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

FY16 funding: $130 million

See also: *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 (for example, public housing demolition) or render their home unaffordable (for example, an owner "opting out" of a Section 8 contract). 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.

PROGRAM SUMMARY

There are two types of TPVs—HCVs and (EVs. The type of TPVs residents might be eligible for depends on which housing program assisted the development in which they are living, as well as certain circumstances for some of the programs. The FY16 Appropriations Act continues the policy of limiting TPVs to units that have been occupied during the previous two years.

Regular Tenant Protection Vouchers Traditional 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 HCVs.
- 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.

TPVs issued as regular HCVs follow all of the basic rules and procedures of non-TPV HCVs.

Enhanced Vouchers. EVs are provided to tenants living in properties with 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 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 Supp or RAP contract terminations, or Section 202 Direct Loan prepayments.

Special Features of Enhanced Vouchers. EVs have two special features that make them "enhanced" for residents:

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.

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. 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.

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 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.

Set-Aside for TPVs at Certain Properties. The FY16 Appropriations Act continues the provision setting aside $5 million of the $130 million appropriated for tenant protection vouchers 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. The act states that existing HUD guidance, Notice HUD 2015-7, will continue to apply until modified.

Notice HUD 2015-7 describes the three types of HUD-assisted multifamily housing at which TPVs could be provided as those that experienced:

1. The maturity of a HUD-insured, HUD-held, or Section 202 loan during FY14 or previous years, and that required the permission of the secretary in order to prepay a loan.
2. The expiration of a rental assistance contract for which the tenants are not eligible for enhanced voucher or tenant protection assistance under existing law.
3. The expiration of affordability restrictions accompanying a mortgage or preservation program administered by the secretary.

The HUD Notice requires owners to request TPVs; if an owner does not request assistance, tenants cannot receive vouchers. HUD does not provide a mechanism for tenants to make a request if the owner did not. Owners could request either enhanced vouchers or project-based vouchers. PHAs must administer the vouchers. A public housing PHA could decline to participate; if so, HUD would attempt to identify an alternative PHA willing to administer the vouchers. Eligible tenants are those that are unassisted low income tenants who are rent-burdened or who would become rent-burdened, that is spend more than 30% of income for rent and utilities.

FUNDING

The amount of funding available for TVPs should be determined by HUD estimates of need in the upcoming year and Congressional appropriations. For FY16 there is $130 million appropriated for TVPs, the same amount as FY14 and FY15, and a significant increase over the sequester-reduced $71 million in FY13 or $75 million in other recent years. HUD's FY17 budget request to Congress seeks $110 million.

The FY16 Appropriations Act continues a provision first introduced by the FY15 Appropriations Act, prohibiting TPVs to be reissued when the initial family with the TPV no longer uses it, except as a replacement voucher as defined by HUD in a future notice.

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

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

National Housing Law Project, 415-546-7000, http://nhlp.org/resourcecenter?tid=114

Notice HUD 2015-7 is at http://portal.hud.gov/hudportal/documents/huddoc?id=15-07pihn.pdf

HUD's Section 8 Renewal Policy Guide, is at http://portal.hud.gov/hudportal/HUD?src=/program_offices/housing/mfh/mfhsec8 ■