

MEMORANDUM

Date: March 8, 2021

To: Marisa A. Zapata, PhD
Director, PSU-HRAC

From: Lauren E. M. Everett
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Subject: Updates on COVID-19 and disaster response, housing, and people experiencing homelessness nationwide, March 1-7.

News

1. In [Oregon](#), several state legislators have proposed legislation to decriminalize homelessness. The Right to Rest Act would prohibit law enforcement and other personnel from harassing, arresting, or citing people for occupying public spaces.
2. In [Los Angeles](#), Council Member Mark Ridley-Thomas sponsored a motion to establish a “Right to Housing” in the city. This would entail that the government provide “a robust and responsive spectrum of solutions to prevent and address homelessness.”
3. A new report from the Consumer Financial Protection Bureau estimates [11 million households are at risk of eviction](#). Black and Latino households are more than twice as likely to be behind on rent as White households.
4. In [Newark, NJ](#) the city is preparing to sell 100 of its lots as part of a newly formed land bank. The goals are to address urban blight, revitalize the urban core, and increase home and property ownership for marginalized residents.
5. The Department of Justice plans to appeal the recent decision of a Texas district court, which [found the CDC’s eviction moratorium invalid](#). The decision does not apply beyond the plaintiffs in the case, and the moratorium is still in place. Nevertheless, the ruling creates a situation in which [landlords may cite this ruling](#) as they pursue evictions.
6. After an eight month moratorium, evictions are being carried out again in [San Francisco](#) after starting in November 2020. More than half (18) involved tenants in permanent supportive housing, which serves some of the city’s most vulnerable residents. Meanwhile, city supervisors approved an emergency ordinance calling for the city to [increase the number of hotel rooms](#) being provided to people experiencing homelessness from 1,800 to 2,200.
7. The U.S. House of Representatives approved the [For the People Act](#), which includes a requirement that federally-subsidized housing providers include voter registration documents to tenants with their initial lease, and again with annual income recertifications.
8. While [\\$25 billion in rental assistance](#) was approved two months ago, little of it has been distributed to tenants and landlords. State and local governments have been waiting for the

Treasury Department to finalize the program's rules, and distribution is expected to pick up in the coming weeks with the release of their new guidance.

9. After the Los Angeles Homeless Services Authority called off its annual Point In Time (PIT) Count, housing justice activists in [El Sereno](#) conducted their own survey of homelessness in the neighborhood.

National Low-Income Housing Coalition (NLIHC) weekly call and updates (March 1)

Ingrid Gould Ellen and Brittany Muscato, NYU Furman Center: We're releasing [a policy brief](#) called *Advancing Racial Equity in Emergency Rental Assistance Programs* in collaboration with the Housing Initiative at Penn and the NLIHC. The data that we're drawing on is the survey we conducted of over 200 programs across the country. We released a report drawing on this data previously. The first lesson we learned in this new report is:

1. Ensure program funding is allocated based on need. The Treasury allocated assistance to states based on total population and not renter population, which created a mismatch between need and availability of funding. In New York for example, New York City received far less of the state funding than their share of renter population.
2. Target and prioritize assistance to vulnerable groups. This includes adopting additional priority criteria, prioritizing small landlords, and avoiding a first-come, first-served process. In Harris County, Texas applications were chosen by a lottery system and were prioritized by: a.) Ineligibility for unemployment assistance, and b.) Applications that come from prioritized census tracts, which received a 50% increased chance of being selected.
3. Invest in outreach and targeting. Many localities invested in creative strategies for reaching difficult to reach populations. Many relied on trusted community partners, and chose to work with organizations who have ties to renter populations that have been more challenging to reach.
4. Simplify applications and documentation. More substantial documentation requirements were correlated with incomplete applications, so ensure that the application process is inclusive, clear, and accessible. Be mindful of documentation requirements that will exclude vulnerable renters, such as needing a written lease or proof of income. The City of San Leandro & Oakland produced materials in Spanish, offered applicants different options for completing the application, and also allowed self-certification.
5. Monitor and make mid-course corrections. Collect and monitor both process and outcome data broken down by demographic categories, and be prepared to change the process and criteria based on how well the program is meeting its goals. Many households were already facing affordability challenges prior to the pandemic, and COVID emergency assistance will not fully address that, but

we hope some of the lessons learned here will help localities make their programs as effective as possible.

Q: Does prioritizing zip codes with a majority of minority residents disadvantage people of color who have moved to majority White neighborhoods?

A: Neighborhood targeting is a proxy so you don't want to target 100% of your assistance in this way. In Harris County these zip codes were weighted 50% more, but some localities have allocated a portion for these zip codes. I'm not a lawyer so I think directly prioritizing by race may run into some legal challenges, so prioritizing by eligibility for unemployment assistance and zip code etc. can serve as a proxy, to meet equity goals. Working with nonprofit partners who have ties to these communities is another way to target these communities.

Q: Have you found a correlation between landlord requirements and concessions and take up rates for the program?

A: The programs with the most onerous landlord requirements did seem to see less take-up, while more minimal concessions didn't seem to have an impact. You can read about this in the first report.

Noel Poyo, Deputy Assistant Secretary for Community Economic Development, Department of the Treasury: The day before the inauguration, the Trump administration released a new FAQ, so there was an urgent need to get something published that reflects the Biden administration's policy position. I think a lot of people read these FAQs and see gaps in what's been addressed, so we will be moving towards full guidance. Even in advance of that it's clear that some things urgently need to be addressed, so we might be making some small edits first. A lot of questions we've been getting are around being more specific about certain things. One of the challenges we're facing is that the housing market has changed a lot with the pandemic, so I think we have to be careful about prescribing too narrowly, so our local grantees can be more flexible as needed. You'll see lots of language about how to balance access for vulnerable populations, and our concern about fraud. This concern is data-based, and fraudsters like to target these kinds of programs. We're trying to create for grantees a reasonable and defensible set of guardrails so we're both getting the money to those who most need it, and in a credible way that protects against fraud. The biggest issues were around documentation, so we want to make sure we're really clear that grantees have flexibility in allowing self-attestation, while not making that the go-to. We will also be providing more clarity around other housing related expenses, such as internet and legal services.

Q: How will the funding for administrative fees be split? The text of the statute is a little confusing, and we're reading it as setting aside two pots of money for this. The Trump administration interpreted that differently.

A: There's a practical consideration here, and we'll address this in another release. If a second round of emergency assistance passes, this issue may be resolved significantly because there will be more dollars to address each of these pots you mention. Though the 'two pots' isn't the plain reading of the language, it seems to be a reasonable interpretation.

Q: Is there any reason for us to think that serving undocumented tenants is not permitted? What is the Department of Treasury's stance?

A: The statute does not speak to this matter, as you said. I think many folks on this call are familiar with the complicated legal issue here. We are unlikely to preempt the decisions of local grantees here. If there are grantees who feel like the right thing to do is exclude this population we're unlikely to change their mind. So I think this is likely to be an issue where pushing federal lawyers to land on a decision here ahead of it being taken to the courts might be a tall order. So I think these are decisions that are going to be made on a local level. When we add additional questions to the FAQ this is probably not going to be in there.

Q: It says that attorney fees are an allowable expense, but Legal Aid attorney's don't usually charge, so can you explain that?

A: I don't think we were trying to parse things in a detailed way, but rather to clarify the intent that the funds can be used in that capacity.

Q: Are households who are homeless and doubled up able to be served with emergency rental assistance?

A: We didn't address situations like subleasing and that's a challenge. We're going to see these things structured differently based on local market conditions and what localities are seeing. In general we expect these things to be resolved by grantees. In this case there may be language in the statute where it's implicated, so we'll be looking at it. In the case of being doubled up, the statute does allow for future rent payments if there's an expectation of payments, so that could apply to people in a situation where prospective payments would help someone get out of homelessness. There would have to be arrearage payments made though, if applicable, to access the funds for future rent.

Q: Are mobile home owners who rent the lot where their home sits eligible for these funds?

A: There's a bit of a complicated question we're working through.

Q: How about someone staying at a hotel who owes rent?

A: To my knowledge quite a few people in this situation are getting other federal support like from FEMA, so we have to be careful not to duplicate funds. That said, it sounds like we have to clarify this, though it doesn't sound like localities would be going out on a limb to interpret this living situation as a rental obligation.

Diane: To clarify, we're not talking about noncongregate shelter programs, but households staying in long-term hotel living arrangements.

Noel: And we'll be seeing a lot of that in Texas, but yes we will be addressing that question.

Diane: We at the NLIHC with our broad network will be putting together suggestions where additional guidance is needed and how we recommend it be resolved.

Q: What is the timing for releasing this?

A: We're not committing to a timeline publicly, and part of this is because we're getting this all stood up and moving as fast as we can.

Barbara DiPietro, Senior Director of Policy, National Health Care for the Homeless Council:

Here are our policy and practice recommendations for people experiencing homelessness. There are more people experiencing homelessness than people in nursing homes, but that population has had the most attention. The reality is that many unhoused people don't even live into old age, so they won't be eligible for the vaccine if that's the criteria. All adults experiencing homelessness should be eligible in an early tier. Additionally, all localities should be tracking race and ethnicity to meet equity goals, and should course-correct their plan if needed. Finally, I know the Johnson & Johnson vaccine was just approved but that might be a month before its available and we don't want this population to have to wait.

FOUR POLICY & PRACTICE RECOMMENDATIONS

1. Immediately **make all adults experiencing homelessness an eligible population** for Phase 1B or 1C distribution (similar to [DC](#), [MA](#), [MN](#), and [Baltimore](#)).
2. Immediately **require race/ethnicity data** be reported for every vaccination, rigorously evaluate that data for inequities, and **create corrective plans of action** if needed. **Add housing status** to tracking systems and [report data](#) to our data dashboard with CDC (similar to [MN](#), which is able to regularly evaluate impact on this population).
3. In collaboration with state and local health authorities, all states should **allow homeless health care providers more flexibility** to deliver vaccines to smaller, more targeted settings. Likewise, allow health centers participating in the [HRSA vaccine program](#) more flexibility to reach target populations.
4. All states should immediately prioritize homeless populations and use currently available vaccines. There is **no reason to delay care** or wait for another vaccine.



 **NATIONAL HEALTH CARE for the HOMELESS COUNCIL**

 **TWO ACTIONS:**
Advocate with your state/local for priority status
[Sign on to our letter](#) to Governors & Health Officers by **Friday, March 5!**

Eric Dunn, Director of Litigation, National Housing Law Project: We had some pretty bad news toward the end of last week, where a US District Court judge in Texas ruled that the CDC eviction moratorium is unconstitutional. There have been a number of cases against the order and they have all been found in favor of the CDC, so this is the first one to rule against. The CDC is authorized to do everything necessary to control the spread of disease if localities aren't doing enough, and that's what rulings have been based on. This case in Texas says that Congress didn't have the power to stop evictions, let alone the CDC. It's a pretty extreme ruling because the court looked at the CDC order itself rather than what gives Congress authority in this realm, so it's an outlier case. The

department of Justice has already filed an appeal. It only affects the plaintiffs in the case, and doesn't include an injunction, which would apply to all renters and landlords in Texas. We put a memo on our site that analyzes this in detail. I think there are going to be a lot of tenants who are confused, and it also might be difficult for advocates to advise tenants because there might be other local judges who will agree in their interpretation in court. So I think this is going to create a problem for people until if/when the Appellate Court strikes it down.

[NLIHC's statement here.](#)

Q: Now that the DOJ has appealed, does that increase the risk of the Texas judge issuing an injunction? It sounds like he said he would if the government won't honor his ruling. What are the immediate next steps in that event?

A: It's not clear what the judge meant by that. The CDC order authorizes very serious criminal penalties for those who defy it. It's difficult to predict what would need to happen before we see what the Texas judge does. For anyone who's followed the rulings during the Trump administration, the court would issue a 'stay' of execution while the decision was pending, so it doesn't take effect immediately.

Marc Jolin, Director, Joint Office for Homelessness Services, Multnomah County, OR: Our community (Portland area) experienced an extreme weather event over the week after Valentine's Day. The depth of snow and the cold were unusual and severe for us. For context we have about 4,000 people experiencing homelessness on a given night (not including doubled-up). With COVID we've seen some increase in the total number of people outside, but what we've really been seeing is that people have organized themselves into encampments. Running large congregate shelters this year has been challenging and our partners have had to double space to account for distancing requirements. It has also been difficult to replace volunteers as we rely heavily on that labor. Prior to the weather event we expanded the number of outreach volunteers. One of the major challenges here is that it's difficult to persuade people to leave their camps and their things. We created a large severe weather shelter in our convention center and provided rapid testing to everyone at the door. There was concern we would be screening people out if they had cold symptoms so testing was important. We also maintained rooms in our isolation hotel for anyone who tested positive. For people who didn't want to come into congregate shelter we hosted a parking garage shelter that was used by about 200 people, and we used propane heaters and distributed tents and sleeping pads. No one tested positive and the system worked reasonably well.

Other resources:

1. The Urban Institute's webinar, [Promoting Equitable COVID-19 Vaccine Distribution in the Greater DC Region](#), will be held March 23.
2. The National Homelessness Law Center and the National Alliance to End Homelessness collaborated on two memos. The first provides an overview of laws and policies that pertain to [consumers](#), and the second to [frontline employees](#).

3. The CDC recently updated its vaccine guidance to include prioritization for [people living in congregate settings](#).