



September 28, 2020

The Honorable Ben Carson
Secretary
U.S. Department of Housing and Urban Development
451 7th Street S.W.
Washington, DC 20410

CC: Brian Montgomery, Deputy Secretary
Michael Williams, Acting General Counsel
Andrew Hughes, Chief of Staff to Secretary Carson

VIA EMAIL (Andrew.hughes@hud.gov)

Dear Secretary Carson:

On behalf of the members of the National Apartment Association (NAA) and the National Multifamily Housing Council (NMHC), we appreciate your efforts to address the challenges facing America's renters and housing providers affected by COVID-19. While HUD has directed critical resources towards housing support, more work must be done to help those who face ongoing challenges as the pandemic persists, including struggling rental housing owners and managers.

At present, housing providers urgently need guidance from the Administration and the relevant federal agencies to understand how federal eviction restrictions interact with state and local eviction processes. The current framework of eviction policies is complex and sometimes conflicting, making compliance difficult. **As one of the federal agencies primarily responsible for oversight and regulation of the rental housing industry, HUD could help bridge this gap with additional guidance to address outstanding issues that arose from the Centers for Disease Control and Prevention (CDC) eviction order and the CARES Act notice to vacate requirement (Section 4024 (c)).**

The recent CDC order prevents owners and operators of rental housing from evicting, or causing the removal of, any covered person from residential property through December 31, 2020, if the renter provides the required declaration to their housing provider. However, evictions for lawful reasons unrelated to the nonpayment of rent are exempt from the Order, and housing providers may still pursue evictions for nonpayment unless and until the required declaration is provided. These circumstances allow challenges related to the CARES Act notice requirement to persist.

Given these ongoing challenges, we urge HUD to clarify the following:

CDC Order – Key Areas for Clarification

- Accuracy of Declarations and Documentation:

- Consistent guidance is necessary as to how housing providers should address questions of the veracity of resident declarations, including, the role and ability to request documentation and how legitimate queries intersect with the applicability of eviction protections.
- Where questions of accuracy or truthfulness arise, the role of courts should be clearly established, and guidance should reinforce their function as a neutral arbiter.
- **Applicability of Order:**
 - Since the Order is premised on mitigating the spread of COVID-19 by limiting homelessness or shared housing, the Order should only attach to and prevent those aspects of the eviction process that execute physical displacement, not broadly to any action in the process. An eviction occurs only when a housing provider lawfully retakes physical possession of the housing and the resident is required to move out
 - The eviction process involves a series of distinct business and legal actions, varying widely according to the unique laws and court rules in a particular jurisdiction. These processes encourage ongoing communication and often result in an agreement between the housing provider and resident that allows the resident to remain in their housing.
 - Guidance should clarify that during the covered period, the Order prevents the enforcement of a judgment to recover possession of the dwelling from a covered person, based upon nonpayment of rent. It should not limit renters and housing providers' rights to due process and ability to access the courts.
 - In addition, housing providers and courts need better definition of exempted evictions. While the Order attempts to distinguish rent-related evictions from non-financial actions, it is not clear how the Order applies to cases such as holdover tenancies, non-renewals and termination notices.
- **Declarations:**
 - To promote certainty and consistency, guidance is needed to identify when declarations must be executed and delivered in order to trigger the CDC eviction moratorium. Additionally, guidance is needed on how declarations can be recertified, rescinded or updated as an individual's circumstances and covered status changes.

CARES Act – Key Areas for Clarification

Furthermore, we ask HUD to:

- Provide a clear sunset date for the notice to vacate provision to expire 30 days after the 120-day covered period terminates. As the moratorium was intended, this is a temporary protection in light of the COVID-19 emergency, not a permanent change to eviction laws;
- Clarify that the notice to vacate provision only applies to cases of nonpayment of rent related to outstanding balances that accrued during the 120-day moratorium; and
- Make clear that if a market rate property does not have a federally backed mortgage loan, Section 4024 only applies to the voucher holder.

In addition to supplemental guidance, we continue to urge support for comprehensive and well-balanced housing policy that assists both residents and property owners affected by the pandemic. It is the Administration and Congress' efforts thus far to provide robust financial assistance to households and businesses impacted by COVID-19 that have prevented widespread evictions and helped to ensure the continued viability of the rental housing industry.

Rental housing providers continue to work with their residents impacted by COVID-19 on rent repayment arrangements, waive fees and connect them with social service resources. Eviction moratoria interfere with these good-faith efforts and housing providers' ability to ensure they have enough rental income to manage their properties. Given the scope of renters who are eligible for eviction protection under the CDC order, it is critically important for robust emergency rental assistance to be made available moving forward.

We remain committed to working with the Administration and Congress to achieve these goals. Please do not hesitate to contact us about questions or if we can serve as a resource on housing policy issues.

Sincerely,

A handwritten signature in black ink, appearing to read "ASB", followed by a horizontal line extending to the right.

Greg Brown
SVP, Government Affairs
National Apartment Association

A handwritten signature in black ink, appearing to read "Cindy V. Chetti".

Cindy Chetti
SVP, Government Affairs
National Multifamily Housing Council