Vouchers: Tenant Protection

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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

FY17 Funding: $110 million. As of the date this Advocates' Guide went to press, Congress has not enacted its final FY18 spending bills.

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" or "eligibility events." 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

Residents are eligible for either HCVs or EVs, depending upon which housing program assisted the development in which they are living, as well as certain circumstances for some of the programs. The FY17 Appropriations Act continued the policy of limiting TPVs to units that have been occupied during the previous two years. However, in Notice PIH 2017-10, HUD states that due to inadequate funding, TPVs will only be awarded for units occupied at the time a PHA or private owner applies for them, or when HUD approves a demolition or disposition of public housing. The FY17 Appropriations Act also continued 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," described in the section on Regular Tenant Protection Vouchers.

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

- Public housing is demolished, sold ("disposition"), or undergoes a mandatory conversion to HCVs.
- Private housing assisted with a project-based Section 8 contract has been 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.

Replacement and Relocation Tenant Protection Vouchers

Since FY15, Congress has prohibited TPVs to be reissued when a household no longer uses it, unless that TPV was a "replacement voucher." In short, replacement TPVs are made available as a result of a public housing or HUD-assisted multifamily action that reduces the number of HUD-assisted units. Replacement TPVs not only assist the household affected by the loss of the HUD-assisted unit, but also make up for the loss of the HUD-assisted housing in the community. After an initial household no longer needs the TPV, a PHA may reissue the TPV to households on its waiting list or project-base that TPV. "Relocation TPVs" are provided when HUD-assisted housing units are not permanently lost, for example when residents are temporarily relocated while waiting to return to redeveloped public housing. Such TPVs cannot be reissued once the household returns to the redeveloped property.

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. (Legal advocates assert that this qualification in HUD guidance is contrary to statute.)
    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 choose 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 rents must still meet the regular voucher program's rent reasonableness requirement; rents must be reasonable in comparison to rents charged for comparable housing in the private, unassisted market (and ought to be compared with any unassisted units in the property undergoing a conversion action). 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 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 FY17 Appropriations Act continued the provision setting aside $5 million of the $110 million appropriated for tenant protection vouchers for low income households in low-vacancy areas that may have to pay more than 30% of their income for rent at three types of HUD-assisted multifamily properties:

1. The maturity of a HUD-insured, HUD-held, or Section 202 loan that would have required HUD permission prior to loan prepayment. These include Section 236, Section 221(d)(3) Below Market Interest Rate (BMIR), and Section 202 Direct Loans.
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. These include properties with a RAP contract that expired before FY12, or a property with a Rent Supp contract that expired before FY2000.
3. The expiration of affordability restrictions accompanying a mortgage or preservation program administered by HUD. These include Section 236, Section 221(d)(3) BMIR, or Section 202 Direct Loan mortgages for which permission from HUD is not required, but the underlying affordability restrictions expired with the maturity of the mortgages. This category also includes properties with stand-alone "Affordability Restrictions" that expired.

TPVs provided under the set-aside are considered replacement TPVs, and may be reissued when an initial household no longer needs the TPV. Other key provisions that have applied to the set-aside in previous years provided in joint PIH and Housing Notices (such as Notice PIH 2016-12/Notice H 2016-7) were:

- Owners of eligible properties must apply for the assistance for residents. If an owner does not request assistance, residents could not receive EVs.
- Requests from owners would be accepted on a rolling basis until funding is exhausted. To prevent significant delay in funding of applications in subsequent fiscal years, applications would also be accepted on a rolling basis after September 30, 2016, but would only be funded subject to the availability of appropriations.
- The tenant protection assistance could be either an EV or a project-based voucher.
- Public housing agencies (PHAs) must administer the vouchers. A PHA may decline to participate; if so, HUD would attempt to identify an alternative PHA willing to administer the vouchers.

Notice PIH 2017-10 stated that until a replacement for Notice PIH 2016-12/Notice H 2016-7 was issued, HUD would not accept any applications for TPV set-aside funding in FY17. HUD failed to issue a new Notice; consequently no residents were protected in FY17. In mid-November 2017, HUD staff stated that a new Notice is in clearance and could apply retroactively. When a new Notice is issued, NLIHC will write about it in NLIHC's *Memo to Members and Partners*.

The National Housing Law Project (NHLP) identified, as of May 2016, approximately 32,300 unassisted units in 314 properties in 45 states that were at risk of mortgage maturity or the expiration of use restrictions or assistance. Of this total, more than 16,800 unassisted units in 150 properties were at risk and eligible for tenant protections. An additional 15,700 unassisted units in 164 properties were also at risk, but were not eligible for TPVs because they were not located in HUD-defined low-vacancy areas.

NHLP created a list of these properties along with a Google map of their locations. A memorandum from NHLP also explains how advocates can identify properties that might warrant tenant protection vouchers. NHLP's materials are at http://nhlp.org/node/15844 (Note: NHLP will be launching a new website; therefore the above link might not work in the near future.)

Advocates, including NLIHC and NHLP, have consistently urged HUD to:

- Issue a Notice implementing the TPV set-aside much earlier in the fiscal year.
- Allow unused funds to roll over to the next fiscal year.
- Allow residents or a PHA to apply for TPVs if the owner does not.
- Loosen the definition of low vacancy rate.
- Improve outreach to owners to better ensure full use of the set-aside.

FUNDING

The amount of funding available for TVPs should be determined by HUD estimates of need in the upcoming year and Congressional appropriations.

President Trump proposed only $60 million for FY18, as did the House; the Senate proposed only $75 million. As of the date this *Advocates' Guide* went to press, Congress has not enacted its final FY18 spending bills.

WHAT TO SAY TO LEGISLATORS

Advocates should tell Members of Congress to support funding sufficient to cover all TPVs 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

HUD Fact Sheet PHAs are now required to issue to residents when owners of private, HUD-assisted housing decide to no longer participate in the HUD program, http://bit.ly/2vYkeBL

Notice PIH 2017-10 is at https://www.hud.gov/sites/documents/pih2017-10.pdf

Chapter 11 of HUD's *Section 8 Renewal Policy Guide*, "Tenant Issues" is at https://www.hud.gov/sites/documents/508FIN_CONSOL_GUIDE6_8_17.PDF

The joint Notice H 2016-7/Notice PIH 2016-12 is at http://bit.ly/2bpBojd