

HUD Publishes Final Housing Choice Voucher Portability Rule

On August 20, 2015, HUD published the long-awaited final portability rule.¹ The rule revises the portability regulations for the Section 8 Housing Choice Voucher (HCV) program with the goal of streamlining the portability process for PHAs and reducing the burden on participating families. HUD hopes that by eliminating administrative hurdles, more families will take advantage of the ability to live in areas where there are employment opportunities and high quality schools.² HUD explicitly recognizes in the final rule the benefits to families moving to low-poverty communities, including improved “mental and physical health for adults and long-term educational and earning gains for young children.”³ HUD also aims to improve the porting process for survivors of domestic violence, dating violence, sexual assault, and stalking, who must often relocate quickly to a home away from an abuser. The new regulations went into effect on September 21, 2015. This article will provide an overview and analysis of the final rule.

Background

Portability refers to the process by which a family may move with continued assistance to a new location outside of the jurisdiction of the Public Housing Authority (PHA) that is currently administering the family’s voucher. The PHA that first issues the family a voucher is called the “initial” PHA and the PHA that has jurisdiction where the tenant will be moving is called the “receiving” PHA. The receiving PHA must administer the voucher, although it has the choice of absorbing the cost of the ported voucher or billing the initial PHA. Advocates have identified numerous problems with portability procedures and expressed frustration on behalf of voucher families who face unnecessary delays and denials.

In 2012, HUD responded to advocate complaints and issued a proposed rule that sought to clarify and improve the portability process.⁴ NHLP, on behalf of the Housing Justice Network (HJN), submitted comments on the proposed rule along with other civil rights and housing advocacy organizations. The key revisions in the proposed rule focused on improving the family’s ability to find a unit, tenant re-screening by the receiving PHA, family choice in selecting a receiving PHA, information provided to families, and improving portability procedures. The final rule implements many of the changes in the proposed rule, with a few notable exceptions, as explained in more detail below. Importantly, the final rule also revises several parts of the HCV regulations that apply to all voucher participants, not just those porting. In implementing the new regulations, HUD made welcome changes to the portability process, although tenants may still face significant barriers to housing choice.

Improves Initial Briefing Requirements

In its final portability rule, HUD made several important changes to the initial briefing requirements that apply to *all* new voucher families. HUD revised the regulations that govern

¹ Housing Choice Voucher Program: Streamlining the Portability Process, 80 Fed. Reg. 50,564 (August 20, 2015) [hereinafter Final Portability Rule].

² *Id.* at 50,564.

³ *Id.* at 50,564.

⁴ Public Housing and Section 8 Programs: Housing Choice Voucher Program: Streamlining the Portability Process, 77 Fed. Reg. 18,731 (March 28, 2012).

both the oral briefing⁵ and the packet of information⁶ that is provided to participant families when they are first selected to the program.

First, PHAs were required under the prior law to inform only families that qualify to port about how portability works both during the initial oral briefing⁷ and in the materials contained in the information packet.⁸ The final rule broadens and clarifies these requirements. A PHA must now inform all families about how portability works, and specifically, how it may affect the family's assistance "through screening, subsidy standards, payment standards, and any other elements of the portability process."⁹ In addition, during the initial oral briefing, past regulations required PHAs to provide information about moving to low-poverty neighborhoods only to families living in high poverty census tracts.¹⁰ The final rule revises the regulation to require that *all* participant families receive information about the advantages of moving to low-poverty neighborhoods.¹¹ HUD made this change because it recognizes that even families already living in low poverty census tracts may not be aware of the benefits.

Next, HUD continues to require that PHAs maintain a list of landlords that participate in the section 8 program, but adds that PHAs can also provide "other resources (e.g. newspapers, organizations, online search tools) known to the PHA that may assist the family."¹² Importantly, in response to HJN and other civil rights organizations' comments, the new rule adds that PHAs must ensure that "the list of landlords or other resources covers areas outside of poverty or minority concentration."¹³ Local advocates should consider verifying that PHA-provided landlord lists meet this requirement.

In the proposed rule, HUD requested comments on additional information that PHAs should be required to provide to families after they have been selected to the voucher program. HJN members responded with several suggestions including (1) a list of local agencies that can assist with the housing search process (2) a list of LIHTC and home-funded properties and (3) resources that can help research crime rates and school performance in a particular jurisdiction. While HUD declined to require this additional information, it left open the possibility that it would require it in the future. Under the revised regulations, if HUD provides information to PHAs about the factors families should consider when determining where to lease a unit, then the PHA will be required to provide this information at the initial briefing.¹⁴

In their 2012 comments, HJN members also suggested that information about porting should be shared with families not only at the initial briefing, but at other times during the families' participation in the voucher program, including after a request to port is submitted. HUD disagreed and found the initial briefing to be sufficient.¹⁵ Without this revision, the briefing requirements on mobility are somewhat less effective, especially for long-time voucher holders that decide to move outside of their jurisdiction after years of program participation.

⁵ 24 C.F.R. § 982.301(a).

⁶ 24 C.F.R. § 982.301(b).

⁷ 24 C.F.R. § 982.301(a)(2).

⁸ 24 C.F.R. § 982.301(b)(4).

⁹ Final Portability Rule, 80 Fed. Reg. at 50,572 (to be codified at 24 C.F.R. § 982.301(a)(2) (oral briefings); Final Portability Rule, 80 Fed. Reg. at 50,573 (to be codified at 24 C.F.R. § 982.301(b)(4) (information packet).

¹⁰ 24 C.F.R. § 982.301(a)(3).

¹¹ Final Portability Rule, 80 Fed. Reg. at 50,572 (to be codified at 24 C.F.R. § 982.301(a)(3)).

¹² Final Portability Rule, 80 Fed. Reg. at 50,573 (to be codified at 24 C.F.R. § 982.301(b)(11)).

¹³ Final Portability Rule, 80 Fed. Reg. at 50,573 (to be codified at 24 C.F.R. § 982.301(b)(11)).

¹⁴ Housing Choice Voucher Program: Streamlining the Portability Process (technical correction), 80 Fed. Reg. 52,619 at 52,619 (September 1, 2015) (to be codified at 24 C.F.R. § 982.301(a)(1)(iii)).

¹⁵ Final Portability Rule, 80 Fed. Reg. at 50,570.

Limits When a PHA May Deny a Move

The final rule maintains the requirement that the receiving PHA must administer a ported voucher.¹⁶ However, the final rule clarifies the exceptions and requires HUD notification or approval in all instances. First, as in the earlier regulation, an initial PHA may deny a family permission to move if the PHA does not have sufficient funding for continued assistance (for example, if the receiving PHA will bill the initial PHA resulting in a HAP increase and the initial PHA doesn't have enough funds to cover it). In response to HJN comments, the new rule adds that if the receiving PHA plans to deny the move for insufficient funds, it must notify HUD within ten business days of making that determination.¹⁷ While this additional oversight is an improvement from the old regulation, HUD chose not to include a requirement that HUD approve or deny the PHA's request. Rather, the ten-day notification period simply allows time for HUD to review the PHA's decision and take action if necessary.

The final rule also explicitly states that there are other reasons why HUD might approve a PHA's decision to deny a port.¹⁸ The example HUD provides is a request made by a PHA in a declared disaster area.¹⁹ While many commenters requested that HUD provide other examples, HUD declined to do so, explaining that it cannot foresee every scenario in which a denial would be appropriate and it prefers to make the determination on a case-by-case basis.²⁰

Increases Tenant Choice

The final rule improves tenant choice because it allows a family to determine the receiving PHA when the family is moving to an area where PHAs have overlapping jurisdiction. Whereas formerly, in this scenario, the initial PHA chose the receiving PHA, under the new regulation, the family may choose the PHA it prefers.²¹ HUD agreed with HJN's comments that families should be able to weigh different PHA policies and programs and select the PHA that best fits their needs.

Reduces Delays and Burdens on Families During the Porting Process

In its final rule, HUD made several changes to reduce delays for families during the portability process. First, under the revised regulations, if the receiving PHA chooses to conduct a new reexamination of the porting family, the receiving PHA may not delay in issuing the family a voucher or otherwise delay the approval of a unit in order to complete the recertification.²² In addition, the revised regulation clarifies that the receiving PHA does not re-determine income eligibility for a participant family.²³ For new participants that were not already

¹⁶ Final Portability Rule, 80 Fed. Reg. at 50,573 (to be codified at 24 C.F.R. § 982.355(a)).

¹⁷ Final Portability Rule, 80 Fed. Reg. at 50,573 (to be codified at 24 C.F.R. § 982.354(e)); *Id.* at 50,573 (to be codified at 24 C.F.R. § 982.355(c)(5)).

¹⁸ Final Portability Rule, 80 Fed. Reg. at 50,573 (to be codified at 24 C.F.R. § 982.355(b)).

¹⁹ *Id.*

²⁰ Final Portability Rule, 80 Fed. Reg. at 50,567.

²¹ 24 C.F.R. § 982.355(c); Final Portability Rule, 80 Fed. Reg. at 50,573 (to be codified at 24 C.F.R. § 982.355(b)).

²² Final Portability Rule, 80 Fed. Reg. at 50,574 (to be codified at 24 C.F.R. § 982.355(c)(11)).

²³ Final Portability Rule, 80 Fed. Reg. at 50,574 (to be codified at 24 C.F.R. § 982.355(c)(9)).

receiving assistance under the voucher program, the initial PHA determines eligibility for the receiving PHA's program using the receiving PHA's income limits.²⁴ HUD hopes that these changes will streamline the portability process to reduce delays when a family ports.

Another way HUD has made porting easier for families is by adding an automatic 30-day extension from the expiration of the initial PHA's voucher term.²⁵ In other words, the earliest that the receiving PHA's voucher can expire is 30 days after the initial PHA's voucher expires. If the initial PHA's voucher expires, the initial PHA determines whether or not to grant an extension.²⁶ But once the receiving PHA issues its voucher, the receiving PHA's policies on extensions apply.²⁷ This will help some families succeed in their housing search because it gives the family more time to find a suitable unit.

Last, HUD's final rule includes a new definition of "suspension"²⁸ and provides that the term of the voucher is suspended when the client submits a request for tenancy approval until notice from a PHA that the request has been approved or denied.²⁹ HUD implemented this change, which applies to all voucher families, to provide "clarity and avoid possible disputes between families and the PHA."³⁰ In its comments on the proposed rule, HJN recommended that HUD further clarify that the voucher term should remain suspended while the PHA and landlord negotiate terms like rent and repairs, but HUD declined to include such language in the final rule.

Changes Billing Requirements

HUD implemented changes to portability billings in the final rule. The most significant change is how reimbursement is calculated for initial and receiving PHAs. Under the final rule, if the receiving PHA is billing the initial PHA (versus absorbing the voucher), the initial PHA must reimburse the receiving PHA for the lesser of 80% of its administrative fees or 100% of the receiving PHA's administrative fees.³¹ With this revision, the receiving PHA will not benefit from charging more than it would otherwise receive for administrative fees. The PHAs may still negotiate a different amount as agreed upon by both PHAs.³²

Other Notable Parts of the Final Rule

- HUD clarified that initial and receiving PHAs must administer special purpose vouchers (such as VASH and NDD) in accordance with program requirements.³³
- HUD removed the absorption requirement in the proposed rule. HUD leaves open the possibility, however, that it will require receiving PHAs to absorb a ported voucher at a later date through a notice and comment period in the federal register.³⁴

²⁴ Final Portability Rule, 80 Fed. Reg. at 50,574 (to be codified at 24 C.F.R. § 982.355(c)(9)).

²⁵ Final Portability Rule, 80 Fed. Reg. at 50,574 (to be codified at 24 C.F.R. § 982.355(c)(13)).

²⁶ Final Portability Rule, 80 Fed. Reg. at 50,574 (to be codified at 24 C.F.R. § 982.355(c)(13)).

²⁷ Final Portability Rule, 80 Fed. Reg. at 50,574 (to be codified at 24 C.F.R. § 982.355(c)(14)).

²⁸ Final Portability Rule, 80 Fed. Reg. at 50,572 (to be codified at 24 C.F.R. § 982.4); See also *id.* at 50,574 (to be codified at 24 C.F.R. § 982.355(c)(15)).

²⁹ Final Portability Rule, 80 Fed. Reg. at 50,573 (to be codified at 24 C.F.R. § 982.303(c)).

³⁰ Final Portability Rule, 80 Fed. Reg. at 50,565.

³¹ Final Portability Rule, 80 Fed. Reg. at 50,574 (to be codified at 24 C.F.R. § 982.355(e)(3)).

³² Final Portability Rule, 80 Fed. Reg. at 50,574 (to be codified at 24 C.F.R. § 982.355(e)(3)).

³³ Final Portability Rule, 80 Fed. Reg. at 50,575 (to be codified at 24 C.F.R. § 982.355(g)).

³⁴ Final Portability Rule, 80 Fed. Reg. at 50,574 (to be codified at 24 C.F.R. § 982.355(d)(2)).

- The final rule does not apply to project-based vouchers. HUD will issue separate guidance for this purpose.
- Despite extensive comments and advocacy from HJN and other civil rights groups, the final rule explicitly allows a receiving PHA to re-screen porting families for criminal history. Rescreening will continue to present significant barriers to voucher participants wishing to relocate to areas of greater opportunity.

The final rule makes important changes to the portability process but does not go far enough to support and encourage voucher families to move to areas of high opportunity. Especially given that mobility is the cornerstone of the voucher program, NHLP and HJN will continue to advocate with HUD to improve the portability process.

