Proposed Rule would therefore permanently extend the 30-day notice requirement “to situations outside of a national emergency.”⁶

THE ASSOCIATIONS’ STATEMENT OF INTEREST

At the outset, it must be noted that the Associations’ members work tirelessly to provide affordable housing and address their residents’ needs. Their businesses always do better when units are occupied and when they can fully meet their obligations to their residents, employees, creditors, and the communities they serve.

Throughout the COVID-19 pandemic, the Associations’ members offered various resources and assistance to residents facing financial hardship and to help them avoid eviction, including rent repayment plans, fee waivers, financial assistance, and connecting them to social services and emergency rental assistance (the Associations championed the federal Emergency Rental Assistance program authorized by the Consolidated Appropriations Act, 2021 and the American Rescue Plan Act of 2021).

¹ 88 FR 83877: 30-Day Notification Requirement Prior to Termination of Lease for Nonpayment of Rent, available at <https://www.federalregister.gov/documents/2023/12/01/2023-26348/30-day-notification-requirement-prior-to-termination-of-lease-for-nonpayment-of-rent>.

² For the purpose of the Proposed Rule, PBRA includes projects in the following programs: Section 8 Project-Based Rental Assistance, Section 202/162 Project Assistance Contract, Section 202 Project Rental Assistance Contract (PRAC), Section 811 PRAC, Section 811 Project Assistance Program, and Senior Perseveration Rental Assistance Contract Projects. “PBRA” refers to this group of HUD multifamily programs.

³ 88 FR 83877.

⁴ 15 U.S.C. § 9058. The CARES Act instituted a 120-day prohibition on initiating eviction proceedings for rental properties that received federal assistance or had federally backed loans. Congress elected not to renew the CARES Act, and its eviction moratorium for rental properties ended on July 27, 2020. Due to ambiguity in the expiration date of the notice period, the CARES Act 30-day eviction notice requirement remains a contested issue in the courts.

⁵ 86 FR 55693.

⁶ 88 FR 83879.

The pandemic highlighted housing providers' efforts to be as flexible as their circumstances allowed to support residents. However, the Associations are deeply concerned that the Proposed Rule is not a sustainable solution to prevent renter displacement in the post-pandemic reality. HUD must move beyond emergency housing measures and focus on implementing workable solutions. Given the complexity of housing policies at state and local levels, the Associations believe a one-size-fits-all federal approach is not practical.

Long after the end of federal eviction moratoria and the end of the federal COVID-19 public health emergency declaration, the CARES Act 30-day eviction notice requirement continues to interfere with legitimate evictions and remains a contested issue in courts today. Instead, we urge the federal government to leverage federal funds to help at-risk renters avoid eviction in the first place, by increasing investment in federal subsidy programs like the Section 8 Housing Choice Voucher Program and supporting states' rental assistance programs.

DISCUSSION

I. The Proposed Rule Disincentivizes Housing Provider Participation in HUD Programs and Risks Long-Term Damage

The eviction process is the measure of last resort for housing providers. Evictions are the only legal remedy for housing providers to recover possession of their property when renters violate their lease agreements. In cases of nonpayment, housing providers turn to eviction after residents have become unresponsive to management's repeated attempts to communicate with them to resolve the issue.

The Proposed Rule introduces an unnecessary layer of federal regulation into the eviction processes established by states, compounding the challenges within a process that is already heavily regulated and posing a heightened risk to the viability of PBRA-funded communities.

Affordable housing providers cannot afford delays that would result from this rulemaking. Timely and consistent rent collection is critical in these communities. Ninety-three cents of every rent dollar cover necessary operational expenses, such as property maintenance, insurance, staffing and go back to the local community through property taxes.⁷ PBRA funding ensures that renters' housing costs can remain consistent, yet housing providers expenses continue to go up. In fact, a 2023 report found that property insurance costs have risen a staggering 26 percent on average for respondents over the past year.⁸

The CARES Act 30-day notice requirement, designed to protect tenants during the unprecedented pandemic, placed a substantial administrative and financial strain on housing providers. Evictions are already becoming increasingly complex, especially with the various jurisdictional requirements and processes at the federal, state, and local levels. Adding additional unnecessary delays and uncertainty into the process will present serious obstacles for property owners, particularly smaller ones, who depend on consistent rental payments to meet their financial obligations. **Rent is critical to ensure housing providers are able to maintain quality affordable housing in their communities.**

⁷ <https://www.naahq.org/breaking-down-one-dollar-rent-2023>.

⁸ <https://www.nmhc.org/news/press-release/2023/nmhc-releases-2023-state-of-multifamily-risk-survey-and-report/>.

The private sector provides the vast majority of affordable rental housing in the United States.⁹ Rather than adding burdens on those providers, regulators should be looking for ways to incentivize the private sector to further invest in affordable housing and choose to participate in HUD-assisted programs. Adding a layer of federal regulation to the eviction process – potentially when it conflicts with existing state and local requirements – creates confusion and hampers private sector investment in the affordable housing market. Striking a balance between regulation and fostering a conducive environment for private investment is crucial to ensuring the continued availability of affordable housing nationwide.

II. The Proposed Rule Interferes with States’ Existing Resident and Housing Provider Protections

Landlord-tenant relationships involve unique considerations best addressed by states. States are best equipped to respond effectively to the distinctive needs of their communities and housing markets. Every state and the District of Columbia have enacted comprehensive laws that govern residential landlord-tenant relationships. In addition to statutes and ordinances, housing providers must also follow state and local landlord-tenant case law.

Sixteen states and a handful of localities mandate a grace period or required window of time that a renter may pay rent after the established due date without being subject to a late fee, and the majority of states have established detailed notice procedures that housing providers must follow before initiating eviction proceedings when renters fail to pay rent. These pre-filing notice requirements vary widely from 0 to 30 days, allowing renters to pay rent after the due date, providing opportunities to cure lease defaults for non-payment, and establishing avenues for residents to avoid the eviction court process.

While notice periods vary widely based on state law, the average notice is 6 days. The 30-day federal notice requirement is 5 times higher than the notice procedure in most states, leading to extended periods of lost rent, often with no practical opportunity to recover the amounts owed. A federal notice requirement ignores how states’ landlord-tenant laws have evolved differently over time to protect renters and housing providers throughout the eviction process.

Without a federal eviction notice requirement, robust tenant protections remain in place post-pandemic, with state laws allowing renters opportunities to repay back rent and avoid eviction, even among the states with no set notice procedure. For example, New Jersey prohibits eviction after a court-issued judgment of possession if the total amount of unpaid rent and approved costs are satisfied. A landlord cannot refuse timely repayment by the tenant or a third party, such as a charitable organization or a rental assistance program.

There continues to be a misalignment between these state notice procedures and the federal 30-day notice to vacate requirement that should have ended after the CARES Act eviction moratorium ended in July 2020. The effect of HUD’s proposed rule would create a 30-day nonpayment grace period for all residents of the covered properties, regardless of whether the tenant could have made a timely payment. There are insufficient reasons for HUD to codify an emergency-measure policy

⁹ See Lance Freeman & Yining Lei, An Overview of Affordable Housing in the United States, Penn IUR Policy Brief, at 2 (August 2023), available at https://penniur.upenn.edu/uploads/media/An_Overview_of_Affordable_Housing_in_the_United_States_Updated.pdf.

that will further complicate the administrative burdens associated with collecting rents and potentially jeopardize the financial stability of HUD’s assisted housing portfolio.

Housing providers still feel the impacts of pandemic-related court backlogs. In Georgia, housing providers in the Atlanta-metro area reported in 2023 that they filed for evictions and after six to eight months, they are still awaiting court dates.¹⁰

The Associations strongly recommend that HUD acknowledge that the CARES Act notice requirement has ended and return eviction policy back to the states.

III. The Proposed Rule Lacks Sufficient Data-Driven Support

HUD relies on insufficient evidence to justify imposing the 30-notice requirement. In support of the Proposed Rule, HUD cites a research study from Gromis et al. (2022) that “confirms that longer notice periods are correlated to a lower eviction filing rate.”¹¹ However, as noted in HUD’s Regulatory Impact Analysis for the Proposed Rule, there are three issues with relying on this research: (1) “correlations are imprecise due to the difficulty of isolating the impact of solely a notice requirement”; (2) the research presents data on eviction filings rate, not physical evictions due to nonpayment; and (3) the research was not limited to HUD-assisted tenants, who have more tenant protections than unassisted tenants, which makes it “reasonable that extending the length of notice . . . would see smaller effects on move-outs for HUD assisted tenants as compared to all tenants.”¹²

Comparing moveout rates data from 2018 and 2019 to 2022, HUD states that a “major difference” contributing to the lower rate of moveouts is the imposition of the 30-day notice requirement.¹³ **Yet, at the same time, HUD notes that the observed decrease in the moveout rate “is likely related” to other factors like the additional time and information given to tenants and unprecedented emergency support in 2022 compared to pre-pandemic years.**¹⁴ HUD conducted its own analysis to estimate that “between 1,600 and 4,900 nonpayment related moveouts in Public Housing and PBRA-assisted housing are prevented each year because of the existing 30-day notice requirements.”¹⁵ HUD acknowledges that this analysis is based on several assumptions to get the “best estimate,” noting “the challenge of empirically attributing the reduction in owner-initiated moveouts due to nonpayment of rent to any individual intervention, given the simultaneous and overlapping nature of various interventions.”¹⁶ Eviction filing statistics do not reflect ultimate evictions outcomes and fail to account for mitigation measures offered by housing providers that reduce actual displacement. Further, filing numbers neglect to convey

¹⁰ <https://www.atlantanevsnfirst.com/2023/09/07/fulton-county-battling-eviction-court-backlogs/>.

¹¹ 88 FR 83881, citing Gromis, A., et al., Estimating Eviction Prevalence Across the United States, Proceedings of the National Academy of Sciences of The United States of America, 6 (2022) <https://doi.org/10.1073/pnas.211616911>.

¹² Regulatory Impact Analysis: 30-Day Notification Requirement Prior to termination of Lease for Nonpayment of Rent, at 7 available at <https://www.regulations.gov/document/HUD-2023-0098-0002> [“Regulatory Impact Analysis”].

¹³ *Id.* at 6.

¹⁴ *Id.* at 6–7.

¹⁵ 88 FR 83881.

¹⁶ Regulatory Impact Analysis, *supra*, note 12 at 8.

essential elements like the underlying cause of the eviction, i.e., financial versus non-financial causes.

Examining the impact on PHAs and owners, HUD’s Regulatory Impact Analysis states that there is no “relatively sizeable decrease in revenue due to the 30-day notice requirement.” To support this statement, HUD points to its analysis showing that lost revenue per occupied unit per year is equivalent to 55 cents for PHAs and \$1.14 for PBRA. According to HUD, the average monthly rent for residents living in a household under the PBRA program is \$280. The potential rental income loss for Project-Based Rental Assistance at the national level if PBRA housing providers remained unpaid during the proposed federal 30-day notice period could cost the industry as much as \$336 million each month.

The limited evidence cited in the Proposed Rule does not support the conclusion that a longer notice period prevents nonpayment-related evictions or that a notice requirement would have a minimal financial impact on property owners – especially in the absence of pandemic-era emergency rental assistance and other financial resources to prevent evictions.

IV. The Proposed Rule Lacks Express Congressional Authority to Preempt State Landlord-Tenant Laws

There is no legal authority to preempt state landlord-tenant laws without express authorization from Congress. According to long-established Supreme Court precedent, the federal government can preempt state laws in limited circumstances. Where federal law regulates an area traditionally within the domain of state law, there is a presumption against preemption “unless that was the clear and manifest purpose of Congress.”¹⁷

Landlord-tenant law is traditionally considered a matter of state law.¹⁸ In *Alabama Associates of Realtors v. U.S. Department of Health and Human Services*, the Supreme Court overturned the federal eviction moratorium on the basis that Congress had not specifically authorized the CDC’s action and the moratorium intruded into “an area that is the particular domain of state law: the landlord tenant relationship.”¹⁹ By preventing landlords from evicting tenants who breached their leases, the moratorium also interfered with a landlord’s right to exclude, “one of the most fundamental elements of property ownership.”²⁰ Notably, the Supreme Court recognized the significant financial burden on landlords, highlight that they were “at risk of irreparable harm” under the eviction moratorium.²¹

Section 8 of the Housing Act, as amended by the Housing and Community Development Act of 1974, 42 U.S.C. § 1437f, is a rental subsidy plan where owners of private housing receive payments on behalf of low-income tenants. The statutory framework contemplates differences

¹⁷ *Wyeth v. Levine*, 555 U.S. 555, 565 (2009)

¹⁸ See e.g., *Lindsey v. Normet*, 405 U.S. 56, 86 (1972) (holding that “[t]he Constitution has not federalized the substantive law of landlord-tenant relations”); *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419, 440 (stating that “[t]his Court has consistently affirmed that States have broad power to regulation housing conditions in general and the landlord-tenant relationship in particular”); *Perry v. Hous. Auth. of City of Charleston*, 664 F.2d 1210, 1216 (4th Cir. 1981) (“It would be hard to find an area of the law in which the states have a greater interest or have had greater involvement than in the legal area of landlord-tenant.”).

¹⁹ 141 S. Ct. 2485, 2389 (2021).

²⁰ *Id.*

²¹ *Id.*

between local and federal regulation, stating that “[i]t is the policy of the United States . . . to vest in public housing agencies that perform well, the *maximum amount of responsibility and flexibility* in program administration, with appropriate accountability to public housing residents, localities, and the general public.”²² Federal restrictions on local eviction proceedings certainly thwart Congress’s intention to give PHAs a “maximum amount of responsibility and flexibility.”

For HUD-assisted housing, the federal statute requires that PHAs provide written notice before termination of the lease, which “shall not be less than – 14 days in the case of nonpayment of rent.”²³ Additionally, the Secretary has explicit authority to require certain terms and conditions be included in leases for HUD-assisted housing.²⁴ In contrast, there is no specified notice period in the statutory language establishing requirements for PBRA,²⁵ indicating a congressional intent to leave eviction proceedings to the states. There is also no language giving the Secretary explicit authority to require certain terms and conditions be included in these leases. In fact, the section covering required contract provisions for assistance payments states that “the agency and the owner shall carry out other appropriate terms and conditions as may be mutually agreed to by them.”²⁶ Accordingly, the Proposed Rule would significantly alter the parties’ rights and obligations under their lease contracts in HUD’s PBRA programs. There is no authority for this.

CONCLUSION

The Associations appreciate the opportunity to respond to HUD’s Proposed Rule. We remain committed to working with federal regulators and policymakers in Congress to address our shared goal of long-term housing affordability nationwide.

While well-intentioned, the Proposed Rule overlooks the financial hardship property owners and managers continue to face from federal interference in local eviction processes. Additional federal regulation in a sector long governed by state and local regulation creates too many inefficient and duplicate requirements. The 30-day notice requirement will exacerbate the post-pandemic backlogs in eviction courts, further delaying the process as owners face even more lost rent.

Additionally, the Proposed Rule will have devastating ripple effects by disincentivizing participation in HUD programs, ultimately resulting in more housing scarcity and higher rents. The research and data HUD relies on paint an incomplete picture of the administrative and financial strain on property owners and the unintended consequences that hurt the very tenants HUD is trying to protect. Finally, HUD lacks clear legal authority to impose the 30-day notification requirement for PBRA programs. The Associations urge HUD to focus on responsible and pragmatic solutions that will benefit tenants at risk of eviction and encourage private sector participation in HUD’s housing programs.

Thank you for the opportunity to comment on this important proposal and for considering the

²² 42 U.S.C. § 1437(a)(1)(C).

²³ 42 U.S.C. § 1437d(1)(4)(B).

²⁴ 42 U.S.C. § 1437d(a) (“The Secretary may include in any contract for loans, contributions, sale, lease, mortgage, or any other agreement or instrument made pursuant to this chapter, such covenants, conditions, or provisions as he may deem necessary in order to insure the lower income character of the project involved, in a manner consistent with the public housing agency plan.”).

²⁵ See 42 U.S.C. § 1437f(d)(1)(B)(iv) (“any termination of tenancy shall be preceded by the owner’s provision of written notice to the tenant specifying the grounds for such action”).

²⁶ 42 U.S.C. § 1437f(d)(1)(D)

Associations' comments. If you have any questions regarding these comments or if we can be of any assistance, please do not hesitate to contact us.

Sincerely,

National Apartment Association

Institute of Real Estate Management

Manufactured Housing Institute

National Affordable Housing Management Association

National Association of Home Builders

National Association of Housing Cooperatives

National Leased Housing Association

National Multifamily Housing Council