

Achieving Housing Choice and Mobility in the Voucher Program: Recommendations for the Administration

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Introduction

Housing Choice Vouchers¹ help deconcentrate poverty and improve the lives of low-income families. There is evidence, however, that the program has failed to meet its housing choice and mobility goals. Tenants with a voucher disproportionately live in low-rent, racially segregated neighborhoods.² In fact, almost a quarter million children in the voucher program live in neighborhoods of extreme poverty.³ Many voucher families are unable to obtain rental housing outside of areas of poverty and, in some cases, fail to lease up at all. The way HUD administers the voucher program has contributed to the mobility and utilization barriers faced by low-income families.

This article will address voucher families' key barriers to housing choice and mobility and provide policy recommendations to HUD, including (1) increasing the value of vouchers to reflect market rent by improving HUD's Fair Market Rent (FMR) methodology, (2) improving landlord participation in the voucher program by prohibiting voucher discrimination and creating landlord incentives, (3) funding mobility counseling programs that will assist voucher families who want to move to areas of opportunity, (4) revising consortia and portability regulations to make it easier for families to move around in a given region, (5) creating an effective incentive to deconcentrate in the Section 8 assessment system, and (6) enforcing housing authorities' duties to affirmatively further fair housing.

Each policy change alone will not break down all of the barriers to choice and mobility. Taken together, however, these policy recommenda-

1. Also referred to as "Section 8 vouchers" after the statute that created them.

2. Establishing a More Effective Fair Market Rent System; Using Small Area Fair Market Rents in Housing Choice Voucher Program Instead of the Current 50th Percentile FMRs, 81 Fed. Reg. 39,218, 39,219 (June 16, 2016).

3. Barbara Sard & Douglas Rice, *Creating Opportunity for Children: How Housing Location Can Make a Difference*, CENTER ON BUDGET AND POLICY PRIORITIES, at 34 (Oct. 15, 2014), <https://www.cbpp.org/research/creating-opportunity-for-children>. Areas of extreme poverty are defined as areas where poverty rates are at least 40 percent.

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tions provide a comprehensive approach that HUD can use to improve the voucher program so that low-income families are able to more easily obtain safe and stable housing in communities of their choice.

Background

The Housing Choice Voucher program provides housing subsidies to 2.2 million low-income households in America.⁴ A majority of voucher households include seniors, children, or people with disabilities⁵ and over one million families with children use vouchers.⁶ Vouchers are now the largest assisted housing program administered by the Department of Housing and Urban Development (HUD), having grown while other HUD programs, such as public and multifamily housing, have decreased in size over the past decades.⁷ Tenant-based housing vouchers have reduced homelessness and housing instability⁸ and provided steady revenue to private landlords while improving opportunities for low-income families.

The cornerstone of the voucher program is mobility, i.e., the ability of voucher families to move from one unit to another while continuing to receive rental assistance. In contrast to participants in “project-based” housing assistance programs, whose assistance is tied to a particular property, families with vouchers can move around inside and outside the jurisdiction of the housing authority that issued the family’s voucher. Housing choice and mobility allows families to access neighborhoods with high-performing schools, reliable transportation, and quality jobs.

Recent studies highlight the importance of the voucher program’s mobility feature by demonstrating that where we live has a lasting impact on our health and future economic advancement. For example, children who move to high opportunity neighborhoods⁹ tend to have greater adult earnings

4. HUD, Office of Policy Development and Research, *Picture of Subsidized Households* (2015), <https://www.huduser.gov/portal/datasets/picture/yearlydata.html>.

5. Center on Budget and Policy Priorities, *United States Fact Sheet: The Housing Choice Voucher Program* (Jan. 12, 2018), http://www.cbpp.org/sites/default/files/atoms/files/3-10-14hou-factsheets_us.pdf.

6. HUD, *Picture of Subsidized Households*, *supra* note 4.

7. Center on Budget and Policy Priorities, *Chart Book: Cuts in Federal Assistance Have Exacerbated Families’ Struggles to Afford Housing* (Apr. 12, 2016), <https://www.cbpp.org/sites/default/files/atoms/files/4-12-16hou-chartbook.pdf>.

8. Michelle Wood, Jennifer Turnham & Gregory Mills, *Housing Affordability and Family Well-Being: Results from the Housing Voucher Evaluation*, 19:2 HOUSING POL’Y DEBATE 367 (2008), http://www.abtassociates.com/reports/Woods_Turnham_Mills_%5B11%5D_HPD.pdf.

9. One definition of “high opportunity neighborhood” comes from Margery Austin Turner, Austin Nichols, and Jennifer Comey, *Benefits of Living in High-Opportunity Neighborhoods: Insights from the Moving to Opportunity Demonstration* (Urban Inst. Sept. 2012). The authors define “high opportunity neighborhood” as

and educational attainment.¹⁰ Research also shows that neighborhood poverty is correlated with behavioral and emotional health.¹¹ Yet an increasing number of poor families live in areas of highly concentrated poverty where over 40 percent of residents are low-income.¹² Voucher families in particular are concentrated in racial and ethnic areas of concentrated poverty.

Families across the country report difficulties using their vouchers in the private rental market. Despite spending years on waitlists,¹³ families who cannot use their voucher within a limited search time¹⁴ must give them back and often return to high-poverty areas. As a result, housing authorities are experiencing historically low “success rates” as measured by the percentage of families who receive housing vouchers that are actually able to use them in the private market.¹⁵ Low success rates are often tied to low voucher utilization rates, i.e., the number of units leased with voucher assistance as a percentage of the number of units that the PHA was authorized to lease by contract with HUD. Housing authorities are funded based in part on the average number of vouchers utilized in the prior year. Low utilization rates cause PHAs to leave money that could be used to provide

High-work and -income neighborhoods (census tracts with poverty rates below 15 percent and labor force participation rates above 60%); High-education neighborhoods: tracts where more than 20% of adults have completed college; Predominantly white neighborhoods: tracts where non-Hispanic white share of the population exceeds 70%; and High-job-density neighborhoods: tracts with more than 200,000 low-wage jobs located within five miles of the tract centroid.

Id. High opportunity neighborhood is used broadly in this article to mean areas with low poverty, job opportunities, and high educational attainment.

10. Raj Chetty, Nathaniel Hendren & Lawrence Katz, *The Effects of Exposure to Better Neighborhoods on Children: New Evidence from the Moving to Opportunity Project* (Aug. 2015), available at http://scholar.harvard.edu/files/hendren/files/mto_paper.pdf.

11. Robert J Sampson, *Moving to Inequality: Neighborhood Effects and Experiments Meet Social Structure*, 114:1 AM. J. SOCIOLOGY 189 (July 2008), https://scholar.harvard.edu/sampson/files/2008_ajs_moving_to_inequality.pdf.

12. Elizabeth Kneebone & Natalie Holmes, *U.S. Concentrated Poverty in the Wake of the Great Recession*, BROOKINGS REPORT (Mar. 31, 2016). According to the report, by 2010–14, almost 14 million people lived in neighborhoods with poverty rates of 40 percent or more—more than twice as many as in 2000.

13. It is not uncommon for PHAs to have a waitlist of up to 10–15 years. Many PHAs close their waitlists for periods of time when the list becomes too long.

14. 24 C.F.R. § 982.203. The initial term of the voucher must be at least 60 days although PHAs have discretion to extend the term.

15. The Housing Authority of the County of Santa Clara, for example, had a success rate of 14 percent in June 2014. Probably one of the lowest, the San Francisco Housing Authority, experienced a success rate of 5 percent in 2015. HUD does not require the reporting of success rate data. The success rates here were discovered through a California Public Records Act request.

critical services for families experiencing homelessness and housing instability on the table.

The surrounding housing market, condition of the affordable housing stock, quality of landlord relations with the housing authority, and availability of housing search assistance all play a role in the implementation of the voucher program.¹⁶ Some factors are “external” and outside the control of HUD and housing authority. Other stakeholders, such as local governments, are therefore needed to help shape policies and programs that desegregate voucher families. There are many ways for HUD however, to improve implementation of the voucher program and create housing choice and mobility.

Set Rent Levels That Compete with the Local Market

Some voucher tenants simply cannot compete for private housing because the value of their voucher is less than market rent. The two main factors at play are HUD’s setting of “fair market rents” and housing authorities’ setting of “payment standards.” First, HUD sets “fair market rents” (FMRs) for Metropolitan Statistical Areas (MSAs) around the country. FMRs are meant to reflect gross rent estimates in a given geographical area and are used by housing authorities to set the maximum assistance that a housing authority will pay for a particular bedroom-sized unit, i.e., the “payment standard.”¹⁷ Housing authorities have considerable discretion in setting their payment standards, but HUD generally requires them to be set at 90 percent to 110 percent of FMR.¹⁸ In some cases, the FMR is lower than average rents but the PHA still maintains a low payment standard. These decisions reduce both the amount of assistance a family can receive and mean that there may be very little housing available to voucher families in low-poverty, high-opportunity neighborhoods.

For example, in Jacksonville, Florida, FMRs fall below actual rents in many neighborhoods: the 2017 FMR for a 2-bedroom unit was \$969, well below the average rent in many zip codes. The Jacksonville Housing Authority, which manages roughly 7,200 vouchers in the Jacksonville metro area, set the payment standard at 97 percent FMR (\$939). This means that voucher families, the overwhelming percentage of whom are African American, are limited to low rent neighborhoods. Their vouchers just do not pay enough to allow them to rent in higher income neighbor-

16. Meryl Finkel, Jill Khadduri, Victoria Main, et al., *Costs and Utilization in the Housing Choice Voucher Program*, Abt Associates, prepared for the U.S. Department of Housing and Urban Development Office of Policy Department and Research (July 2003), <https://www.huduser.gov/portal/Publications/PDF/utilization.pdf>.

17. 42 U.S.C.A. § 1437f(c); HUD, Office of Policy Development & Research, *Fair Market Rents for the Section 8 Housing Assistance Payments Program* (July 2007). Note that 50th percentile rents are being phased out by the Small Area Fair Market Rent policy.

18. 42 U.S.C.A. § 1437f(o)(1)(B).

hoods. In fact, 75 percent of Section 8 voucher families—including 79 percent of African American voucher households—live in racially concentrated minority neighborhoods.¹⁹

Statutory law requires HUD to revise FMRs annually using the most recent available data.²⁰ HUD sets FMRs at either the 40th or 50th percentile rent—the dollar amount below which the rent for 40 percent or 50 percent of standard quality rental housing units are rented by recent movers in a given geographic area.²¹ HUD’s methodology for setting FMRs is flawed, however, and often results in inaccurate market rent determinations. FMRs are problematic because, while HUD requires an annual update, the data used for that update is usually several years old, making a big difference in a hot rental market. In addition, FMRs are based on rents across an entire metropolitan area, where rents can vary drastically between (and even within) cities and towns. As a result, voucher holders are effectively barred from living in many areas, especially low-poverty neighborhoods with access to high-performing schools and other community amenities. Not surprisingly, then, a majority of voucher tenants continue to live in low-rent, high-poverty areas.²²

One way to improve the FMR methodology would be to require HUD to account for trends in local rental markets. HUD currently uses a “trend factor” to calculate FMRs that measures the anticipated changes in *national* gross rents. Instead, HUD should use the percentage change in MSA-wide rents issued as part of the quarterly U.S. Housing Market Conditions Regional Reports²³ published by HUD’s Office of Policy Development and Research (PD&R). Using the MSA, instead of the whole nation, as the unit of analysis for measuring rental market changes will result in a trend factor that is more sensitive to local conditions. HUD already has access to these data so changing the methodology would not be an administrative burden. As a result, the FMRs and payment standards will better

19. Center on Budget and Policy Priorities, *Housing Voucher Policy Designed to Expand Opportunity Targets Areas That Need It* (Jan. 9, 2018), <https://www.cbpp.org/research/housing/housing-voucher-policy-designed-to-expand-opportunity-targets-areas-that-need-it>.

20. 42 U.S.C.A. § 1437f(c)(1)(B).

21. 24 C.F.R. § 888.113(a). 50th percentile rents are used to address neighborhoods where voucher families are highly concentrated in areas of poverty although the program is being phased out by SAFMRs.

22. Establishing a More Effective Fair Market Rent System; Using Small Area Fair Market Rents in Housing Choice Voucher Program Instead of the Current 50th Percentile FMRs, 81 Fed. Reg. 39,218, 39,219 (June 16, 2016).

23. HUD’s Office of Policy Development and Research is tasked with “maintaining current information on housing needs, market conditions, and existing programs, as well as conducting research on priority housing and community development issues.” *About PD&R*, HUD OFFICE OF POLICY DEVELOPMENT & RESEARCH, <https://www.huduser.gov/portal/about/pdrabout.html>.

reflect actual rents, opening up housing opportunities for low-income families.

Second, HUD should take steps to fully implement its Small Area Fair Market Rents (SAFMRs) rule. HUD recently published a rule addressing the problem of rent variability between neighborhoods and to “establish a more effective means for voucher tenants to move into areas of high opportunity and lower poverty.” The rule replaces Fair Market Rents (FMRs) with zip-code level (or “small area”) rent data, thereby increasing the potential maximum assistance amount in some areas and lowering it in others.²⁴ Under the regulation, the new SAFMRs will be applied to 24 areas that meet HUD’s criteria, although other housing authorities may choose to opt in.²⁵ These 24 metro areas represent some of the most segregated regions in the country. By starting with these 24 regions, HUD can perform a rigorous analysis of the policy’s impacts and broaden the rule’s application if it is a success.

The adoption of the SAFMR final rule represents an important step toward addressing the concentration of voucher families in high-poverty, racially segregated neighborhoods. In the preamble to the proposed SAFMR rule, HUD acknowledges that the agency’s existing policy of utilizing 50th percentile rents to address voucher concentration “has not proven effective in addressing the problem of concentrated poverty and economic and racial segregation in neighborhoods” because “the majority of voucher tenants use their vouchers in neighborhoods where rents are low but poverty is generally high.”²⁶ By revising the way FMRs are calculated and shrinking the geographic unit, the SAFMR rule attempts to deconcentrate voucher families from areas of high poverty by expanding affordable housing options in a range of neighborhoods and communities. HUD should continue implementation and closely monitor the results.

24. Establishing a More Effective Fair Market Rent System; Using Small Area Fair Market Rents in Housing Choice Voucher Program Instead of the Current 50th Percentile FMRs, 81 Fed. Reg. 80,567 (Nov. 16, 2016).

25. Note that HUD suspended the mandatory implementation of SAFMRs by sending notice to all PHAs. Civil rights groups sued under the Administrative Procedure Act and the Fair Housing Act in *Open Communities Alliance et al v. Carson*, No. 17-2192 (D.D.C. 2017), and were successful in obtaining a preliminary injunction that ordered HUD to rescind the suspension on December 23, 2017. Although HUD published a notice in the *Federal Register* requesting comments on the suspension, subsequent to the injunction, it issued guidance requiring that housing authorities implement the rule by April 1, 2018.

26. Establishing a More Effective Fair Market Rent System; Using Small Area Fair Market Rents in Housing Choice Voucher Program Instead of the Current 50th Percentile FMRs, 81 Fed. Reg. 39,218, 39,219. (June 16, 2016).

Prohibit Discrimination or Incentivize Landlords to Accept Vouchers

In addition to needing vouchers that reflect market rents, participant families must be able to find a landlord willing to rent to a voucher tenant. In many areas, this is no easy task. In cities like San Diego, for example, where hundreds of veterans remain on the street because they have nowhere to use their housing vouchers, government officials are desperately seeking landlords who will accept vouchers and help house the nation's veterans.²⁷ This is particularly disturbing because vouchers are largely responsible for the reduction in homeless veterans nationwide.²⁸ The blanket refusal of some landlords to house voucher holders increases the harm and severity of the country's rental housing crisis, continues a cycle of poverty and segregation, and perpetuates housing barriers that are often based on misguided stereotypes. Yet there are a number of ways to address this issue.

Ban source of income discrimination: One of the most effective ways to improve housing choice and mobility for all voucher families would be to prevent unreasonable discrimination against voucher tenants or otherwise legally require landlords to accept vouchers. HUD should work with Congress to create a federal prohibition on discriminating against voucher families by expanding the Fair Housing Act to explicitly protect individuals who pay rent using a federal housing voucher. HUD should also consider working with Congress to craft federal legislation that would require landlords to accept tenants that meet all of their eligibility requirements.

The failure of landlords to accept vouchers is so pervasive that many states and local jurisdictions have adopted "Source of Income Protection" (SOI) laws to protect voucher families from discrimination.²⁹ Such laws broaden housing opportunities for low-income voucher families by increasing the amount of housing available. They also help reduce the stigma associated with using a voucher. Research demonstrates that state and local SOI antidiscrimination laws improve outcomes for voucher

27. *Targeting Homeless Vets, Faulconer Launches 'Housing Our Heroes'*, KPBS News, Jan. 15, 2016, <http://www.kpbs.org/news/2016/jan/15/faulconers-housing-our-heroes-program-leadership-a/>. San Diego Mayor Kevin Faulconer announced the initiative because the city had enough vouchers to house all of its homeless veterans, but not enough landlords willing to rent to them.

28. The Veterans Supportive Housing Program (VASH), a partnership between the Department of Veterans Affairs and HUD, caused the number of homeless veterans to drop by almost 50 percent since 2010. *Obama Administration Announces Nearly 50 Percent Decline in Veteran Homelessness*, HUD EXCHANGE (Aug. 1, 2016), <https://www.hudexchange.info/news/obama-administration-announces-nearly-50-percent-decline-in-veteran-homelessness/>.

29. Poverty and Race Research Action Council, *Expanding Choice: Practical Strategies for Building a Successful Housing Mobility Program*, Appendix B: State, Local, and Federal Laws Barring Source-of-Income Discrimination (Updated Aug. 2017), <http://www.prrac.org/pdf/AppendixB.pdf>.

holders.³⁰ Several studies have found that the probability of successfully using a voucher within the allowed search time was significantly higher in jurisdictions with a SOI antidiscrimination protection.³¹

State and local laws are insufficient strategies to combat the racial and class segregation of voucher tenants, however, because they are vulnerable to legal challenges and inconsistent across jurisdictional boundaries.³² Federal action is necessary to truly safeguard voucher families from discrimination based solely on their receipt of federal housing assistance.

In addition to protecting voucher tenants, HUD should also address discrimination against landlords who rent to voucher participants by insurance companies. Based on false stereotypes about the risks of renting to a voucher family, insurance companies often deny coverage to a landlord simply for agreeing to house voucher tenants. Charging higher premiums or refusing to provide insurance altogether may be a violation of federal fair housing laws.³³ Landlords who wish to rent to voucher families should be explicitly protected by law from such discrimination. HUD should enforce the fair housing rights of voucher landlords by issuing guidance or an opinion from HUD's Office of General Counsel that discrimination against voucher landlords is illegal under the Fair Housing Act. The practice is already prohibited in some states.³⁴

Loosen regulatory requirements: Under federal regulations, housing authority staff must inspect every voucher unit prior to move-in and verify that it meets HUD's Housing Quality Standards (HQS).³⁵ Such costly delays act as a disincentive for private landlords to participate in the voucher program. Housing may remain vacant for weeks while the landlord waits for the housing authority to inspect the unit, resulting in a financial loss to the landlord.³⁶ HUD should loosen or eliminate certain regulatory requirements on

30. J. Rosie Tighe, Megan E. Hatch & Joseph Mead, *Source of Income Discrimination and Fair Housing Policy*, 32:1 J. PLANNING LITERATURE 3–15 (2017).

31. Meryl Finkel, Linda Pistilli & Larry Buron, *Study on Section 8 Voucher Success Rates*, Abt ASSOCIATES (2001); Lance Freeman, *The Impact of Source of Income Laws on Voucher Utilization*, 22:2 HOUSING POL'Y DEBATE 297–78 (2012).

32. See *Austin Apt. Ass'n v. City of Austin*, 89 F. Supp. 3d 886 (W.D. Tex. 2015) (federal court upheld an amendment to the city's fair housing code that prohibits landlords from refusing to rent to prospective tenants on the basis of using a housing voucher). Consequently, the state legislature passed a law prohibiting adoption or enforcement of such local ordinances. See S.B. 267, 2015 Leg., 84(R) Sess. (Tex. 2015).

33. See *Complaint, Nat'l Fair Housing Alliance v. Travelers Indem. Co.*, 1:16-cv-00928 (D.C. Cir. May 17, 2016) (suit alleges that defendant insurance company violated local and federal fair housing laws when it refused to provide insurance to owners of multi-unit residential buildings because some of the residents relied on vouchers).

34. See CAL. INS. CODE § 679.74.

35. 24 C.F.R. § 982.401(a)(3).

36. By regulation, large PHAs have 15 days to complete an inspection from the date a tenant submits a request for approval of tenancy. 24 C.F.R. § 982.305(b)(2)(i). Small PHAs must complete an inspection within a reasonable time. *Id.*

PHAs so that tenants can move into units more quickly. The Housing Opportunity Through Modernization Act (HOTMA) provided some regulatory relief to housing authorities by allowing families to move into a unit that fails an inspection for a non-life threatening HQS violation.³⁷ However, it can still take a few weeks for a housing authority to perform an initial inspection and landlords prefer to rent out apartments immediately to other applicants. HUD should revise the inspection regulations to make it easier for tenants to quickly and efficiently move into a new unit.

Offer additional financial incentives: HUD should also consider allowing housing authorities to pay more than market rent to compensate landlords for the additional administrative requirements required by the voucher program. State governments have experimented with different financial incentives. For example, the State of Illinois created a program that allows PHAs and counties to jointly administer tax incentives for property owners in low poverty neighborhoods to rent to voucher tenants.³⁸ Oregon created a “Housing Choice Landlord Guarantee Program” that allows voucher landlords to file claims of up to \$5,000 in damages and receive money out a fund administered by the state Housing Community Services Department.³⁹

Fund and Encourage Mobility Counseling Programs

Families who wish to move to higher opportunity areas have a hard time doing so due to a variety of administrative and social constraints.⁴⁰ Even with an adequate amount of rental assistance and a willing landlord, many voucher families find it difficult to successfully obtain and maintain housing with a voucher in higher opportunity areas. Mobility counseling is an essential component of a successful voucher program.

There are an increasing number of mobility programs throughout the country.⁴¹ Mobility programs offer a range of services, including counseling families on the benefits of moving to different neighborhoods, coordinating moves to other jurisdictions, outreach to landlords, financial assistance for security deposits and moving assistance, and long-term support for second and third moves. One pilot in Dallas, for example, has successfully helped families move to areas with lower crime rates by giving them access to critical information; helping with landlord negotiations and bonuses; and providing them with fair housing counseling, referrals to social

37. Housing Opportunity Through Modernization Act (HOTMA), H.R. 3700, Pub. L. 114-201, 130 Stat. 782 (July 29, 2016) (to be codified at 42 U.S.C. § 1437f(o)(8)(1)(A)(ii)).

38. Illinois Pub. L. 93-0316.

39. Oregon HB 2539.

40. Ruoniu Wang, *Tracking “Choice” in the Housing Choice Voucher Program, The Relationship Between Neighborhood Preference and Locational Outcome*, 54(2) *URB. AFF. REV.* 267 (Mar. 2018), <http://journals.sagepub.com/doi/full/10.1177/1078087416646205>.

41. Audrey Berdahl-Baldwin, *Housing Mobility Programs in the U.S.* (2015), <http://pracc.org/pdf/HousingMobilityProgramsInTheUS2015.pdf>.

service agencies, and other post-move help.⁴² The Baltimore Housing Mobility Program provides another example of a successful housing mobility program that has helped thousands of voucher families move to low poverty areas through tenant education, training, and landlord outreach.⁴³

Despite the strong evidence that mobility programs help families overcome obstacles to locating housing in low-poverty neighborhoods, a majority of housing authorities do not provide mobility counseling and do not partner with mobility counseling agencies, most likely due to the cost of administering such programs. However, investment in such services is worth it. Among other benefits, there is evidence that mobility programs could generate medical cost savings (to government health programs, such as Medicaid) in the long term due to the health benefits of living in high opportunity areas.⁴⁴

In 2016, HUD proposed the Housing Choice Voucher Mobility Demonstration to support collaboration at housing authorities in ten regions with initiatives to help low-income families use existing vouchers to move to high opportunity neighborhoods.⁴⁵ Congress did not fund the program. Under the proposal, the one-time funding would have supported research to learn what strategies are most cost-effective by providing participating housing authorities with the financial capacity to build mobility programs. HUD should revisit the demonstration project, provide funding, and encourage local housing authorities to start mobility programs.

Remove Barriers to Portability

Nearly 4,000 housing authorities around the country administer public housing and/or vouchers.⁴⁶ About 3,300 of these agencies are small, administering fewer than 550 units.⁴⁷ In a given metropolitan area, there can be dozens of different housing authorities administering HUD's housing programs. For example, in the Hartford, Connecticut, metro area, there are twenty housing authorities administering anywhere between thirteen and 7,800 vouchers.⁴⁸

42. Robert Collinson & Peter Ganong, *Incidence and Price Discrimination: Evidence from Housing Vouchers*, JOINT CENTER FOR HOUSING STUDIES, HARVARD UNIV. (April 2016).

43. Berdahl-Baldwin, *supra* note 41.

44. Dan Rinzler et al., *Leveraging the Power of Place: Using Pay for Success to Support Housing Mobility*, FEDERAL RESERVE BANK OF SAN FRANCISCO (July 2015).

45. HUD, FY 2017 Budget Proposal, Sec. 270, "Housing Choice Voucher Mobility Demonstration."

46. Barbara Sard & Will Fischer, *Bill to Simplify Housing Program Administration Contains a Few Promising Proposals, but Numerous Problematic Ones*, CENTER ON BUDGET AND POLICY PRIORITIES (Nov. 15, 2012).

47. *Id.*

48. See links to information for individual housing authorities, https://www.hud.gov/program_offices/public_indian_housing/pha/contacts/ct.

When several housing authorities administer assistance in a particular area like Hartford, voucher tenants who wish to move are more likely to experience the challenges created by the portability process. “Portability” refers to carrying voucher-based assistance from the jurisdiction of one PHA to the jurisdiction of another. Even families moving just across a county may enter a different housing authority’s jurisdiction and are therefore impacted by portability rules. Existing portability regulations are burdensome and confusing for tenants and housing authorities alike and can put tenants at risk of homelessness. For example, the roles of the current and receiving housing authorities are often unclear, particularly with respect to billing requirements and search times, leading to delays in approval of portability requests.

Given that families must find new units within a limited time period, any delay can result in eviction or termination of assistance. Tenants are also provided conflicting information from housing authorities about eligibility requirements. Even though housing authorities have an obligation to accept most porting tenants, families may be discouraged from moving because of a misunderstanding about the eligibility criteria at a receiving housing authority. HUD’s recent changes to the portability regulations and subsequent guidance⁴⁹ are an improvement, but they did not go far enough to have a real impact on ensuring continued assistance when a tenant moves to the jurisdiction of a new housing authority.

A single point-of-contact can make the process of applying for and obtaining rental assistance less confusing and more transparent.⁵⁰ This is especially true for applicants who face special barriers to housing access, such as people with disabilities, seniors, and individuals with limited English proficiency. For this reason, Massachusetts developed a statewide system for voucher applications. The waitlist is centralized and applicants need only apply once for a housing voucher. The most effective way to address portability barriers is to encourage the formation of consortia and regional housing authorities and revise the portability rules.

Consortia and regional housing authorities: A consortium is an entity formed by two or more housing authorities for the purposes of administering housing programs.⁵¹ Consortium members maintain independent legal identities but share some of HUD’s reporting requirements. Consortia and regional housing authorities have the potential to significantly im-

49. HUD, Housing Choice Voucher (HCV) Family Moves with Continued Assistance, Family Briefing, and Voucher Term’s Suspension, PIH 2016-09 (HA) (June 6, 2016).

50. U.S. GOVERNMENT ACCOUNTABILITY OFFICE, HOUSING CHOICE VOUCHERS: OPTIONS EXIST TO INCREASE PROGRAM EFFICIENCIES, GAO-12-300, at 43 (Mar. 2012).

51. 42 U.S.C. § 1437k(a); 24 C.F.R. § 5.100, “Public Housing Agency (PHA) means any State, county, municipality, or other governmental entity or public body, or agency or instrumentality of these entities, that is authorized to engage or assist in the development or operation of low-income housing under the 1937 Act.”

prove the operation of the voucher program while expanding families' housing choice and mobility because they eliminate portability requirements and consolidate waitlists, among other benefits to applicants and tenants. In areas where housing authorities form consortia or regional entities, voucher participants are free to choose a unit without the existing barriers created by complex portability rules. Expanding the jurisdiction of a housing authority allows an avenue of mobility for families to move closer to a current job, for example, or to move out of neighborhoods with high concentrations of poverty.

Consortia also provide a degree of administrative relief by allowing housing authorities to pool resources, share program staff, reduce reporting requirements, and increase efficiency.⁵² Because a housing authority retains its separate existence and some ability to maintain local policies while participating in a consortium, housing authorities and their trade groups tend to support flexible rules on consortia while opposing more comprehensive consolidation.⁵³ However, very few agencies currently take advantage of the consortia option.⁵⁴ Given that most functions of a consortium can be met through the use of a less formal cooperative arrangement, there is little incentive for housing authorities to participate in one. HUD issued a proposed rule in 2014 that would have provided additional incentives to form consortia by allowing participating agencies to fully merge reporting and other obligations under a "single-Annual Contributions Contract."⁵⁵ However, HUD withdrew the proposed rule in response to executive orders 13771⁵⁶ and 13777,⁵⁷ which were issued as part of the administration's "Regulatory Reform" agenda. HUD should consider reissuing the final rule on this important issue.

HUD should also work with Congress to ensure that there are no state law barriers to the formation of consortia. Federal law broadly permits housing authorities to form consortia, but a minority of states have laws that appear to limit the practice.⁵⁸ HUD should urge Congress to eliminate

52. 42 U.S.C.A. § 1437a(6)(A); 24 C.F.R. § 943.122.

53. National Association of Housing and Redevelopment Officials (NAHRO), *Banding Together to Face Tough Times: The Consortium Option*, NAHRO MONITOR (June 30, 2013).

54. Barbara Sard & Deborah Thrope, *Consolidating Rental Assistance Administration Would Increase Efficiency and Expand Opportunity*, CENTER ON BUDGET AND POLICY PRIORITIES (Apr. 2016), <http://www.cbpp.org/research/consolidating-rental-assistance-administration-would-increase-efficiency-and-expand>.

55. Streamlining Requirements Applicable to Formation of Consortia of Public Housing Agencies, 79 Fed. Reg. 40,019 (July 11, 2014).

56. Reducing Regulation and Controlling Regulatory Costs, 82 Fed. Reg. 9,339 (Jan. 27, 2017).

57. Reducing Regulatory Burden: Enforcing the Regulatory Reform Agenda Under Executive Order 13777, 82 Fed. Reg. 22,344 (May 15, 2017).

58. *Id.*

the barriers created by the lack of uniform state-enabling legislation by revising the U.S. Housing Act to include explicit authorization for the formation of consortia that would preempt any state law barriers.

Portability regulations: Existing portability regulations are ineffective at promoting housing choice for voucher families. HUD published a new portability rule in 2015.⁵⁹ The rule revised the portability regulations for the voucher program with the goal of streamlining the portability process for PHAs and reducing the burden on participating families. The rule revised the regulations in several important ways, but fell short of removing significant barriers to housing choice because it failed to adequately preserve tenants' rights in the porting process.

Specifically, the final rule allows housing authorities to re-screen tenants who are seeking to port their vouchers. Ongoing program participants can be screened out by a receiving jurisdiction that has a different policy regarding criminal history, for example. HUD should adhere to the statute and implementing regulations, which prohibit receiving PHAs from conducting elective screening of current participants,⁶⁰ and revise the regulation accordingly.

HUD should also revise the regulations to require that information about porting 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. Without this provision, 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.

Finally, HUD regulations currently require that a request to port be denied if there are any outstanding issues with the current housing authority, even if those issues are unsettled or being contested by the tenant. HUD should relax the regulations and allow housing authorities to port a voucher even if there are loose ends from a prior tenancy. Housing authorities could still have the discretion to deny a port for severe program violations. Allowing tenants to port more quickly would promote rapid rehousing. HUD should revise the portability regulations to maximize family choice and increase the effectiveness of the voucher program.

Revise HUD's Evaluation Tools

HUD uses the Section 8 Management Assessment Program (SEMAP) to measure housing authority performance with respect to the voucher pro-

59. Housing Choice Voucher Program: Streamlining the Portability Process, 80 Fed. Reg. 50,564 (Aug. 20, 2015).

60. 42 U.S.C. § 1437f(o)(6)(B); 24 C.F.R. § 982.307(a)(1); Section 8 Tenant-Based Assistance Programs; Statutory Merger of Section 8 Certificate and Voucher Programs; Correction, 64 Fed. Reg. 49,656, 49,657 (Sept. 14, 1999); Section 8 Tenant Based Assistance; Statutory Merger of Section 8 Certificate and Voucher Programs; Housing Choice Voucher Program, 64 Fed. Reg. 56,894 (Oct. 21, 1999).

gram. SEMAP uses information in HUD's national database to score housing authorities in 14 areas. Each housing authority is then assigned a rating. SEMAP's purpose is to "assess whether the Section 8 tenant-based assistance programs operate to help eligible families afford decent rental units at the correct subsidy cost."⁶¹ The tool is used to motivate housing authorities to competently manage their tenant-based programs.⁶² Housing authorities are rated in different program areas and then receive a total SEMAP score. The score determines whether the agency is labelled "troubled" or "high performing." Troubled agencies are subject to more requirements, such as on-site reviews by HUD and corrective action plan procedures.⁶³ High performers, on the other hand, may receive national recognition by HUD or be given a competitive advantage for new funding.

HUD currently awards bonus points in SEMAP for deconcentration efforts.⁶⁴ HUD will assess the percent of housing choice voucher families with children who live in, and who have moved during the housing authority's fiscal year, to low-poverty census tracts in the housing authority's area.⁶⁵ If the deconcentration assessment is significant, HUD will award bonus points to the housing authority. Unfortunately, however, the number of bonus points awarded for this type of result has proven insufficient to incentivize housing authorities to take aggressive and effective deconcentration measures. HUD should revise SEMAP to increase the points awarded for deconcentration and include measures that would further incentivize housing authorities, such as points for mobility counseling and for moves to areas of opportunity.

Enforce Fair Housing Laws

The duty to affirmatively further fair housing refers to the obligation to promote desegregation proactively—an obligation that requires more than just merely prohibiting discrimination.⁶⁶ The text of the FHA imposes an

61. 24 C.F.R. § 982.452(b).

62. 24 C.F.R. Part 985.

63. 24 C.F.R. § 985.107.

64. 24 C.F.R. § 985.3(h).

65. HUD, HOUSING CHOICE VOUCHER GUIDEBOOK, at ch.2-4 (7420.10G), available at: https://www.hud.gov/program_offices/administration/hudclips/guidebooks/7420.10G.

66. See *Affirmatively Furthering Fair Housing*, 80 Fed. Reg. 42,272, 42,274 (July 16, 2015) (codified at 24 C.F.R. pts. 5, 91, 92, 570, 574, 576, and 903) [hereinafter "AFFH Rule"] ("In examining the legislative history of the Fair Housing Act and related statutes, courts have found that the purpose of the affirmatively furthering fair housing mandate is to ensure that recipients of Federal housing and urban development funds and other Federal funds do more than simply not discriminate: Recipients also must take actions to address segregation and related barriers for groups with characteristics protected by the Act, as often reflected in

obligation on the HUD Secretary to affirmatively further fair housing (AFFH).⁶⁷ In fact, the FHA requires all federal agencies and executive departments to affirmatively further fair housing and to cooperate with the HUD Secretary to accomplish this objective.⁶⁸ Both case law⁶⁹ and statutes⁷⁰ governing certain HUD programs have extended the AFFH obligation to recipients of HUD funding, including housing authorities.

In accordance with their duty to AFFH, housing authorities are required to identify and analyze “fair housing issues” (such as segregation, racially/ethnically concentrated areas of poverty, disproportionate housing needs, and disparity in access to opportunity) and the “contributing factors” that create, contribute to, perpetuate, or increase the severity of one or more

racially or ethnically concentrated areas of poverty.”); 24 C.F.R. § 5.152 (2016) (defining “affirmatively furthering fair housing” to mean “taking meaningful actions, in addition to combatting discrimination, that overcome patterns of segregation and foster inclusive communities free from barriers that restrict access to opportunity based on protected characteristics”); *see also* N.A.A.C.P. v. HUD, 817 F.2d 149, 154 (1st Cir. 1987) (observing that a “statute that instructs HUD to administer its grant programs so as ‘affirmatively to further’ the Act’s fair housing policy requires something more of HUD than simply to refrain from discriminating itself or purposely aiding the discrimination of others”). The following section provides a very basic overview of the duty to affirmatively further fair housing. For a more in-depth background discussion that predates the issuance of the final AFFH Rule, *see* Timothy Smyth, Michael Allen & Marisa Schnaith, *The Fair Housing Act: The Evolving Regulatory Landscape for Federal Grant Recipients and Sub-Recipients*, 23 J. AFFORDABLE HOUSING & CMTY. DEV. L. 231 (2015).

67. 42 U.S.C.A. § 3608(e)(5) (West 2014) (HUD Secretary will “administer the programs and activities relating to housing and urban development in a manner affirmatively to further the policies of this subchapter.”).

68. *Id.* § 3608(d) (West 2014). The full text of the subsection reads as follows: “All executive departments and agencies shall administer their programs and activities relating to housing and urban development (including any Federal agency having regulatory or supervisory authority over financial institutions) in a manner affirmatively to further the purposes of this subchapter and shall cooperate with the Secretary to further such purposes.”

69. *See, e.g.*, *Langlois v. Abington Hous. Auth.*, 234 F. Supp. 2d 33, 73 (D. Mass. 2002) (in finding PHA had AFFH obligation, court stated, “When viewed in the larger context of [the Fair Housing Act], the legislative history, and the case law, there is no way—at least, none that makes sense—to construe the boundary of the duty to affirmatively further fair housing as ending with the Secretary”); *Otero v. N. Y. City Hous. Auth.*, 484 F.2d 1122, 1133–34 (2d Cir. 1973) (also recognizing that the housing authority has an obligation to affirmatively further fair housing).

70. *See, e.g.*, 42 U.S.C.A. § 5304(b)(2) (West 2016) (CDBG grantees must certify that they will affirmatively further fair housing.); 42 U.S.C.A. § 1437c-1(d)(16) (West 2016) (PHA Plan includes civil rights certification wherein the PHA must certify that it will affirmatively further fair housing).

fair housing issues.⁷¹ Through this process (“the Assessment of Fair Housing” or “AFH”), housing authorities should set policy goals that (1) help low-income, minority voucher families move out of high-poverty areas; and (2) expand affordable housing options in a range of neighborhoods and communities. The administration can and should take steps to enforce the FHA and the duty to AFFH against local PHAs. In particular, HUD should scrutinize housing authorities’ deconcentration policies and goals under its AFH.

Conclusion

Vouchers are an essential component of a multifaceted national housing policy. Coupled with project-based assistance and the preservation of the existing affordable housing stock, tenant-based vouchers can improve the lives of low-income families across the country. As the nation’s largest housing assistance program, vouchers can go a long way towards reducing homelessness, improving health outcomes, and desegregating our communities. In order to realize the program’s potential, HUD must address existing obstacles to true housing choice and mobility.

71. 24 C.F.R. § 5.152.