

Eviction Prevention Resource for Advocates Working with Public Housing and Voucher Tenants

In the National Housing Law Project's summer 2022 survey, attorneys from the Housing Justice Network reported an increase in eviction cases in HUD-assisted housing that surpasses pre-pandemic levels. Several factors contribute to this increase, such as the end of the CDC eviction moratorium in August 2021 and the dwindling down of emergency rental assistance and its related tenant protections. HJN members have warned of an increased threat of evictions for non-payment of rent in the public housing program in particular.

This advocacy resource is geared toward legal advocates who are working to keep public housing and voucher tenants stably housed and to prevent their evictions for nonpayment of rent, especially in this time of rising rents and inflation. The resource is divided into two sections. The first is focused on systemic advocacy targeted to public housing authorities, and the second is focused on eviction defense strategies to help individual public housing and voucher residents.

Advocacy with the Public Housing Authority

1. Advocate that PHAs apply directly for any remaining rental assistance for all tenants

Emergency rental assistance can help tenants by providing funds for rent arrearages and related tenant protections, such as a stay on evictions during the period that an ERAP application is pending. Public housing and voucher tenants qualify for the assistance if they are behind on rent and otherwise meet the local program qualifications. While many programs are closed or on hold, some programs are still accepting applications. To determine the status of your jurisdiction's ERAP program, consult the National Low Income Housing Coalition's [Emergency Rental Assistance Dashboard](#).

2. Advocate that PHAs adjust their utility allowance in light of the rising cost of gas

Advocates should ensure that their PHAs review and adjust their utility allowance schedule, as required by HUD regulations. If any individual utility rate has increased by 10% or more since the most recent adjustment to the allowances – a likely scenario given the rapid increase in the cost of gas in the first half of 2022 – the PHA must adjust its utility allowances. The adjustment must be effective the first day of the month following the month in which the rate change took effect.¹ For more information, see the following NHLP resources:

- [*Protect Subsidized Tenants from Rising Utility Costs*](#)
- [*Advocating for Higher Utility Allowances in Federally Subsidized Housing: A Practical Guide; and updated links to the guide's appendices*](#)

3. Advocate for PHAs to implement other policies to help tenants afford rent

Evictions should only be used as a last resort, particularly for public housing and voucher tenants who have the least resources to enter the rental market at this time of rapidly rising rents and inflation. Advocates should strongly argue that PHAs operate their public housing and voucher programs in alignment with these notions and advocate for PHAs and landlords to use the flexibilities afforded by

¹ 25 CFR 965.507 (2022).

HUD to help tenants afford rent. Advocates can make recommendations to their PHA anytime or more formally through the annual PHA plan process. PHAs can adopt the following flexibilities on their own and do not need a waiver from HUD.

a. Retroactive recertifications

Advocates should work with local PHAs to adopt an interim recertification rule with three parts. First, the rule should provide that, if rent is not paid when due during the emergency (and for a reasonable period thereafter), PHAs and owners should presume that the cause is a reduction in income and thus begin the recertification process. Second, the rule should allow tenants to self-certify their change in income using a variety of methods. Third, the rule should require PHAs to apply any decrease in rent due to loss of income to the month following the change in income, retroactively if necessary.

b. Minimum rents and financial hardship policies

Advocates should also work with PHAs to suspend minimum rents. As part of the ACOP, the PHA must establish a written policy on minimum rent, which can be any amount between \$0 to \$50. Public housing residents may be exempted from the minimum rent if they are experiencing a qualifying financial hardship. HUD regulations specify that one qualifying financial hardship is when a family would be evicted because it is unable to pay the minimum rent.² Other financial hardships include situations when the family has lost eligibility or is awaiting an eligibility determination for a Federal, State, or local assistance program; the family's income has decreased because of changed circumstances, including loss of employment; and a death has occurred in the family. The PHA may identify qualifying financial hardships other than those enumerated under HUD regulations, and they must be documented in the ACOP. Once a family paying minimum rent requests a financial hardship exemption, the PHA must suspend the minimum rent, effective the following month. For 90 days post-request, the PHA may not evict the family for non-payment of the minimum rent.

In addition to ensuring that these policies are in place, advocates should monitor whether PHAs are effectively and consistently communicating to families the availability of a hardship exemption from the minimum rent. Given the uncertain state of the economy, it is especially important for PHAs to take affirmative steps to engage with residents who might benefit from a financial hardship exemption from minimum rent. Potential communications strategies for PHAs include:

- Including the policies during annual reexaminations
- Engaging directly with families that possibly qualify for a hardship exemption
- Drafting a simple form for households to request a minimum rent exemption
- Developing an informational fact sheet or FAQ for families
- Developing a checklist for families to assess whether a hardship exemption is available
- Create a door hanger, flyer, or postcard to educate residents, especially those who are harder to reach

Advocates can also work with PHAs to ensure that all PHA staff understand and can effectively communicate the minimum hardship exemption with residents. For more on minimum rents, see HUD's

² 24 CFR 5.630(b).

training for PHAs: [HUD's Public Housing Minimum Rent and Hardship Exemption training](#).

c. Repayment plans

Advocates should encourage PHAs to implement a policy that includes repayment agreements if a tenant is behind on rent. Advocates can also help ensure that PHA staff understand that repayment plans are an option and that they are effectively communicating this option to public housing residents

Where a PHA has a policy that includes repayment agreements prior to eviction or subsidy termination, advocates should review their PHA's policy and determine whether the policy should be revised to maximize the PHA's flexibility in structuring the repayment agreement. For example, a PHA policy may limit the length of repayment agreements or require an initial lump sum payment. Revising a policy to remove unnecessary limits such as these would help public housing residents who owe larger amounts. HUD strongly urges PHAs and landlords to enter into repayment agreements with tenants in its [Eviction Prevention and Housing Stability Toolkit](#). Section 16 of [PIH Notice 2018-18](#) provides additional guidance on repayment agreements for public housing and voucher tenants.

4. Advocate with the PHA to increase local payment standards (voucher tenants only)

In recognition of the ongoing impacts of the Covid pandemic, HUD issued multiple waivers to PHAs in order to meet the needs of tenants, including waivers related to increasing payment standards. HUD published PIH 2021-34 (December 9, 2021) and PIH 2022-09 (April 11, 2022), "Streamlined Regulatory Waivers for the Housing Choice Voucher (including Mainstream and Mod Rehab) Program," authorizing PHAs to seek up to 120% of the FMR and SAFMR through December 31, 2022, upon the submission of a relatively simple justification request.³ The notice also allows PHAs to apply changes in payment standards immediately to participants, as opposed to applying the increase at their next annual recertification. This will protect *current* tenants experiencing sharp rent increases, above existing payment standards, and avoid eviction and/or displacement.⁴ In addition, the SAFMR rule allows flexibilities to PHAs to increase their payment standards above the basic range (90-110% FMR or SAFMR). These policies, taken together, allow greater flexibilities for PHAs to quickly revise payment standards and apply new, higher payment standards immediately to existing HCV tenants. For more on how PHAs can increase payment standards to make the voucher program more affordable to tenants, see NHELP and PRRAC's resource, [New Options to Increase Housing Choice Voucher Payment Standards](#), June 2022.

Advocacy on Behalf of Individual Clients

The following strategies can help give tenants more time to defend themselves in eviction

³ A PHA can email HUD to submit a waiver request. The email need only contain basic information including justification of good cause for the request. The good cause justification must include (a) why a PHA needs the waiver; (b) the impact on PHA operations or applicants if the waiver is not provided; and (c) the proposed waiver duration. Notice PIH 2022-09 @ 3.

⁴ Note that PHAs are also bound by the voucher statute to apply payment standard increases immediately to participants. The statute provides that when contract rent does not exceed the payment standard, the tenant pays up to 30% of his or her income in rent. *Compare* 42 U.S.C. § 1437f(o)(2)(A) *with* 24 C.F.R. 982.505(c)(4).

actions and ensure that their rent owed has been correctly calculated.

1. Determine whether the PHA provided the proper CARES Act 30-day notice

Public housing and voucher residents are entitled to a 30-day notice to vacate before they can be evicted for non-payment of rent. There are two main authorities for this requirement. First, the CARES Act imposes a 30-day notice requirement on public housing, vouchers, and other federally subsidized housing, and because this statutory requirement has no sunset date, it remains in effect. See 15 U.S.C. 9058(c). Second, HUD published an interim final rule in October 2021 that imposed a 30-day notice requirement on public housing (and project-based Section 8 housing) for the duration of a presidentially-declared disaster.⁵

Attorneys should enforce the 30-day notice provision in individual eviction defense cases. Unfortunately, HJN members have reported inconsistent enforcement of this provision by the courts. For a discussion on how to strengthen a case for noncompliance, consult NHLP's resource on [Enforcing the CARES Act 30-Day Eviction Notice Requirement](#).

2. Demand to see the rent calculation and a proper rent ledger

Advocates for tenants facing eviction for nonpayment of rent must make sure the rent has been properly calculated. The rules for calculating rent for HUD-subsidized tenants are complicated, often resulting in mistakes. Advocates should always demand to see the PHA's rent ledger to verify whether the alleged back rent is actually due.

Under the law of a number of states, an eviction notice is defective if it overstates the amount of rent due. If the rent has been improperly calculated and the error extends back to past months in which rent has been paid, the amount owed may be exceeded by the past overpayments. In such a case, the tenant can defend the eviction action on the ground that no rent is owed (because the current deficiency is offset by the past overpayments)⁶. In addition, if the tenant has a voucher, the family is not responsible for payment of the portion of the rent covered by the assistance payment from the PHA.⁷

3. Ask for a repayment plan for your client and assist with the emergency rental assistance application

Once the client determines what, if any, rent is due, advocates should request a repayment plan on behalf of a client and seek emergency rental assistance if the tenant does not have the funds to pay the back rent.

4. Refer client to bankruptcy to wipe out rent arrearages

Tenants, especially those in public housing, should consider filing for bankruptcy while defending an eviction based on nonpayment of rent. A bankruptcy case provides the procedural protection of an automatic stay of all collection actions against the debtor's estate, including any

⁵ See 86 Fed. Reg. 55693; 87 Fed. Reg. 10289 (Continuation of a National Emergency Concerning the Coronavirus Disease 2019 (COVID-19) Pandemic).

⁶ See *Peoria Hous. Auth. v. Sanders*, 298 N.E.2d 173 (Ill. 1973).

⁷ 24 C.F.R. § 982.310(b)(1) (2018)

eviction actions, as long as the bankruptcy petition was filed before the landlord obtains judgment of possession in the eviction action.⁸ The stay remains in place until the end of the bankruptcy case, unless the landlord obtains a relief from the stay from the bankruptcy court.⁹ For public housing tenants, the stay applies even if the PHA obtained a judgment pre-petition.¹⁰ In addition, a bankruptcy discharge may also provide a substantive defense to non-payment evictions from public housing. Section 525 of the Bankruptcy Code prohibits bankruptcy-based discrimination by government units against debtors.¹¹ Some courts have held that PHAs may not terminate a tenancy for nonpayment of rent that was discharged in a tenant's bankruptcy.¹² However, other courts disagree, holding that nothing in the bankruptcy code precludes a PHA from evicting based on unpaid rent, even if it was discharged.¹³ PHAs are clearly subject to Section 525.

⁸ 11 U.S.C. § 362(a)(1).

⁹ In re Baxter, 74 Collier Bankr.Cas.29 901 (Oct. 15, 2015)

¹⁰ In re Carpenter, 2015 WL 1956272 (Bankr. D. Vt. Apr. 29, 2015) (PHA may not enforce pre-petition eviction judgment based on non-payment of rent); In re Aikens, 503 B.R. 603 (Bankr. S.D.N.Y. 2014) (stay exception in 11 U.S.C. § 362(b)(22) does not apply to public housing because § 525 is more specific).

¹¹ 11 U.S.C.A. § 525(a).

¹² Stoltz v. Brattleboro Hous. Auth. (In re Stoltz), 315 F.3d 80 (2d Cir. 2002) (debtor-tenants whose unpaid prepetition rent was discharged are protected from eviction of said rent); Gibbs v. Hous. Auth. of New Haven, 76 B.R. 257 (D. Conn. 1983); In re Aikens, 503 B.R. 603 (Bankr. S.D.N.Y. 2014); In re Bain, 2010 WL 10489036 (Bankr. S.D. Fla. Apr. 20, 2010) (applying § 525 to management company for government-owned housing); In re Kelly, 356 B.R. 899 (Bankr. S.D. Fla. 2006); In re Day, 208 B.R. 358 (Bankr. E.D. Pa. 1997); Curry v. Metro. Dade Cnty. (In re Curry), 148 B.R. 966 (Bankr. S.D. Fla. 1992); Hous. Auth. of Erie v. Szymecki (In re Szymecki), 87 B.R. 14 (Bankr. W.D. Pa. 1988) (PHA may not circumvent § 515 by basing eviction on repeated delinquencies); Sudler v. Chester Hous. Auth. (In re Sudler), 71 B.R. 780 (Bankr. E.D. Pa. 1987).

¹³ Hous. Auth. of Pittsburgh v. Smith (In re Smith), 2014 WL 7016081 (W.D. Pa. May 20, 2014) (PHA would not violate § 525 for evicting tenant; § 525 did not apply to leases); In re Valentin, 309 B.R. 715 (Bankr. E.D. Pa. 2004) (PHA may evict for non-payment of rent, but PHA may not discriminate against tenant in the future, e.g. deny housing assistance, solely because of the bankruptcy); In re Bacon, 212 B.R. 66 (Bankr. E.D. Pa. 1997); Hous. Auth. of Pittsburgh v. Collins (In re Collins), 199 B.R. 561 (Bankr. W.D. Pa. 1996); Hous. Auth. of Decatur v. Caldwell (In re Caldwell), 174 B.R. 650 (Bankr. N.D. Ga. 1994); Hous. Auth. of New Orleans v. Eason, 12 So. 3d 970 (La. 2009).