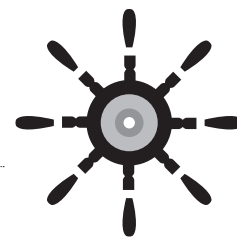


Resident Participation in Federally Subsidized Housing



By Ed Gramlich, Senior Advisor, NLIHC

Subsidized housing residents have important personal perspectives about the impact of established and emerging subsidized housing policies on their homes and communities. Consequently, they have good ideas about how their housing developments should be managed. Resident participation in all aspects of housing management is critical to the long-term success of federal housing programs.

HUD has three major programs that provide rent subsidies to approximately 4.4 million households nationwide. These programs are the public housing program, private multifamily HUD-assisted rent programs, and the Section 8 Housing Choice Voucher program. Each of those programs has its own set of challenges and opportunities related to resident participation.

PUBLIC HOUSING

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

Year started: 1986 for public housing tenant participation, 1998 for Resident Advisory Boards

Population targeted: Residents of public housing

See also: *Public Housing, Public Housing Agency Plan*

There are a number of HUD policies that help support the participation of all public housing residents in public housing agency (PHA) decision-making.

PHA Plan Process. Opportunities for resident participation exist in the annual and five-year planning processes, collectively called the PHA Plan, required by the Quality Housing and Work Responsibility Act (QHWRA). Many PHAs only have minimal PHA Plan resident engagement requirements, but the process does open the door for residents and other community members to interact and influence PHA decisions. The regulations for the PHA Plan process are at Part 903 of Title 24 of the Code of Federal Regulations (24 CFR Part 903).

Resident Advisory Boards.

QHWRA created Resident Advisory Boards (RABs) to ensure that public housing and voucher-assisted households can meaningfully participate in the PHA Plan process. RABs consist of residents who are elected to represent the population served by the housing agency. By law, PHAs must provide RABs with reasonable resources to enable them to function effectively and independently of the housing agency. Regulations regarding RABs are in the PHA Plan regulations, Part 903.

Part 964 Resident Participation Regulations. A federal rule provides public housing residents with the right to organize and elect a resident council to represent their interests. This regulation, 24 CFR Part 964, spells out residents' rights to participate in all aspects of public housing development operations. Residents must be allowed to be actively involved in a PHA's decision-making process and to give advice on matters such as maintenance, modernization, resident screening and selection, and recreation. The rule defines the obligation of HUD and PHAs to support resident participation activities through training and other activities.

A resident council is a group of residents representing the interests of the residents and the properties they live in. Some resident councils are made up of members from just one property, so a PHA could have a number of resident councils. Other resident councils, known as jurisdiction-wide councils, are made up of members from many properties. A resident council is different from a RAB because the official role of a RAB is limited to helping shape the PHA Plan. Resident councils can select members to represent them on the RAB.

Most PHAs are required to provide \$25 per occupied unit per year from their annual operating budget to pay for resident participation activities. A minimum of \$15 per unit per year must be distributed to resident councils to fund activities such as training and organizing. Up to \$10 per unit per year may be used by the PHA for resident participation activities. On August 23, 2013, HUD issued Notice PIH 2013-21 providing new guidance on the use of tenant participation funds.

Resident Commissioners. The law also mandates that every PHA, with a few exceptions, have at least one person on its governing board who is either a public housing resident or voucher holder. HUD's rule regarding the appointment of resident commissioners, at Part 964, states that residents on boards should be treated no differently than non-residents.

Resident Opportunities and Self-Sufficiency program. HUD's Resident Opportunities and Self-Sufficiency (ROSS) program is designed to help public housing residents become more self-sufficient by linking them to supportive services and resident empowerment activities. Competitive grants under the ROSS program can be awarded to PHAs, resident councils, resident organizations, and other entities. ROSS funds have been appropriated annually by Congress, followed by a Notice of Funding Availability (NOFA) from HUD inviting eligible applicants to compete for the funds. Twenty-five percent of ROSS grants have been set aside for formally recognized resident councils, but few ever apply for it. For FY16, Congress appropriated \$35 million for ROSS—\$10 million less than FY15, and \$15 million less than FY12 and earlier.

HOUSING CHOICE VOUCHERS (SECTION 8)

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

Year started: 1998 for RABs

Population targeted: Residents with Section 8 Housing Choice Vouchers

See also: *Vouchers: Housing Choice Voucher Program; Public Housing Agency Plan*

Approximately 2 million households receive tenant-based assistance through the Housing Choice Voucher Program. Housing Choice Voucher holders, often referred to as Section 8 voucher holders, are among the most difficult residents to organize because they can choose a private place to rent anywhere in the PHA's market, so are less likely to live close to or have contact with each other. However, the PHA Plan process, and the requirement that voucher holders be included on the RAB, offer platforms for organizing voucher holders so that they can amplify their influence in the decision-making affecting their homes.

Participating in PHA Plan Processes. At the local level, voucher holders can play a key role in shaping PHA policies by participating in the annual and five-year PHA Plan processes. PHAs make many policy decisions affecting voucher holders, such as setting minimum rents, developing admissions criteria, determining the amount of time a voucher holder may search for a unit, giving preferences for people living in the PHA's jurisdiction, as well as creating priorities for allocating newly available vouchers to categories of applicants (for example, homeless individuals, families fleeing domestic violence, working families, or those with limited English-speaking capability).

Participation on Resident Advisory Boards. Voucher holders can play an integral role in setting the agenda for local PHAs because the RAB regulations require reasonable representation of voucher holders on the RAB when there are a significant number of voucher holders assisted by the PHA.

PRIVATELY OWNED, HUD-ASSISTED MULTIFAMILY HOUSING (PROJECT-BASED SECTION 8 RENTAL ASSISTANCE, PBRA)

Administering agency: HUD's Office of Multifamily Housing Programs

Year started: 1978, with significant regulatory changes in 2000

Population targeted: Residents of private multifamily HUD-assisted rental developments

See also: *Project-Based Rental Assistance*

Tenants' right to organize is based in law at 12 USC 1715z-1b and spelled out in regulations at 24 CFR Part 245, which require owners of privately owned, HUD-assisted multifamily housing to recognize tenant organizations. A legitimate tenant organization is one established by tenants that represents all tenants, operates democratically, meets regularly, and is independent of owners and management. The regulations recognize the rights of tenants to distribute leaflets, canvass, post notices, and convene meetings without management present and without prior notice to or permission from management. Residents can invite outside organizers to assist them. HUD-funded organizers have the right to go into a building without a tenant invitation to help residents organize.

On June 18, 2010, HUD sent a letter to all owners and management agents highlighting key features of Part 245, emphasizing the right of tenants to organize and repeating the list of protected tenant organizing activities.

Policy Notices H 2011-29 of October 13, 2011, and Notice H 2012-21 of October 17, 2012, repeated and elaborated on the content of the June 2010 letter, adding civil money penalties that HUD could impose on an owner or manager failing to comply with Part 245. The civil money penalties regulation (24 CFR Part 30) allows HUD to assess fines on owners or management agents for major violations of tenants' right to organize. Notice H 2014-12, issued on September 4, 2014, revised Notice H 2011-29 and Notice H 2012-21 by adding a tenant appeals process when a decision by the local HUD office concludes that an owner did not violate the tenant participation regulations or other program obligations.

Other HUD guidance includes HUD's Model Lease, which is applicable to all HUD tenants, and explicitly refers to the regulation's provisions about the right to organize. The Management Agent Handbook requires owners to recognize tenant unions, and specifies management practices that would violate tenants' rights and therefore potentially result in HUD-imposed sanctions.

Resident Rights and Responsibilities is a resident-oriented HUD brochure explaining that tenants have the right to organize free from management harassment or retaliation. This brochure must be distributed annually to all HUD tenants.

In addition, over the years, Congress and HUD have expanded the formal process for tenant participation in decisions affecting HUD-assisted housing. For example, HUD must notify tenants about a pending auction or sale of their building if it is owned by HUD or is under HUD foreclosure, so that tenants can either submit a purchase offer as a nonprofit or limited-equity cooperative, or support purchase by others. In addition, when owners choose to go into HUD's Mark-to-Market program, HUD is required to notify tenants prior to a first and second tenant meeting so that tenants can comment on the owner's plans to rehabilitate the building and change the financing.

Tenant Resource Network. For a few years, Congress provided funds to help tenants organize,

primarily so they could understand and influence the future of their homes when a development's Section 8 contract was expiring. The Outreach and Training Assistance Grant (OTAG) program was established by Section 514(f) of the Multifamily Assisted Housing and Reform Affordability Act, enacted in 1998. Section 514 requires HUD to set aside \$10 million annually to enable tenants to participate in the mortgage restructuring process during any proposed transfer of a property. However, between FY01 and FY10 OTAG grants were not awarded due to HUD concerns about administrative problems, which are not believed to have been widespread.

HUD issued a NOFA for FY11 making \$10 million available for a renamed and revised program called the Tenant Resource Network (TRN). The purpose of TRN was to inform and engage tenants about their rights and options if their privately owned, HUD-assisted apartments were at risk of leaving the affordable housing stock. Eligible properties included those with an FHA insured or direct mortgage that will mature within 24 months, an owner who decides to opt out of or prepay a project-based Section 8 contract within 12 months, or a REAC (physical inspection) score below 60 for two consecutive months within the last year. Nonprofit organizations with a minimum of five years of tenant outreach and organizing experience were eligible to apply.

Only \$5 million was awarded to 15 organizations in June 2012. HUD requested \$3 million for FY16; however, Congress did not appropriate any new money. Between 2002 and 2015 only \$8.5 million was spent for Section 514 activities.

The TRN program has expired, but HUD committed to using the balance of the FY11 Section 514 funds for an AmeriCorps VISTA Volunteer program. Unless HUD and Congress act, the VISTA program will have no resources for tenant assistance after FY17. The program replacing TRN is called the AmeriCorps VISTA Affordable Housing Preservation Project (VAHPP). The National Alliance of HUD Tenants worked diligently to convince HUD to partner with VISTA and Equal Justice Works to create and operate VAHPP. Thirty-three VISTA organizers and 20 supervisors are implementing the project, providing both community organizing and legal support to tenants and tenant organizations with the goal of working with owners and project

administrators to preserve, maintain, and improve project-based Section 8 homes.

Developments eligible for VAHPP are subject to a project-based Section 8 Housing Assistance Contract (HAP) when:

- A HAP contract will expire within five years.
- A property has two consecutive REAC physical inspection scores less than 60.
- A property is otherwise at risk of HUD abating the HAP contract due to health and safety issues.
- The owner has submitted a request to HUD to prepay the mortgage, such that the prepayment would trigger the issuance of preservation vouchers to tenants of non-assisted units.

The Obama Administration's FY16 budget request sought to set aside \$3 million from the project-based Section 8 Rental Assistance program appropriations for preservation-related tenant advocacy and capacity building technical assistance, building upon the VAHPP work. However, the Administration proposed that such technical assistance be available through a competitive process announced via a Notice of Funding Availability through Community Compass (formerly OneCPD). Funds were not appropriated for FY16.

WHAT TO SAY TO LEGISLATORS

Advocates should speak to their Members of Congress and ask them to:

- Fund the public housing ROSS program at \$50 million in FY17.
- Reverse HUD's administrative weakening of the PHA Plan and Congress' streamlining of the Plan's requirements for 75% of the nation's PHAs.

- Adhere to Section 514 by ensuring \$10 million is available and utilized each year to support qualified and independent organizations to provide outreach and training to HUD-assisted housing tenants threatened with the loss of their housing.

FOR MORE INFORMATION

National Alliance of HUD Tenants, 617-267-9564, www.saveourhomes.org

National Housing Law Project, 415-546-7000, www.nhlp.org

NLIHC, 202-662-1530, www.nlihc.org

24 CFR Part 964, Tenant Participation and Tenant Organizing in Public Housing Regulations, <https://www.gpo.gov/fdsys/pkg/CFR-2014-title24-vol4/pdf/CFR-2014-title24-vol4-part964.pdf>

24 CFR Part 903, Public Housing Agency Plans Regulations, <https://www.gpo.gov/fdsys/pkg/CFR-2014-title24-vol4/pdf/CFR-2014-title24-vol4-part903.pdf>

24 CFR Part 245, Tenant Participation in Multifamily Housing Projects, <https://www.gpo.gov/fdsys/pkg/CFR-2014-title24-vol2/pdf/CFR-2014-title24-vol2-part245.pdf>

HUD Resident Rights and Responsibilities brochure, http://portal.hud.gov/hudportal/documents/huddoc?id=DOC_12162.pdf

Notice PIH 2013-21, Guidance on the use of Tenant Participation Funds, <http://1.usa.gov/1oeNmvJ>

Notice H 2014-12, Implementation of Tenant Participation Requirements in Accordance with 24 CFR Part

245, <http://portal.hud.gov/hudportal/documents/huddoc?id=14-12hsgn.pdf> ■