

Vouchers: Tenant Protection Vouchers

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Administering agency: HUD's Office of Public and Indian Housing, and Office of Multifamily Housing Programs

Year program started: 1996 for prepayments; 1999 for opt outs

Population targeted: Low income tenants of HUD's various project-based housing assistance programs

FY14 funding: \$130 million

Also see: *Housing Choice Voucher Program, Project-Based Rental Assistance*

Tenant Protection Vouchers (TPVs) may be provided to low income residents of project-based HUD-assisted housing when there is a change in the status of their assisted housing that will cause residents to lose their home or render their home unaffordable. HUD calls such changes "housing conversion actions." There are two types of TPVs, regular tenant-based Housing Choice Vouchers (HCVs) and tenant-based Enhanced Vouchers (EVs). Both types are administered by a local public housing agency (PHA).

The amount of funding available for TVPs is determined by HUD estimates of need in the upcoming year and Congressional appropriations. For FY14 there is \$130 million appropriated for TVPs, a significant increase over the sequester-reduced \$71 million in FY13 or \$75 million in other recent years. HUD's FY15 budget request to Congress seeks \$150 million.

PROGRAM SUMMARY

Tenant Protection Vouchers (TPVs) issued as regular Housing Choice Vouchers (HCVs) follow all of the basic rules and procedures of non-TPV HCVs. Enhanced Vouchers (EVs) have special features that make them "enhanced" for residents.

Special Features of Enhance Vouchers

There are two key features that make EVs "enhanced":

1. Right to Remain. A household receiving an EV has the right to remain in their previously-assisted home, and the owner must accept the EV as long as the home:
 - a. Continues to be used by the owner as a rental property; that is, unless the owner converts the property to a condominium, a cooperative, or some other private use.
 - b. Meets HUD's "reasonable rent" criteria, basically rent comparable to unassisted units in the development or in the private market; and,
 - c. Meets HUD's Housing Quality Standards.

Instead of accepting an EV, a household may move right away with a regular HCV. A household accepting an EV may chose to move later, but then their EV converts to a regular HCV.

2. Higher Voucher Payment Standard. An EV will pay the difference between a tenant's required contribution toward rent and the new market-based rent charged by the owner after the housing conversion action even if that new rent is greater than the PHA's basic voucher payment standard. A PHA's regular voucher payment standard is between 90% and 110% of the Fair Market Rent (FMR). EV payment standards must be adjusted in response to future rent increases.

In most cases a household will continue to pay 30% of their income toward rent and utilities. However, the statute has a minimum rent requirement calling for households to continue to pay toward rent at least the same amount they were paying for rent on the date of the housing conversion action, even if it is more than 30% of their income. If in the future a household's income declines by 15%, the minimum rent must be recalculated to be 30% of income or the percentage of income the household was paying on the date of the conversion event, whichever is greater.

Which residents are eligible for EVs and which are eligible for regular HCV as TPVs?

The type of TPVs residents might be eligible for depends on which housing program assisted the development they are living at, as well as certain circumstances for some of the programs.

Regular Tenant Protection Vouchers. Traditional Housing Choice Vouchers (HCVs) are provided to residents to enable them to find alternative affordable homes when:

- Public housing is demolished, sold, or undergoes a mandatory conversion to Housing Choice Vouchers;
- Private housing assisted with a project-based Section 8 contract has the contract terminated or not renewed by HUD (for example if the owner continuously fails to maintain the property in suitable condition);
- Private housing with a HUD-subsidized mortgage undergoes foreclosure;
- A Rent Supplement Payments Program (Rent Supp) or a Rental Assistance Payment Program (RAP) contract expires, or underlying mortgage is prepaid, or HUD terminates the contract.
- Certain Section 202 Direct Loans are prepaid.

Enhanced Vouchers. Enhanced Vouchers (EVs) are provided to residents of private, project-based assistance when an “eligibility event” takes place, as defined in Section 8(t)(2) of the Housing Act of 1937. The most typical “eligibility event” is when a project-based Section 8 contract expires and the owner decides not to renew the contract – “opt outs” of the contract. Prepayment of certain unrestricted HUD-insured mortgages (generally Section 236 and Section 221(d)(3) projects) is another type of eligibility event.

There are a number of other situations triggering an eligibility event, depending on the program initially providing assistance. HUD must provide TPVs for opt outs and qualifying mortgage prepayments just described; however, HUD has discretion regarding TPVs for other circumstances such as Rent Supplement (Rent Supp) or Rental Assistance Payment (RAP) contract terminations, or Section 202 Direct Loan prepayments.

Mortgage Prepayment Eligibility Events Under Section 8(t) of the Housing Act. When an owner prepays an FHA-insured loan, under certain conditions EVs may be provided to tenants in units not covered by rental assistance contracts. However, EVs may not be provided to unassisted tenants if the mortgage matures.

If a mortgage may be prepaid without prior HUD approval, then EVs must be offered to income-eligible tenants living in units not covered by a rental assistance contract. Section 229(l) of the Low-Income Housing Preservation and Resident Homeownership Act of 1990 (LIHPRHA) spells out the various types of such mortgages.

Some properties that received preservation assistance under the Emergency Low-Income Housing Preservation Act (ELIHPA) may have mortgages that meet the criteria of Section 229(l). For such properties, HUD may provide EVs to income-eligible tenants not currently assisted by a rental assistance contract when the mortgage is prepaid. However, HUD may not provide EVs if after mortgage prepayment the property still has an unexpired Use Agreement.

Situations Involving Rent Supplement Payments Program (Rent Supp) or the Rental Assistance Program (RAP). EVs may be provided to Rent Supp residents if a project has a Rent Supp contract and a Section 8 contract which both expire on the same day. EVs may be provided to RAP tenants in limited situations when the property’s mortgage can be prepaid without prior HUD approval and meets the criteria of Section 229(l) of LIHPRHA.

The FY12 Appropriations Act allows HUD to provide regular HCVs when a Rent Supp or RAP contract terminates due to expiration, prepayment of the underlying mortgage, or HUD enforcement action. HCVs may be provided for all units on an original Rent Supp or RAP contract that were occupied within 24 months of contract termination.

Section 202 Direct Loan Properties. The FY12 Appropriations Act allows HUD to provide regular HCVs to unassisted elderly residents when the mortgage of certain Section 202 properties are prepaid. Qualifying prepayments must be of mortgages with properties that were financed between 1959 and 1974, and refinanced under Section 811 of the American Homeownership Economic Opportunity Act of 2000. The Section 202 mortgage must have an interest rate of less than 6%, and prepayment must involve substantial rehabilitation. HUD must determine that unassisted elderly residents would face rent increases without TPV assistance.

Set-Aside For TPVs At Certain Properties. Out of the \$75 million FY12 Appropriations Act provision for tenant protection vouchers, \$10 million was set aside for low income households in low-vacancy areas who may have to pay more than 30% of their income for rent at three types of HUD-assisted multifamily properties that experienced in FY12, or in previous years:

1. A maturing HUD-insured or HUD-held mortgage, or a Section 202 Direct Loan which required HUD permission to prepay;
2. An expiring rental assistance contract for which tenants were not eligible for tenant protection assistance under existing law; or,
3. An expiring affordability restriction that accompanied a HUD mortgage or preservation program.

HUD Notice PIH 2013-08 set out procedures for implementing the set-aside. Instead of making the full \$10 million available, HUD only set aside \$4 million, claiming other properties needed to use the limited TPV funding appropriated.

HUD required owners to request TPVs; if an owner did not request assistance, tenants could not receive vouchers. HUD did not provide a mechanism for tenants to make a request if the owner did not.

HUD selected properties based on the date a mortgage matured, or a rental assistance contract or affordability agreement expired. This was intended to prioritize assistance to households that had been without affordability restrictions or rental assistance the longest.

HUD will also prioritize applications that had households facing the greatest rent burden. A three-tiered system was established. First priority went to residents who would have to pay more than 40% of their income for rent, but if funds remained, then a second tier priority would assist household who would have to pay more than 35% of their income. A third tier would cover, if funds were available, households who would have to pay more than 30% of their income.

The FY14 Appropriations Act required a \$5 million set-aside. HUD must issue a new Notice implementing the FY14 set-aside by mid-May, 2014. The Administration's FY15 budget proposal does not request this set-aside.

WHAT TO SAY TO LEGISLATORS

Advocates should tell their Members of Congress to support funding sufficient to cover all tenant protection vouchers that might be needed due to housing conversion actions so that: low income households are not displaced from their homes as a result of steep rent increases when an assisted property leaves a HUD program; and, low income households losing their homes as a result of public housing demolition, disposition, or mandatory conversion to vouchers have tenant-based assistance to be able to afford rent elsewhere.

FOR MORE INFORMATION

- National Low Income Housing Coalition, 202-662-1530, www.nlihc.org
- National Housing Law Project, 415-546-7000, <http://nhlp.org/resourcecenter?tid=114>
- HUD's PIH Notice 2012-3, <http://portal.hud.gov/hudportal/documents/huddoc?id=pih2012-3.pdf>
- HUD's Section 8 Renewal Policy Guide, Chapter 11, http://portal.hud.gov/hudportal/documents/huddoc?id=Sec_8_Renewal_Policy_Guide.pdf