Preventing a Public Housing Eviction Crisis during COVID-19

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The eviction crisis in the US is worsening with COVID-19, with a tidal wave of evictions coming through the courts. A specific type of eviction -- for people living in public and subsidized housing -- has been prevented so far because of federal emergency policies. But as these policies potentially expire this month, July is a crucial time for public housing authorities and national policymakers to protect public housing tenants from displacement.

During the COVID-19 pandemic, national policy-makers have created emergency relief measures to protect tenants living in public housing and federally subsidized housing. The CARES Act, passed in late March 2020, included protections against evictions, late fees, and other penalties for these tenants. Additionally, HUD encouraged local housing authorities to relax the usual requirements that these tenants must go through in order to prove what their income is, or to apply for a rent decrease.

In the coming several months, however, these temporary protections are set to expire. Tenants in public housing and federally subsidized housing may face an ‘eviction cliff’ at the end of the summer, when rent becomes due, protections end, and their financial situation has been undercut by the larger economic collapse. This is a key moment for city leaders, public housing authorities, and national policy-makers to create a strategic bridge from the emergency policies that are set to expire in July, and a ‘new normal’ afterward.

This piece highlights the major areas for strategic policy-making around public and subsidized housing after the CARES Act protections end, and best practices that housing authorities may use to ensure that residents, neighborhoods, and cities don’t face a worsening housing crisis in 2020 and beyond.

The first wave of emergency protections
The CARES Act mandated a temporary eviction moratorium for tenants living in federally subsidized housing (including public housing tenants and tenants with housing choice vouchers (HCV)).

Under the CARES Act Section 4024, tenants who live in subsidized housing are still obligated to pay rent as usual. However, their landlords cannot file a court action to evict public housing or HCV tenants for non-payment of rent until July 24th, 2020. Landlords also cannot charge any fees associated with nonpayment of rent between March 27th and July 24th. This temporary respite is just that: temporary.

Roughly 40 million Americans have lost their jobs since the start of the pandemic. For many tenants in public housing, unless their local housing authority lowers their rent, they will face an eviction notice as soon as the moratorium ends on July 24th.

Tenants in public housing and HCV tenants pay rent set at 30% of their income. Their income and rent are calculated by their local Public Housing Authority (PHA). Tenants who suffer a loss of income normally go through “recertification,” a process to alert the PHA to their change in income and to adjust their rent. Under normal circumstances, tenants whose income drops due to loss of employment or death in the family can go in person to their landlord or rental office to recertify their income. The PHA will reset their rent at 30% of their new income. If the tenant has no income, they must pay the minimum rent amount that has been set by their local PHA. Tenants who have a hardship may request an exemption from paying minimum rent, which would temporarily reduce their rent to $0 for the duration of their hardship, as determined by the PHA. However, all tenants over the age of 18 who are not working or disabled are required to engage in a certain number of hours of monthly community service.

In non-emergency times, Congress and HUD impose strict requirements on how PHAs go through this income recertification and exemption process. PHAs are required to verify tenant claims of lost income with third party verifications and other documentation, such as pay stubs, employer notice of termination, and unemployment monetary benefit notices. Tenant declarations are usually only allowed as a last resort when no other method of verification is possible.

1 Please note that some states are interpreting this date to be July 25th, giving an extra day to the protections.
Since the passage of the CARES act, HUD has set policies that ease the typical burdens on PHAs and tenants, when it comes to the income recertification process. On April 10th, 2020, HUD waived the third party verification requirement and allowed PHAs to consider a tenant’s declaration (by phone, mail, or email) as the highest form of certification. This substantially lowers the administrative burden that tenants must bear, to have their rent adjusted due to a loss of income. HUD also waived the community service requirement for every household up until the date of the household’s next income recertification.

Additionally, the CARES act provided $3 billion in supplemental funding to help PHA’s make up the difference between their fixed operating costs and their likely reduced rent collection. Congress has provided $1.25 billion for Tenant-Based Rental Assistance (which funds the Housing Choice Voucher program) and $1 billion for Project-Based Rental Assistance to maintain normal operations and take other necessary actions to meet the needs of residents and owners. This emergency aid can support the PHAs and the tenants during the economic collapse brought on during the pandemic. Even as tenants pay less (or no) rent due to reduced income, the PHAs will be supported with this emergency aid.

The need for more strategic policy now

Even as Congress, HUD, and local public housing authorities have been working to stave off evictions and problems for tenants during the first months of the pandemic, the temporary nature of the current protections may lead to a worse crisis in the coming months. Many public housing and HCV tenants are at risk of eviction for nonpayment of rent due to COVID-19.

Problem 1: Effective communication with tenants about their protections and obligations. PHAs have faced challenges in notifying tenants of their rights and obligations. Housing Authority offices in many states have been closed, making it difficult for some tenants to get information and clarification from property managers and housing specialists. Tenants who lack internet or phone service face additional barriers to receiving information, especially given that public internet access sites such as libraries have closed as well. Tenants who cannot read english (whether due to language barriers, disabilities, or lack of education) are especially likely to be confused in the absence of clear communication. As a result of these unprecedented challenges
tenants may believe that their obligation to pay rent has been relieved. These tenants may face eviction when the moratorium ends for failure to pay rent. There is a need for policy-making and service design now, to combat misinformation about tenants’ protections and their upcoming obligations.

**Problem 2: Inconsistent implementation of lighter-burden income recertification processes.** HUD’s emergency waivers related to recertification are optional, not mandatory. Some PHAs may still refuse income recertifications from tenants who do not complete the typical process (with its high administrative burdens of documentation and third party verifications), even though that process is not feasible for tenants who don’t have access to their rental offices, the internet, or copy machines because of the current health crisis.

Whether due to lack of notice, or administrative challenges, tenants who suffered a loss of income in March, April, or May could be delayed in applying for recertifications. As rental offices and public libraries begin to reopen, these tenants will eventually be able to recertify, but they may already be multiple months behind on rent before that occurs. Since PHAs generally do not apply their recertifications retroactively, these tenants will all be subject to eviction for nonpayment of rent.

These two key problem areas require immediate action from housing authorities and city and national leaders who are interested in preventing a worsening of the housing crisis in the coming months.

**Best practices for PHAs to take:**

1) PHAs should proactively reach out to all tenants who fail to pay rent during the months of April, May, or June and ensure that they understand their rights and obligations under the moratorium, including their obligation to pay rent, their ability to decrease their rent if they have lost income, and their right to a hardship exemption from minimum payments.
   a) PHAs should attempt a variety of notice methods such as mailing or posting notices. Written notices should be written in plain language and translated into different languages that are common in their neighborhoods.
   b) There are resources for designing effective communication from places like the Simplification Centre and Stanford’s Legal Design Lab. PHAs should invest in effective visual and language communication, following benchmarked standards and examples.
2) PHAs should all implement PIH Notice 2020-05 to make it as easy as possible for tenants who have lost income to recertify by phone, email, mail, or online, and ideally by making all of these options available.
   a) The Minneapolis Housing Authority was quick to implement a simplified online form, that can offer one example.
   b) The D.C. Housing Authority is expediting recertifications via phone or email, to provide multi-channel opportunities for tenants who have different communication access.
3) PHAs should make income adjustments back to the date the loss of income occurred, rather than the date of the recertification request. HUD should make this a mandatory policy for all Housing Authorities.
4) PHAs should follow the New Haven Housing Authority and establish a clear policy of waiving the Community Service and Self Sufficiency Requirement until March of 2021.

**Bottom Line: Why Action is Needed Now.**

If these measures are not taken, we may see a massive surge in evictions from public housing after the CARES Act moratorium ends in July. This is a consequence that is entirely avoidable given the funding which Congress has already provided, but only if the gaps in the current policies are speedily corrected. Some housing authorities are already seeing high numbers of tenants who have failed to pay their rent during the months of the moratorium. If PHAs wait until the end of the moratorium to inquire into tenants ability to pay rent and loss of income, it will be too late. By then, tenants who misunderstood the moratorium will likely not have enough money saved to pay back rent. Also, those who were delayed in recertifying their incomes will be unable to pay for back rent as well.

Congress has provided $3 billion of funding to help PHAs prevent evictions. If PHAs proactively reach out to tenants and allow them to retroactively apply for rent decreases, they can cover their expenses through these funds. If these funds are insufficient, then PHAs should seek to make that determination immediately in order to support advocacy for increased funding from Congress. If they wait until after the moratorium or expect tenants to depend on rent relief from other sources, they will likely never receive the funds they need.

The time to act is now.