

Resident Participation in Federally Subsidized Housing

By Ed Gramlich, Senior Advisor, National Low Income Housing Coalition

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 program 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*, *Rental Assistance Demonstration*

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). For more see *Public Housing Agency Plan* in Chapter 7 of this *Advocates' Guide*.

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. Each PHA must have a RAB consisting of residents elected to reflect and represent the population served by the PHA. Where residents with Housing Choice Vouchers make up at least 20% of all assisted households served by the PHA, voucher households must have reasonable representation on the RAB.

The basic role of the RAB is to make recommendations and to assist in other ways in drafting the PHA Plan and any significant amendments to it. 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.

RENTAL ASSISTANCE DEMONSTRATION

The Rental Assistance Demonstration (RAD) allows public housing agencies (PHAs) and owners of private, HUD-assisted housing to leverage Section 8 rental assistance contracts in order to raise private debt and equity for capital improvements. The public housing component allows up to 185,000 units of public housing to compete for permission to convert their existing public housing capital and operating fund assistance to project-based Housing Choice Vouchers (PBVs) or to Section 8 project-based rental assistance (PBRA) by September 30, 2018.

Before submitting a RAD application to HUD, the PHA must notify residents and resident organizations of a project proposed for conversion. The PHA is not required to notify the Resident Advisory Board (RAB) or residents of other developments. The PHA must conduct two meetings with residents of the selected project to discuss conversion plans and to give those residents a chance to comment. Once there is preliminary HUD approval, the PHA must hold at least one more meeting with those residents.

RAD is a Significant Amendment. RAD conversion is a "Significant Amendment" to the PHA Plan. However, HUD does not require a Significant Amendment process to begin until late in the conversion process, which could be as late as six months after HUD has issued a preliminary approval for RAD conversion of a specific development and by which time the PHA has secured all necessary private financing. Consequently, RAB involvement and the PHA-wide notice, broad public outreach, and public hearing required by the Significant Amendment regulations will not take place until the conversion application process is too far along. Rather than engage all PHA residents before an application for RAD conversion is submitted, the public engagement process is only required to take place close to the time when a PHA has all of its financing and construction plans approved and is ready to proceed.

Resident Organizations Continue to Receive \$25 Per Unit. Whether a property is converted to PBV or PBRA, each year the PHA must provide \$25 per occupied unit at the property for tenant participation; of this amount, at least \$15 per unit must be provided to the legitimate resident organization for resident education, organizing around tenancy issues, or training. The PHA may use the remaining \$10 per unit for resident participation activities; however, some PHAs distribute the entire \$25 per unit to the resident organization.

Residents Right to Organize. Residents have the right to establish and operate a resident organization. If a property is converted to PBRA, then the current multifamily program's resident participation provisions apply, the so-called "Section 245" provisions (see "Privately Owned, HUD-Assisted Multifamily Housing (Project-Based Section 8 Rental Assistance, PBRA)" below). If a

property is converted to PBV, instead of using public housing's so-called "Section 964" provisions (see "Part 964 Resident Participation Regulations" above), RAD requires resident participation provisions similar to those of Section 245. For example, PHAs must recognize legitimate resident organizations and allow resident organizers to help residents establish and operate resident organizations. Resident organizers must be allowed to distribute leaflets and post information on bulletin boards, contact residents, help residents participate in the organization's activities, hold regular meetings, and respond to a PHA's request to increase rent, reduce utility allowances, or make major capital additions.

Properties converted to PBRA are no longer required to meet PHA Plan requirements. In addition, PBRA residents can no longer be on the RAB, be a PHA commissioner, or be on a jurisdiction-wide resident council—unless the PHA voluntarily agrees.

HOUSING CHOICE VOUCHERS (SECTION 8)

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

Year started: 1998 for Resident Advisory Boards (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 households, often referred to as Section 8 voucher households, are among the most difficult residents to organize because they can choose a private place to rent anywhere in the public housing agency's (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 households 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, Subpart B, 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 completely 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.

Unlike the 964 regulations in Public Housing, the 245 regulations do not require a specific

structure, written by-laws, or even elections for a tenant association to be “legitimate”, as long as the “organic” tests are met: the group meets regularly, operates democratically, represents all tenants, and is completely independent of owners. This allows “early stage” tenant organizing committees to demand recognition as legitimate tenant groups, and to claim their right to organize in the face of common resistance or hostility from private owners and managers.

The civil money penalties regulation from 2001 (24 CFR Part 30) allows HUD to assess fines on owners or management agents for major violations of tenants’ right to organize. However, to date HUD has not issued any fines, despite widespread reported violations. 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 Notice 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. 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.

Notice H 2016-05 issued on March 31, 2016 updated the previous Notice regarding filing complaints, added to the list of property types that may be assessed a civil money penalty, and clarified that that civil money penalties may be assessed on Project-based Section 8 developments, not just buildings with HUD mortgages. Notice H 2016-05 also elaborated on the responsibility of owners to give priority to meeting spaces that provide physical access to people with disabilities. In addition, when residents have complaints the Notice allowed tenants to reject “mediation” with owners as an option for resolving complaints because many tenants found mediation unproductive; instead tenants may seek a ruling by HUD regarding owner infractions.

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. HUD’s Management Agent Handbook 4381.5 Revision 2 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 in appropriate languages and distributed annually to all HUD tenants at lease signing or recertification.

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. In 1997, Congress enacted Section 514(f) of the Multifamily Assisted Housing and Reform Affordability Act, following advocacy by the National Alliance of HUD Tenants (NAHT) and the National Housing Law Project. Section 514 allowed HUD to set aside up to \$10 million annually to enable tenants to participate in decisions regarding Section 8 contract renewals in their buildings. HUD awarded two rounds of Outreach and Tenant Grants (OTAGs) to 35 local organizations in 1998 and 2000, with a portion of these funds as well as smaller targeted grants to individual tenant groups and nonprofit purchasers. In addition, HUD funded a VISTA program targeting at-risk HUD housing. However, between FY02 and FY10, HUD did not utilize the Section 514 set-aside, and the programs lapsed.

NAHT advocated throughout that period to

reactivate Section 514 to provide resources for tenant organizing and capacity-building. Finally, in FY11 HUD set aside \$10 million in Section 514 resources and issued a Notice of Funding Availability (NOFA) for a revised tenant assistance program called the Tenant Resource Network (TRN). In June 2012, HUD awarded \$5 million for 15 grants to local, areawide tenant organizing groups 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. Although the TRN grants successfully helped preserve at-risk buildings, advocates criticized the two-year program because HUD placed unnecessary restrictions that limited eligible properties and local assistance. HUD has not issued any new NOFAs for TRN. Although, HUD Secretary Donovan requested, and Congress approved, an additional \$30 million in Section 514 funding in FY10, FY12, and FY13, these funds were ultimately re-programmed by HUD for other purposes.

In 2014, NAHT persuaded HUD to utilize the balance of FY11 funds for a HUD funded AmeriCorps VISTA Volunteer program. To date, HUD has provided \$5 million to VISTA, a federal agency, which has re-granted the funds to Equal Justice Works, an intermediary agency, to administer the program as VISTA's agent. Equal Justice Works, a nationwide legal service internship program, partnered with NAHT to create the VISTA Affordable Housing Preservation Project (VAHPP) in fall 2014. NAHT recommends organizing sites and provides training and support to the VISTA organizers in the program; Equal Justice Works administers the program overall and provides training to locally placed VISTA lawyers (Legal Fellows).

Through VAHPP, 45 VISTA members – 33 organizers and 12 Legal Fellows – have been placed with 20 local nonprofit tenant organizing groups and 10 legal service organizations to build the capacity of tenant organizations through outreach, education, leadership development, and legal services over three years with the goal of working with owners and project administrators to preserve, maintain, and improve project-based Section 8 homes. The project aims to: increase tenant outreach and the training capacity of qualified local nonprofit organizations in at least 20 cities; organize or strengthen up to 120 independent

tenant associations that meet HUD standards; and help tenants save or improve at least 120 eligible Section 8 communities that house more than 18,000 families.

Developments eligible for VAHPP are those with a project-based Section 8 Housing Assistance Contract (HAP) for which:

- The HAP contract will expire within five years.
- The property has two consecutive REAC physical inspection scores less than 60.
- The 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.

In fall 2016, Equal Justice Works authorized expansion of the number of VAHPP organizers to 38 and added additional Legal Fellows.

In 2015-16, HUD re-programmed \$2 million of the \$5 million awarded to VISTA for a new program called "Tec/Dev," to assist Public Housing tenants in buildings converting to HUD's Rental Assistance Demonstration (RAD), provided the RAD conversions result in Project Based Rental Assistance (PBRA) contracts, not Project Based Vouchers (PBV). Equal Justice Works has been asked to coordinate the Tec/Dev placements of VISTA lawyers and "community advocates" with qualified local agencies. As of February, 2017, ten lawyers and six "community advocates" have been placed through Tec/Dev.

Responding to the NAHT Board's advocacy with former HUD Secretary Castro, the Obama Administration's FY16 budget request included \$3 million from Section 514 to provide staff management support for local VISTA sites to supplement VAHPP. HUD advertised the funds through a NOFA through the Community Compass (formerly OneCPD) program in May 2016, designated as the "MAHRAA TA" program. Although four qualified regional nonprofits applied to provide staffing subcontracts to most of the VAHPP VISTA sites, in the end HUD awarded the funds for other purposes. HUD has requested \$4 million in Section 514 funds in its FY17 appropriations request, which has not yet been adopted.

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, 617-522-4523, 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>

Notice H 2016-05, Revision of Tenant Participation Requirements in accordance with 24 CFR Part

245, <https://portal.hud.gov/hudportal/documents/huddoc?id=16-05hsgn.pdf>