

# MEMORANDUM



Robin Carter, Chairperson, Board of Commissioners | Janet Abrahams, President | Chief Executive Officer

To: The Honorable President and Members of the Baltimore City Council  
c/o Natawna Austin, Executive Secretary

From: Janet Abrahams, President and Chief Executive Officer

A handwritten signature in black ink, appearing to read "J. Abrahams".

Date: February 9, 2021

Re: City Council Bill 21-0021 Baltimore City Late Fees for Past Due Rent

The Housing Authority of Baltimore City (HABC) has received the referral for comment on City Council Bill 21-0021, an ordinance concerning Late Fees for Past Due Rent, and submits the following comments on those provisions that impact HABC and the residents that it serves.

The proposed legislation seeks to: (1) require landlords to include a lease provisions that provides a 10-day grace period to tenants for payment of rent before a landlord may assess a late fee and limits the amounts of the late to 1% each day up to 5%; (3) provide limitations on when landlords may charge tenants receiving certain public assistance for late fees; (4) limit conditions precedent to the tenant's right to redeem a warrant of restitution; (5) allow landlords to recover certain costs if a tenant has had three judgments in favor of the landlord for nonpayment of rent within 12 months of redeeming another warrant.

HABC agrees in part with the intent of the proposed relief except as discussed below.

## **HABC Information**

HABC provides federally funded affordable housing programs and related services for Baltimore's low-income households. Through the Public Housing and Housing Choice Voucher (HCV) programs, HABC serves approximately 43,000 residents, including some of the city's most vulnerable populations such as the elderly, persons with disabilities, veterans and families with children. HABC provides affordable housing through conventional public housing developments, scattered site public housing units and the HCV program. HABC-supported residents live in every zip code in Baltimore City.

HABC provides direct rental assistance to Baltimore residents either as the landlord of public housing, or by making housing assistance payments (HAP) to private landlords under the HCV program. – any tenant receiving rental assistance under these programs would qualify as receiving "public assistance," though rental assistance is not specifically mentioned in the bill. For public housing, rents are based on household income and is capped at 30% of the household's adjusted gross income. In the HCV program,

Housing Authority of Baltimore City | 417 East Fayette Street, Baltimore, MD 21202

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a participant's contribution towards rent is also capped at 30% of the household income and the difference is made up in a direct HAP by HABC to the landlord. If a household reports a decrease in income the rent also decreases, and the tenant portion of rent can be as low \$0.00

### **Low Income Public Housing**

As allowed by HUD, HABC's public housing lease provides that rent is due on the 1<sup>st</sup> of each month, and if it is not paid by the 5<sup>th</sup> day of the month, a late fee of 5% of the monthly rent will be assessed on the 6<sup>th</sup> day. Despite this language HABC does not charge late fees for past-due rent, therefore, these sections of the proposed additions to the Baltimore City Code would not impact Public Housing residents at this time. However, HABC plans to initiate late fees in the future as an incentive for residents to pay rent when it is due. Extending the grace period for rent payment before assessing a late fee to 10 days would negatively impact HABC negatively for reasons discussed below.

The average rent in HABC's public housing is approximately \$250.00, so a 5% late fee would be \$12.50. While this is average, rents in public housing (and in HCVP) are determined by the household income and capped at 30% of allowable income. A zero rent for a zero-income household would mean a zero late fee.

HUD requires that HABC provide a 14-day notice of lease termination for late rent before pursuing any legal action for failure to pay rent. Notably, since the onset of the COVID-19 pandemic HABC has not sent 14-day lease termination notices or filed failure to pay rent complaints. However, prior to the pandemic, HABC's practice was to send the 14-day notice on or about the 6<sup>th</sup> day that rent is past-due, giving the tenant 14 days to become current on his or her rent and then file the complaint if rent was not paid by then. In essence, the resident receives an additional 14-day grace period before legal action is taken for failure to pay rent, during which time the resident has been informed of the need to satisfy the monthly rent obligation.

Moving the grace period to 10 days means that the required 14-day notice cannot be sent until after the 10<sup>th</sup> and the filing for failure to pay rent complaint would carry over into the following month given that HABC allows an additional 3 days for mailing. HABC believes that this would: (1) introduce even more confusion into the process and communication with residents about their obligations; (2) undercut HABC's efforts to prevent poor rent payment habits; and (3) possibly create more rent delinquency that could lead to more evictions.

### **Housing Choice Voucher Program (HCVP)**

Tenants who participate in the HCV program, where HABC makes Housing Assistance Payments (HAPs) directly to landlords on behalf of HCV program participants based on a lease between the participant and the private landlord. The lease provisions envisioned by the proposed legislation would have to be incorporated by the landlords in their leases with their tenants. As such, the landlords who participate in the HCV program would be bound by any changes to the Baltimore City Code and this would not be an issue for HABC.

HABC supports these changes applying to private landlords as it would be beneficial for our HCV program participants.

### **Residential Lease Requirements**

HABC uses a lease based on language specified by the United States Department of Housing and Urban Development (HUD) for public housing residents. As such, local mandates for inclusion of lease provisions are problematic for the Housing Authority, if they conflict with HUD's provisions. Local mandates that are not inconsistent with HUD requirements can be achieved by a separate lease addendum rather than creating a new lease altogether. Moving the grace period to 10 days would not be contradictory to HUD regulations however a certain portion of the proposed legislation, Section (A-2)(2) V would violate HUD regulations as discussed below.

### **Sections (A-2)(2)(III) through (VIII)**

For these sections, HABC notes the following:

- (III) HABC rental assistance is never provided with weekly rental installment provisions in its leases.
- (IV) HABC believes that this section is already addressed by HUD regulations governing public housing authorities, and in any event, may already be prohibited by state law in Maryland.

(V) This section would allow landlords to require tenants to pay costs and charges that have not been awarded by the court and would be prohibited by HUD regulations and HABC. This section is somewhat contradictory to the preceding subsection (IV) and also appears to be inconsistent with State law by providing landlords additional rights that limit tenants' rights of redemption.

(VI) through (VIII) HABC already operates in a manner that adheres to these requirements, either through HUD mandates or through approved procedures.

### **Exclusion of Federally Subsidized Rental Assistance**

HABC believes that the protections afforded by HUD for renters in either public housing or HCV program provide safeguards in place that do not exist for market rentals, even at lower income levels.

HABC believes that Section (2)(II) is problematic insofar as there are various causes for late payment of rent.

HABC believes that federally subsidized rental assistance (like the programs offered through HABC) should be exempted from these provisions. HABC recommends either specifically exempting HABC, the public housing authority authorized to provide these services in Baltimore City, or exempting “programs that provide federally-subsidized rental assistance.”

In conclusion, HABC will continue to use its federal funding to serve the residents of Baltimore by providing affordable housing opportunities to those with the lowest incomes.