

Section 8 Voucher Overview December 2015

KEY COMPONENTS OF THE SECTION 8 VOUCHER PROGRAM

- **Number of Units and Characteristics of Families:**
 - 2.1 million vouchers nationwide
 - 47% are households with children; 22% are elderly; 28% are households with a disabled adult;
 - 48% headed by African-Americans; 15% headed by Hispanics/Latinos
 - 83% of voucher families are making less than \$20,000 per year.
 - Information such as the above is available nationally, by state, or by public housing agency (PHA) on the Center for Budget and Policy Priority's website at <http://www.huduser.gov/portal/datasets/picture/yearlydata.html>
 - Information on the number of vouchers allocated to a local PHA is stated in the PHA Plan, available locally and is also posted on the HUD website for each PHA.
 - The Center on Budget Policy and Priorities publishes Housing Choice Voucher Fact Sheets for national and state data:
<http://www.cbpp.org/research/housing/national-and-state-housing-data-fact-sheets>

- **Ownership**
 - Tenants receive a voucher from a PHA and find a willing landlord. That landlord is typically a private landlord with no other federal assistance. However, it is possible that the landlord does receive other federal assistance, such as tax credits.

- **Parties Involved and Their Roles**
 - Congress appropriates funds for an administrative fee and housing assistance payments for the Housing Choice Voucher (HCV) program. HUD allocates the funds, the PHA administers the program locally, and the tenant finds a willing landlord who agrees to accept the voucher. The PHA determines if the unit meets the Housing Quality Standards (HQS), whether the rent charged for the unit is reasonable and if lease contains required addendum. PHA enters into a contract with the landlord.
 - PHAs administer the voucher program.
 - A PHA is created by local and state enabling legislation.
 - Most PHAs are governed by a Board of Commissioners (there are some exceptions).
 - The jurisdiction of a PHA can be statewide, countywide, citywide or by other geographical or political area.

- Voucher tenant(s) must serve on the Resident Advisory Board (RAB) that the PHA must consult with regarding the PHA 5 Year and Annual Plan

KEY REGULATORY FEATURES

- Federal statute, regulations and forms.
 - Statute: 42 U.S.C.A. § 1437f(o).
 - Regulations: 24 C.F.R. Part 982 (comprehensive regulations for the voucher program).
 - 24 C.F.R. Part 5 (General HUD Program Requirements which may also be applicable to other low income housing programs).
 - HUD, Voucher Program Guidebook, 7420.10G (April 2001), available at http://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/programs/hcv/forms/guidebook
- HUD Notices and Forms (available on HUD's website)
 - Form HUD-52641 Housing Assistance Payments Contract (HAP Contract) Section 8 Tenant-Based Assistance Housing Choice Voucher Program (08/2009) (contract between PHA and the landlord).
 - Form HUD-52641-A, Tenancy Addendum, Section 8 Tenant-Based Assistance Housing Choice Voucher Program (08/2009) (lease addendum between the landlord and the voucher participant).
 - Form HUD-52646 Voucher Housing Choice Voucher Program (7/2000)
- Locally developed rules, policies and contracts:
 - PHA 5-year and Annual Plan is developed locally and must be available locally. http://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/pha; *see also* 24 C.F.R. Part 903; form HUD 50075; HUD, PHA Plan Desk Guide
 - Section 8 Administrative Plan, 24 C.F.R. § 982.54. This document is sometimes attached to the PHA Annual Plan.
 - In addition to the Lease Addendum mentioned above, the tenant may also sign the landlord's lease.

FINDING THIS HOUSING IN YOUR COMMUNITY

- PHA must maintain a list of landlords that participate in the voucher program. The list must cover areas outside of poverty or minority concentrations. 24 C.F.R. 982.301(b)(11).
- HUD as part of the effort to affirmatively further fair housing has created a prototype geospatial tool which provides information on the location of HUD assisted housing including the location of units with vouchers.
http://www.huduser.org/portal/affht_pt.html#dataTool-tab

TIPS FOR DETERMINING WHAT KIND OF HOUSING IS INVOLVED

- Tenant was given a voucher by the PHA
- Tenant had to find the unit and a willing landlord.
- PHA annually inspects the unit and conducts annual rent recertification.
- Landlord is most often a private landlord without any other federal assistance.
- Look up the property in the National Housing Preservation Database, administered by the National Low Income Housing Coalition: <http://preservationdatabase.org/>

RELATED SUBPROGRAMS OR SET-ASIDES FOR SPECIAL USES

- There are many types of voucher programs that are targeted to families with special needs, such as Welfare to Work, Family Unification, Mainstream, Designated Housing, Enhanced Vouchers, Tenant Protection Vouchers and VASH (Veteran Affairs Supportive Housing). With the exception of Enhanced Vouchers, Tenant Protection Vouchers and VASH, PHAs apply for these special programs by responding to Notice of Funding Availability (NOFA) announcements. The PHA Annual Plan should list the special voucher programs administered by the local PHA. These vouchers are in addition to the PHAs basic allocation of vouchers. For some of these programs, if the voucher is returned it must be reissued to a family that meets the criteria of the sub-program
- At the local level, the PHA may opt to have a voucher homeownership program, permitting voucher payments to enable a family to purchase a home. 42 U.S.C.A. § 1437f(y); 24 C.F.R. § 982.625 et seq.
- A PHA may also opt to have a project-based voucher (PBV) program. The PBV is attached to the unit, but tenant may move with a housing choice voucher after first year. The owner retains the PBV assistance for the unit. 42 U.S.C.A. § 1437f(o)(13); 24 C.F.R. part 983.

MAJOR APPLICANT AND TENANT ISSUES FOR VOUCHER PROGRAM

ADMISSIONS

- **Generally**
 - The admission process for a voucher applicant is divided between the PHA and a landlord. The PHA creates a wait list, conducts eligibility review and screens for certain criminal history and may do more extensive screening. The landlord may also screen the voucher tenant. Aside from the federal civil rights laws, there are no special federal rules governing the landlord regarding the admission of a voucher tenant, except that certain federally assisted landlords may not discriminate against voucher holders and some states or localities have similar nondiscrimination laws.
- **Waiting list**
 - PHA maintains a list of applicants.
 - List for voucher applicants may be combined with public housing lists.

- How lists are created is determined locally. Lists may be developed through lottery process. For example, 18,000 applicants apply and a wait list of 3,000 is created by lottery.
- Vouchers are issued for various bedroom sizes depending on the size and needs of the family.
- **Eligibility**
 - Income: Low Income (80% of Area Median Income (AMI) or Very Low Income (50% of AMI). 42 U.S.C.A. § 1437(o)(4).
 - Targeting: 75% of all new admissions must be families with Extremely Low Incomes (ELI) (30% of AMI). 42 U.S.C.A. § 1437n(b).
 - The AMI for each jurisdiction is updated annually and available at <http://huduser.org/portal/datasets/il.html>.
 - Restrictions on Assistance to Non-Citizens: In general a family must have one member of the household who is a citizen or who has eligible immigration status under one of the categories set forth in 42 U.S.C.A. § 1436a(a). If any members of the household are not citizens or lack eligible immigration status, the assistance for the family is prorated. *Id.*; 24 C.F.R. §§ 5.500–5.528.
 - Social Security Number (SSN): A SSN is required. But, individuals in mixed immigration status families, who are not claiming to qualify for subsidy, are exempt from SSN requirements. PIH Notice 2012-10.
- **Preferences**
 - PHAs may adopt local preferences for applicants. For example, preferences for families whose head of household and/or other adults are working (which preference also must include families whose head of household is elderly or disabled to avoid discrimination against protected classes), residency preferences, preferences for victims of domestic violence, and families who are homeless or threatened with homelessness. 42 U.S.C.A. § 1437f(o)(6)(A); 24 C.F.R. § 982.207. Any preferences should be included in the Section 8 Administrative Plan, a supporting document to the PHA Annual Plan. The PHA may have no preferences.
- **Screening**
 - Standards: PHA may not discriminate because members of family are unwed mothers, recipients of welfare or have children born out of wedlock. 24 C.F.R. § 982.202(b)(3).
 - Criminal activity: PHAs must screen and reject applicants for certain criminal behavior including: if any household member has been evicted from federally assisted housing within past 3 years for drug related criminal activity (except that an applicant may demonstrate rehabilitation or changed circumstances), if an applicant is currently engaged in illegal use of drugs, if any household member has ever been convicted of methamphetamine production on the premises of federally assisted housing, and if any member is a registered lifetime sex offender.

24 C.F.R. § 982.553; 42 U.S.C.A. §§ 13,661 (3 yrs. for eviction) 13,663 (sex offender), 1437n(f) (methamphetamine).

- Criminal activity: PHA may also establish standards which would deny eligibility to an applicant who has engaged in other criminal activity or abused alcohol which may threaten the health and safety of others. 24 C.F.R. §§ 982.553(a)(2) and (3). Not all PHAs conduct the discretionary screening. 42 U.S.C.A. § 1437f(o)(6)(B).
 - Criminal Activity: Note new guidance from HUD- Notice PIH 2015-19. Notice states that (1) arrest records alone may not be the basis for denying, terminating, or evicting someone, (2) PHAs are not required to adopt “one-strike” policies, and (3) applicants and tenants have due process rights.
 - Poor tenant history: PHA is not required to screen for this, but local rules may permit this practice.
 - Poor rent-paying history or bad credit: Same as poor tenant history. Information about past debt to a PHA is accessible to PHAs and may be a basis for denial
 - Local policies are contained in the Section 8 Administrative Plan.
 - Landlord may screen for criminal history, tenant history, credit history, etc.
- **Procedural Protections**
 - Applicants must be notified of the reasons for rejection by the PHA and that they are entitled to an informal review. 24 C.F.R. §§ 982.552 and 982.554; *Baldwin v. Hous. Auth. Camden NJ*, 278 F.Supp.2d 365 (D.N.J. 2003).

RENTS

- **Generally**
 - HUD adopted an Enterprise Income Verification (EIV) program which uses computer matching with a number of federal agencies to get government income as well as wage income and new hire data. This reduces errors but often creates problems for residents, due to, for example, changed circumstances or different reporting periods.
 - Rent contributions for voucher residents are a function of their required statutory contribution and the amount by which the actual unit rent exceeds (if at all) the local payment standard (see discussion below). Statutory contributions are based upon a percentage of a tenant’s adjusted income or gross income, with tenants generally paying the higher of 30% of adjusted income or 10% of gross. 42 U.S.C.A. § 1437f(o)(2)(A). In a few jurisdictions, there is also a “welfare rent.” Tenants may be subject to a minimum rent (see discussion below). Voucher tenants must pay the minimum rent.
- **Payment Standard**
 - The payment standard is the maximum subsidy that a PHA will pay on behalf of a family. PHAs usually set the payment standard between 90% and 110% of the Fair Market Rent (FMR). Information on the level of payment standard may be in the PHA Plan. HUD annually publishes the FMRs in the Federal Register. PHAs

may seek HUD approval to increase the payment standard to an amount up to and above 120% of the FMR (called the Exception Payment Standard). See e.g., HUD Notices PIH 2005-9, PIH 2009-44 and PIH 2011-28.

- To accommodate a family with members who are disabled, PHAs may also increase the payment standard within the basic range and/or seek HUD approval of a higher payment standard. 24 C.F.R. § 982.503; If PHA wants to increase payment standard up to 120%, must seek approval from field office. Of above 120% must seek approval from HUD headquarters. (note that for some time, PHAs did not need to seek approval for a payment standard up to 120% but the HUD notice expired on 3/31/15. PIH 2013-3 extended by Notice PIH 2013-26.) HUD proposed to revise the regulations in its proposed rule on streamlining.
- **Annual Income and Exclusions**
 - Annual income includes all income that the family anticipates that it will receive in the coming year. There are many exclusions, deductions and disallowances from anticipated income. Some of these exclusions include the Earned Income Disregard/disallowance (EID), which is available only to disabled members of a voucher household; income from full-time students who are not the head of household; income for foster care; income of live-in aides; deferred lump sum additions to family income due to the delayed start of SSI or social security payments, etc. 24 C.F.R. § 5.609.
- **Adjusted Income after Deductions**
 - To determine the amount of the tenant's contribution, a PHA determines for each family an adjusted annual income.
 - The standard mandatory annual deductions include:
 - \$480 for each dependent,
 - \$400 for each elderly or disabled family,
 - For each elderly or disabled family, unreimbursed medical expenses and cost of reasonable attendant care or auxiliary apparatus to allow a family member to work that exceeds 3% of annual income
 - Child care expenses (for children under 13) that allow a family member to work. 42 U.S.C.A. § 1437a(a)(5); 24 C.F.R. § 5.611.
 - If a resident loses welfare due to sanctions because of fraud or failure to comply with an economic self-sufficiency program, tenant rent will not be adjusted and the lost welfare income will be imputed for purposes of setting the tenant's contribution for rent. 24 C.F.R. § 5.615; 42 U.S.C.A. § 1437j(d).
- **Minimum Rent and hardship exemptions**
 - A PHA may decide to charge no minimum rent, or a minimum rent of up to \$50 per month. If a PHA decides to charge a minimum rent, it should be set forth in the PHA's
 - Administrative Plan: Any tenant who pays a minimum rent is eligible for a hardship exemption, if the tenant is threatened with eviction for failure to pay the minimum rent or there is a reduction in income due to a change in family

circumstances. If the family qualifies for the hardship exemption, the minimum rent is suspended for 90 days and the tenant may not be evicted during that period for nonpayment of rent. The tenant may have to repay the minimum rent with a reasonable repayment agreement. 24 C.F.R. § 5.630; 42 U.S.C.A. § 1437a(a)(3). PHAs often fail to advise tenants of the hardship exemption.

- **Utility Allowance**

- Residents who pay their own utilities are entitled to an allowance for the consumption of a reasonable level of utilities by an energy conservative household. This allowance is deducted from the tenant portion of the rent. 24 C.F.R. § 5.603 (definition of utility allowance). If tenant income is so low that the allowance is greater than the tenant portion of the rent, the family is entitled to a utility reimbursement, or the PHA may pay the reimbursement directly to the utility company. However, the benefit of the utility allowance for voucher recipients is often minimal because rent plus the utility allowance cannot exceed the payment standard and rents are often set at the payment standard. 24 C.F.R. §§ 5.632 and 982.514(b).

- **Recertification**

- Annual recertification required for all families.
- PHA decides when, how and if to require interim rent recertification when tenant income increases. 24 C.F.R. §§ 903.7(d), 982.54.54(d)(18).
- Interim recertification required if family reports decrease in income (exceptions for loss of certain welfare income). 24 C.F.R. § 982.516; 42 U.S.C.A. § 1437f(o)(5).

- **Other rent issues**

- Tenant rent, including a reasonable utility allowance, *cannot* exceed 40% of income for a new unit or for a unit upon initial resident participation in the program. 24 C.F.R. § 982.508; 42 U.S.C.A. § 1437f(o)(3).
- PHAs must review the rent to be charged by the landlord to determine if it is reasonable. If it is not reasonable, the PHA may decline to enter into a Housing Assistance Payments (HAP) contract with the landlord. 42 U.S.C.A. § 1437f(o)(10).

- **Informal Hearing**

- Tenant may request an informal hearing for certain acts of the PHA, including income determinations and the computation of the housing assistance payment and proposed termination of the voucher. 24 C.F.R. § 982.555.

EVICTIONS AND TERMINATIONS

- **Notice (content and term)**
 - Midterm evictions: written notice must specify the grounds, at or before commencement of eviction; HUD rule states notice can be satisfied by the judicial complaint, 24 C.F.R. §982.310(e); term of notice set by state law.
 - End-of-term evictions: no federal requirements; state law may require notice of specified length for termination at lease expiration.
 - Copy of eviction notice must be given to the PHA by the landlord and also by the tenant.

- **Lease Term**
 - PHA may set initial lease term for one year or less. 42 U.S.C.A. § 1437f(o)(7); 24 C.F.R. § 982.309.

- **Good cause required at end of lease term?**
 - Not required by statute or regulation.
 - Some leases or local law may require good cause for all terminations of tenancy, even for end-of-term or month-to-month.
 - Because voucher may be combined with other federally subsidized housing, the good cause requirements of those programs may also apply.

- **Good cause required during lease term**
 - 24 C.F.R. § 982.310(a) (serious or repeated violation of lease; violation of applicable laws imposing tenant obligations).
 - Good cause includes drug-related activity *on or near* (*on* premises if offender is “other person under control”) or criminal activity that threatens health and safety of the premises. 24 C.F.R. §982.310(c).
 - Owner has discretion to consider all circumstances. 24 C.F.R. §982.310(h).
 - PHA obligated to make voucher payments on behalf of tenant until court-ordered eviction. 24 C.F.R. § 982.311(b).
 - State or local law may impose additional requirements.
 - Required proof by landlord: preponderance of evidence that breach occurred.

- **Pre-judicial administrative review?** None.

- **Section 8 Voucher terminations**
 - Grounds: eviction for serious lease violation (not just having committed the alleged violation), 24 C.F.R. § 982.552(b)(2) (*termination required*, also for immigration status or failure to submit consent forms); many other grounds *authorized* (e.g., violation of family obligations such as failure to supply required information, not allowing PHA inspection, failing to give PHA notice of move, not using unit as sole residence, committing fraud or drug-related or threatening criminal activity or alcohol abuse; also owing money to PHA, breach of

repayment agreement, threatened or actual abusive behavior to PHA staff). 24 C.F.R. § 982.552(c)(1), incorporating family obligations at § 982.551.

- PHA has discretion to consider all circumstances. § 982.552(c)(2).
- Notice and hearing protections for voucher termination: 24 C.F.R. § 982.555.

PORTABILITY

- Note recently revised regulation, Housing Choice Voucher Program: Streamlining the Portability Process, 80 Fed. Reg. 50,564 (August 20, 2015).
- A family may use a voucher in any area within the jurisdiction of the initial issuing PHA or in the jurisdiction of another 24 C.F.R. § 982.353;
- The PHA may deny a family permission to move in limited circumstances. 24 C.F.R. § 982.354.
- PHAs must inform families about how portability works and how it could affect the family's assistance at the initial briefing and in the materials contained in the information packet. 24 C.F.R. § 982.301.
- A PHA may attempt to restrict housing choice and/or portability. But such restrictions are generally illegal, and HUD is making greater efforts to limit the discretion of PHAs. See Notice PIH 2012-42.

OTHER CURRENT IMPORTANT ISSUES

- **PHA Plans**
 - PHA has discretion over many program features; advocates may influence the policies through PHA Plan process, local PHA Board of Commissioners or RAB. 42 U.S.C.A. § 1437c-1; 24 C.F.R. part 903; form HUD 50075.
- **HERA**
 - In 2008, Congress enacted legislation to streamline the PHA Plan process for small PHAs. (HERA). In addition, HUD has reduced the PHA Plan Template, form HUD 50075 to less than a page and a half.
- **Voucher Funding**
 - Voucher funding: PHAs are funded to make Housing Assistance Payments (HAP) to landlords and for administrative fees. The HAP payments are based upon a formula created in appropriation acts, which is number of vouchers leased up times in the prior 12 months the cost of those vouchers, plus an inflation factor and pro rated in the event that the funding is insufficient. The lack of a permanent voucher funding formula continues to be a problem.
 - The voucher program was hard hit by sequestration in 2012. It is estimated that in 2015, about 100,000 housing vouchers have been eliminated from the program. Hopefully restorations vouchers will be allocated in the 2016 and 2017 budget.

- **Voucher Utilization**
 - Voucher utilization is the percentage of authorized vouchers that families are using. You can find voucher utilization data by state and individual PHAs here: <http://www.cbpp.org/research/housing/national-and-state-housing-data-fact-sheets?fa=view&id=3586>

- **Moving to Work**
 - 39 PHAs are Moving to Work (MTW) which means that they may waive most federal housing rules and statutes, for more information see http://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/programs/ph/mtw
 - There are proposals to expand the number of PHAs with MTW status.

- **VAWA Protections**
 - Implementation of Violence Against Women Act 2005 and 2013, which precludes denying admission, terminating subsidy or eviction of a victim of domestic violence. New protections were added in 2013. Final rule implementing VAWA 2005, 75 Fed. Reg. 66,246 (Oct.27, 2010); VAWA 2013 is codified at 42 U.S.C.A. § 14043e-11, 1437d.
 - Information on PHA's implementation of VAWA must be in the PHA Plan. 42 U.S.C.A. § 1437c-1(d)(13).
 - HUD's proposed VAWA 2013 rule was published in the federal register but the final rule has not come out. HUD, Violence Against Women Reauthorization Act of 2013: Implementation in HUD Housing Programs, Proposed Rule, 80 Fed. Reg. 17,548 (Apr. 1, 2015)

- **RAD**
 - Pursuant to the Rental Assistance Demonstration (RAD), PHAs may apply to convert public housing to project-based rental assistance or project-based vouchers.
 - No new federal funds, but conversion allows for the use of other financing mechanism (i.e. tax credits)
 - There is a cap on the number of public housing units that may be converted (185,000).
 - The purpose is to allow PHAs to leverage the funding to obtain funding for capital improvements and to allow residents to move out of their units with a voucher.

- **Anticipated new rules** and voucher-related updates to keep an eye out for
 - Proposed rules regarding the Section 8 Management Assessment System
 - Updated Voucher Guidebook
 - Final VAWA Rule
 - Expansion of the MTW Program
 - Final regulation on streamlining