



Section 8 Housing Choice Vouchers Overview September 2016

I. KEY COMPONENTS OF THE PROGRAM

Number of Units and Characteristics of Families

- More than 5 million people in 2.2 million low-income households use vouchers. The voucher program is the country's largest rental assistance program.
- 41% are households with children; 23% are elderly; 23% are households with a disabled adult.
- 47% households are headed by African-Americans, 17% headed by Hispanics/Latinos
- The above information plus additional demographic data is available nationally, by state, or by Public Housing Agency (PHA) on HUD's website at <https://www.huduser.gov/portal/datasets/picture/yearlydata.html>
- The number of vouchers allocated to a local PHA is stated in the PHA Plan, available locally and is also available on the website above.
- The Center on Budget and Policy Priorities publishes both national and state Housing Choice Voucher Fact Sheets here: <http://www.cbpp.org/research/housing/national-and-state-housing-fact-sheets-data?fa=view&id=3586#map>

Parties Involved and Their Roles

- Congress appropriates funds for an administrative fee and housing assistance payments for the Housing Choice Voucher program. HUD allocates the funds, the PHA administers the program locally, and the tenant finds a willing landlord who agrees to accept the voucher (typically a private landlord although the landlord may also receive tax credits). The PHA determines if the unit meets the Housing Quality Standards (HQS), whether the rent charged for the unit is reasonable and if the lease contains the required addendum. PHA enters into contract with landlord.
- PHAs are created by state enabling legislation.
- Most PHAs are governed by a Board of Commissioners (with some exceptions).
- The jurisdiction of a PHA can be statewide, countywide, citywide, or by other geographical or political area.
- Voucher tenants must serve on the Resident Advisory Board (RAB) that the PHA must consult with regarding the PHA 5 Year and Annual Plan.

II. KEY REGULATORY FEATURES

Federal statute and regulations

- 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 Forms

- Form HUD-52641: Housing Assistance Payments Contract (HAP Contract between PHA and landlord)
- Form HUD-52641-A: Tenancy Addendum (lease addendum between the landlord and the voucher participant)
- Form HUD-52646: Housing Choice Voucher
- All forms related to the voucher program can be found on HUD's website.

Locally developed rules, policies and contracts

- PHA 5-year and Annual Plan is developed locally and must be available locally; *see* 24 C.F.R. Part 903; Form HUD-50075; HUD, PHA Plan Desk Guide
- Section 8 Administrative Plan, 24 C.F.R. § 982.54 (sometimes attached to the PHA Annual Plan); local rules for the voucher program
- In addition to the Lease Addendum mentioned above, the tenant may also sign the landlord's lease.

III. FINDING THIS HOUSING IN YOUR COMMUNITY

- PHA must maintain a list of landlords that participate in the voucher program or other resources that will assist the family in locating a unit. 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. A link to the data is here: https://www.huduser.gov/portal/affht_pt.html#dataTool-tab

IV. TIPS FOR DETERMINING IF YOUR CLIENT HAS A VOUCHER

- Tenant was given a voucher by the PHA
- Tenant had to find the unit and a willing landlord
- Client recertifies her income periodically with the PHA.
- Landlord is most often a private landlord without any other federal rental assistance.
- Client's lease includes a Section 8 tenancy addendum

- Client tells you she has previously moved and was able to keep her Section 8 assistance.
- Other tenants at the property may not be subsidized.

V. 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
 - 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 PHA's 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 the tenant may move with a housing voucher after the 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.

VI. ADMISSIONS

Process

- 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 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 a 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.
- See NHLP's HUD Housing Programs: Tenants' Rights (4th Edition) at Chapter 2.8.5.

Eligibility

- Income: Low Income (80% of Area Median Income (AMI) or Very Low Income (50% 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 or the federal poverty level). 42 U.S.C.A. § 1437n(b).
- The AMI for each jurisdiction is updated annually and available at: <https://www.huduser.gov/portal/datasets/il/il16/index.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 a subsidy, are exempt from SSN requirements. PIH Notice 2012-10.
- See NHLP's HUD Housing Programs: Tenants' Rights (4th Edition) at Chapter 2.2.

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.
- The PHA may have no preferences.
- See NHLP's HUD Housing Programs: Tenants' Rights (4th Edition) at Chapter 2.3

PHA Screening

- Standards: PHA may not discriminate because members of a family are unwed mothers, recipients of welfare or have children born out of wedlock. 24 C.F.R. § 982.202(b)(3).
- Criminal activity bans: 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). 42 U.S.C.A. § 13,661.
- 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. 42 U.S.C.A. § 1437n(f).
- If any member is a registered lifetime sex offender. 42 U.S.C.A. § 13,663.
- Other 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) & (3). Not all PHAs conduct the discretionary screening. 42 U.S.C.A. § 1437f(o)(6)(B).
- New HUD guidance on the use of arrest records in housing decisions: Notice PIH 2015-19 states that arrest records alone may not be the basis of denial of admission, termination of subsidy, or eviction. The guidance also clarifies that PHAs are not required to adopt “one-strike” policies.
- Poor tenant history: PHA is not required to screen for tenant history, but local rules may permit this practice.
- Poor rent-paying history or bad credit: Same as poor tenant history but note that 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.
- See NHLP’s HUD Housing Programs: Tenants’ Rights (4th Edition) at Chapter 2.5.

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).

Landlord Screening

- Landlord may screen for criminal history, tenant history, credit history, etc.
- New HUD guidance on the application of the Fair Housing Act to Criminal History Screening: HUD’s Office of General Counsel released guidance that addresses how the discriminatory effects and disparate treatment theories may apply in cases where a housing provider refuses to rent to an individual due to his or her criminal history. The guidance, which applies to both private and subsidized housing providers (including Section 8 landlords), states that blanket bans on people with criminal records may be illegal under the Fair Housing Act.

VII. 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 (see below).

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). 24 C.F.R. 982.503.
- To accommodate a family with members who are disabled, PHAs may increase the payment standard up to 120% (anything higher would need to be approved by HUD).

Annual Income and Exclusions

- Annual income includes all income that the family anticipates that it will receive in the coming year, minus income exclusions. Note that H.R. 3700, the Housing Opportunity Through Modernization Act, revised the law so that a tenant's income is based on prior year income, with the exception of a family's initial determination of income. Housing Opportunity Through Modernization Act, HR 3700 (HOTMA), Pub. L. 114-201, div. ___, tit. ___, 130 Stat. 782 (July 29, 2016) *to be codified at* 42 U.S.C. §§ 1437a(a)(7)(A) & (B).
- There are many exclusions, deductions and disallowances from anticipated income. Some of these exclusions include 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.
- See NHLP's HUD Housing Programs: Tenants' Rights (4th Edition) at Chapter 4.3.

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.
- See NHLP's HUD Housing Programs: Tenants' Rights (4th Edition) at Chapter 4.4.1.2

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.
- 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).
- See NHLP's HUD Housing Programs: Tenants' Rights (4th Edition) at Chapter 5.6

Recertification

- Annual recertification of income is required for all families, except those that receive a fixed income. PHAs have discretion to reexamine fixed income tenants every three years. 24 C.F.R. §§ 960.257; 982.516.
- PHA decides when, how and if to require interim rent recertification when tenant income increases. 24 C.F.R. § 982.54(d)(18). However, under HR 3700, a PHA can't do an

interim recertification based on earned income, unless the family has received an interim reduction during the same year. Housing Opportunity Through Modernization Act, HR 3700 (HOTMA), Pub. L. 114-201, div. __, tit. __, 130 Stat. 782 (July 29, 2016) *to be codified at* 42 U.S.C. § 1437a(a)(6)(A)(iv).

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.

VIII. 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 is 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.
- See NHLP’s HUD Housing Programs: Tenants’ Rights (4th Edition) at Chapter 11.4.

IX. 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. 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.
- See NHLP’s HUD Housing Programs: Tenants’ Rights (4th Edition) at Chapter 7.3.

X. 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.

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 in the prior 12 months times 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 the sequestration's funding cuts in 2012. By the end of 2015, housing authorities were serving about 45,000 fewer families than they were in 2012. Congress has yet to restore all of the vouchers lost as a result of sequestration.

Source of Income Discrimination

- Landlords are free to discriminate against voucher families in most jurisdictions
- Nine states, Washington D.C. and many local governments protect voucher tenants from source of income discrimination that includes use of a housing voucher.
- In some areas, despite spending years on a waiting list, families are forced to return their voucher because they cannot find a landlord willing to accept it.

Concentration of Voucher Families

- Many vouchers are used in areas of high poverty and high racial concentration
- HUD is taking steps to provide tenants with a subsidy adequate to access high opportunity areas.
- Other factors play a role in this issue including local housing markets, mobility counseling, and voucher discrimination.

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
- Congress recently expanded the number of PHAs with MTW status by 100, increasing gradually over the next 7 years.

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)

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
- Final Small Area FMR Rule