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To: HJN Members
From: Deborah Thrope, Supervising Attorney
Re: Voucher Funding Shortfalls
Date: May 4, 2017

On May 1, 2017, Congress passed a bill to finalize federal funding for the remainder of 2017. The bill provides \$48.1 billion for HUD housing and community development programs including \$18.36 billion to renew Housing Choice Vouchers. While this is an increase from last year, it falls short of the funding required to renew all vouchers currently in use. Consequently, PHAs will receive 97.5% of the funding they would need to renew all vouchers in use (a 97.5% proration). The Center on Budget and Policy Priorities estimates that this amounts to a loss of about 50,000 vouchers nationwide.¹

In anticipation of the final budget, on April 26, 2017, HUD published Notice PIH 2017-7 that provides guidance related to PHA eligibility for shortfall funding in 2017 and outlines steps that PHAs must take to be eligible.² HUD also identified PHAs that were likely to experience a shortfall and sent a letter directly to those PHAs requiring them to take the steps outlined in HUD's notice immediately to qualify for shortfall funding and to avoid terminating participants. The steps are that the PHA must:

1. Cease issuing vouchers as of the date the PHA is notified of the potential shortfall. Exceptions: Participants moving to a new unit and most TPVs and VASH vouchers.
2. Rescind any vouchers on the street issued to applicants but not in use as of the date the PHA is notified of the potential shortfall (same exceptions as above).
3. Cease absorbing portable vouchers as of the date the PHA is notified of the potential shortfall.
4. Not issue PBVs to a family that wants to voluntarily move.

Even PHAs not identified by HUD as likely to experience a shortfall are taking immediate measures to reduce spending in the face of budget cuts. This memo provides guidance to advocates working with PHAs that are making policy changes in response to potential cuts, both required by HUD due to funding shortfalls and using the PHA's discretion to implement cost-saving measures. It is by no means an exhaustive list of advocacy strategies that can be utilized in the face of PHA funding shortfalls. We hope that local advocates continue to share with us ideas and tools to maximize the impact of the voucher program.

I. Know Your PHA Budget

¹ <http://www.houserscorner.org/wp-content/uploads/2017/05/IP-memo-FY-2017-omnibus.pdf>

² HUD PIH 2017-7, Guidance related to (1) Eligibility for Potential Shortfall Funding Under the Calendar Year (CR) 2017 Housing Assistance Payments (HAP) Renewal Set-Aside for the Housing Choice Voucher (HCV) Program and (2) CY 2017 Administrative Fees (April 26, 2017).

What is the budget outlook of your PHA?

Understanding the PHA’s budget can help you assess the financial state of the PHA and prepare for different scenarios. The easiest way to obtain this information is to ask for the PHA’s financials. HUD’s Voucher Management System (VMS) also contains a lot of relatively up-to-date data such as the number of new vouchers issued but not leased up (most current data available as of the date of this Memo is Oct-Dec 2016). To find VMS data for your PHA, go to the HUD Voucher Program Support Division page³ and scroll down on the right side for a link to the most recent quarterly VMS data. Once you open the spreadsheet, you can search for your PHA.

Does the PHA have administrative reserves to cover a shortfall?

The best way to find out how much a PHA has in administrative reserves is to request that information directly from the PHA. Administrative reserves are also publicly available on HUD’s VMS website, listed in the spreadsheet as “Unrestricted Net Position (UNP) as of the Last Day of the Month.” However, note that HUD warns against relying on this data because (1) HUD’s methodology can misrepresent the actual amount in reserves at any given time and (2) reporting by PHAs is often inaccurate.

Does the PHA have other sources of funding that can be used to off-set a shortfall?

It is important for advocates to know whether the PHA has other sources of funding that can be used to off-set a potential shortfall. For example, are there unrestricted federal funds available? What about state or local sources?

II. Understand the Proposed Policy Changes and the Process Necessary to Implement Them

What does the PHA Administrative Plan say about funding shortfalls? Is the PHA following its Plan?

To understand what steps a PHA may take if there are insufficient HAP funds to assist current voucher holders, advocates should review the Administrative Plan. HUD requires PHAs to adopt policies regarding funding shortfalls and how they will deal with the problem in the event that families must be terminated due to insufficient funding.⁴ Note that this requirement is limited to voucher participant terminations and not applicants. Nonetheless, the Administrative Plan is a good place to start.

Is the PHA following the proper procedure to implement the change? If not, did the PHA request a waiver from HUD?

Before taking cost-saving measures, the PHA must follow both its Administrative Plan and proper regulatory procedures. For example, under HUD regulations, reduced payment standards can only be

³ https://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/programs/hcv/psd

⁴ HUD PIH 2011-28, Cost-Savings Measures in the Housing Choice Voucher (HCV) Program (May 27, 2011), “PHA termination policies due to insufficient funding must be included in the administrative plan. Such policies should describe how the PHA will determine which HAP contracts will be terminated. Any PHA policies with respect to the resumption of assistance for the impacted families must also be included in the administrative plan. In setting such policies, a PHA should be mindful of its obligation to affirmatively further fair housing pursuant to 24 CFR 982.53(c) and 24 CFR 903.7 (o).”

applied to current participants at the second annual recertification.⁵ A PHA can request that HUD waive the requirement, but the PHA cannot take the action until the waiver is granted.

In addition, certain policy changes may be considered a significant amendment to the PHA's Administrative Plan and are therefore subject to the tenant participation process. You can find your local PHA's definition of "significant amendment" in the 5-year or Annual Plan. Advocates have successfully challenged PHAs that took action prior to properly revising its plans. In one case, a court ruled there was sufficient evidence to show that a change in the minimum rent or subsidy standard, as a result of a shortfall, is a significant amendment or modification to the PHA plan, triggering the public participation process.⁶

Can the PHA take other cost-saving steps that are less harmful to families?

Not all policy changes impact participant and applicant families the same. NHLP assembled a list of PHA cost-saving measures for the voucher program and organized them in order of the projected negative impact on families.⁷ Please refer to this list to determine whether there are "better" cost-savings measures that the PHA can take.

For all proposed changes, advocates should ask for information and data on how the policy will reduce costs, what the dollar savings are to the program, and what is the dollar amount that the PHA anticipates it will need to save to stay within budget. In general, there are two types of program changes that a PHA may make to reduce costs. There are program changes that will reduce the cost of the program per family and changes that will reduce administrative burdens/costs.

Program changes that reduce costs per family. Before making program changes that reduce the cost per family, a PHA ought to determine the turnover rate. The turnover rate is the percentage or number of families who give up or lose their vouchers monthly/yearly. For some PHAs it may be that the turnover rate if acknowledged and managed will eliminate or minimize the need to make any drastic changes to the program. It is also important to determine if the PHA has any reserves and the amount and the restrictions on such reserves (see above).

Streamlining the administration of the program. To address the cuts to a PHA's administrative fees, a PHA could streamline the administration of the HCV program, which would also cut cost. There are several HUD notices that provide ideas on how to streamline the program.⁸ Because these policies are discretionary, advocates should urge their adoption.

Do you have a contact at your local HUD field office?

If you have a friendly contact at your local HUD field office, it might help to call and discuss the PHA's budget outlook. If the PHA is implementing cost-saving measures that are too drastic, for example, the HUD field office might be able to intervene.

⁵ 24 C.F.R. § 982.505(b).

⁶ *Rogers v. Housing Authority of Prince George's County*, (D. Md Sept. 8, 2015).

⁷ You can find a link to the chart on NHLP's website here: <http://www.nhlp.org/node/15929>

⁸ HUD PIH Notice 2012-15, Streamlining Administrative Practices in the Housing Choice Voucher Program (Feb. 27, 2012); HUD PIH Notice 2013-3, Public Housing and Housing Choice Voucher Programs - Temporary Compliance Assistance (Jan. 22, 2013).

III. If HUD Requires the PHA to Adopt Policies Due to a Projected Shortfall, Make Sure the PHA is Following HUD's Guidance

Does the PHA's action apply to applicants or participants?

HUD's guidance is clear that in the case of a shortfall, PHAs should stop issuing/rescind move vouchers for applicants only and not current participants. An applicant family is defined by HUD as a family that has applied for admission to the voucher program but is not yet a participant.⁹ A participant family is a family that has been admitted and is currently assisted in the PHA program.¹⁰ A family becomes a participant on the first day of the initial lease term (the effective date of the first HAP contract).¹¹

PIH Notice 2017-7 explicitly states that participant families who were issued a voucher to move to a different unit are exempt. Before a PHA terminates assistance to participants due to insufficient funding, the PHA is required to consider all cost-savings measures and utilize alternative sources of unrestricted non-federal funding that may be available to prevent termination of rental assistance.¹² In addition, the PHA must notify the HUD field office and the Financial Management Center prior to issuing notices of termination.¹³

There are additional restrictions on rescinding move vouchers that are issued but not yet in use if the rescission is based on a funding shortfall. If a PHA has approved a participant family's request to move (either within or outside of the PHA's jurisdiction), the PHA may only rescind the voucher if the family is able to remain in the current unit.¹⁴ If the family gave notice and their current apartment was re-rented, for example, the PHA has to provide the family with a moving voucher. Other limitations on when a PHA can deny a request to move due to insufficient funding include:

1. The proposed move must be to a higher cost unit.
2. The receiving PHA is not absorbing the voucher.
3. The PHA would be unable to avoid termination of participants at current funding levels.¹⁵

In the case of applicants, there may be state law challenges available such as contract claims based on detrimental reliance, that preclude a PHA from rescinding a voucher after the family has given notice and is unable to return to their unit.

IV. Other Considerations

Did the PHA rescind emergency transfer vouchers meant to protect survivors of domestic violence?

VAWA provides important protections for survivors of domestic violence. In some cases, an applicant or participant may be issued an emergency transfer voucher to facilitate a move away from an abuser.

⁹ 24 C.F.R. § 982.4.

¹⁰ 24 C.F.R. § 982.4.

¹¹ 24 C.F.R. § 982.4.

¹² PIH Notice 2011-28 at § 5.

¹³ PIH Notice 2011-28 at § 5.

¹⁴ HUD PIH Notice 2016-9, Housing Choice Voucher (HCV) Family Moves with Continued Assistance, Family Briefing, and Voucher Term's Suspension (June 6, 2016) at § 7

¹⁵ PIH Notice 2016-9.

Advocates should be sure that PHAs are not implementing policies that restrict applicants' and tenants' rights to move as a result of domestic violence.

Did the PHA provide reasonable accommodations for people with disabilities?

Applicants and participants are entitled to reasonable accommodations when it is necessary as a result of their disability. A PHA's policies should not interfere with this right. A PHA may argue that it is a financial burden to consider accommodations, given a funding shortfall. However, every accommodation must be considered on a case-by-case basis.

Advocates have successfully argued that blanket policies that place an additional burden on people with disabilities may be illegal under antidiscrimination laws.¹⁶ In one case, due to a funding shortfall, a new subsidy standard was applied to all voucher participants, reducing the number of bedrooms allocated per family regardless of whether the family had requested an accommodation for an extra bedroom. Because people with disabilities were unfairly impacted by the seemingly neutral policy, one court found sufficient evidence that a judgment could be granted in favor of the voucher tenants with disabilities on the reasonable accommodation claims.

Do the policy changes have a disproportionate impact on people of a protected class?

In addition, it is important to consider whether the proposed policy change will have a disparate impact on a protected class. In order to perform this analysis, advocates can request data from the PHA on which families are affected by a particular policy change. If the PHA is unwilling to provide the data, consider making a public records act request under state law.

V. Make Sure the PHA Applies for Set-Aside Funds

The Appropriations Act provides shortfall funding for HUD to provide to local PHAs. In order to be eligible, PHAs must take the steps outlined in HUD's Notice PIH 2017-7. The notice also explains the types of set-aside funds that HUD plans to make available. In the case of a shortfall, advocates can work with their local PHAs to guarantee that the PHA applies for the set-aside funds so it can continue to provide assistance to as many families as possible.

VI. A Note on Public Housing

The cuts in the public housing operating fund will create problems for PHAs. Because PHAs have many fixed costs including utilities, it will mean that the amount of "discretionary" funds for maintenance and repairs are extremely limited. For public housing, PHAs should immediately implement cost saving policies such as streamlining program administration. There are other consequences to severe cuts for public housing programs such as the inability of a PHA to convert public housing units in accordance with a RAD application, because funding for the development will be inadequate. Please contact NHLP staff if you are concerned about the public housing in your community due to funding shortfalls.

¹⁶ *Huynh v. Harasz* 2016 WL 2757219 (N.D. Cal. May 12, 2016).