

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

Funding: For FY24, the Administration proposed \$385 million, the House proposed \$337 million, and the Senate proposed \$445 million. The Administration’s proposal would set aside \$20 million to provide USDA Section 521 rental assistance for households living in USDA Section 515 and 514 properties with mortgages that mature, are prepaid, or are foreclosed. Congress appropriated \$337 million for FY23, greatly exceeding previous years’ appropriations of \$100 million in FY22, \$116 million in FY21, \$75 million in FY20, and \$85 million in FY19. As of the date this *Advocates’ Guide* went to press, Congress has not passed FY24 appropriations.

See Also: The *Housing Choice Voucher Program* and *Project-Based Rental Assistance* sections of this *Advocates’ Guide*.

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.” TPVs have two types: 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. HUD’s FY24 budget proposal estimated that 36,776 TPVs would be needed during FY24, a reduction from its FY23 estimate of 46,360 TPVs. HUD’s budget proposal also noted that the proposed \$385 million in new TPV funds, combined with FY23 carryover funds, would be sufficient to meet the estimated need.

PROGRAM SUMMARY

Residents are eligible for Tenant Protection Vouchers (TPVs), either as Housing Choice Vouchers (HCVs) or as Enhanced Vouchers (EVs), depending upon which housing program assisted the development in which they are living, as well as certain circumstances for some of the programs. 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, disposition, or voluntary conversion to vouchers) or render their home unaffordable (for example, an owner “opting out” of a Section 8 contract, or prepaying certain HUD mortgages). 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). PHAs must apply to HUD to receive TPVs and HUD awards TPVs to PHAs on a first-come-first-served basis. The amount of funding available for TVPs is determined by HUD estimates of need in the upcoming year and congressional appropriations. Each year, HUD publishes in the *Federal Register*, the names and addresses of properties awarded TPVs along with the number of units involved and the amount of TPV funding provided. The FY2022 list is [here](#).

REPLACEMENT AND RELOCATION TENANT PROTECTION VOUCHERS

Whether a TPV is considered a “replacement” or

a “relocation” TPV depends on whether the HUD-assisted housing is permanently lost. Except as modified by Sections 5a and 5d of [Notice PIH 2023-07 Revision 1](#), [Notice PIH 2018-09](#) remains as the key guidance document discussing HUD policy regarding replacement and relocation TPVs. 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 in a community. 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. Replacement TPVs become a part of a PHA’s voucher program. After an initial household no longer needs their replacement 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. Since FY15, appropriations acts have made it clear that TPVs issued for temporary relocation cannot be reissued once the original household no longer uses it – for example when it returns to a redeveloped property or decides to move elsewhere.

Starting with the “FY19 Appropriations Act” and continuing through the “FY23 Appropriations Act” (as well as proposed for FY24 by HUD and the Senate) TPVs were no longer limited to units occupied at the time of a housing conversion action. Instead, appropriations language and guidance from HUD (e.g. [Notice PIH 2023-07 Revision 1](#)) allowed replacement TPVs to be awarded to any units that had been occupied sometime within the previous two years. In other words, a unit that might have been occupied 18 months prior to a housing conversion action, but that was vacant at the time of the housing conversion action, would still be eligible for a TPV. However, HUD guidance for FY23 ([Notice PIH 2023-07 Revision 1](#), page 5) notes that “depending on demand and funding availability, HUD may need to subsequently suspend the

allocation of replacement TPVs for vacant units...” HUD’s Office of Public and Indian Housing (PIH) created “[Tenant Protection Vouchers \(TPVs\) for Public Housing Actions](#),” a summary of its current policies regarding TBVs relating just to public housing (the summary does not apply to TPVs for HUD’s Office of Multifamily Housing Programs).

REGULAR TENANT PROTECTION VOUCHERS

Traditional HCVs are provided to residents to enable them to find alternative affordable homes when:

- Public housing is demolished, sold (a “disposition”), or undergoes a voluntary or mandatory conversion to HCVs.
- A project-based Section 8 contract has been terminated or not renewed by HUD at a private, multifamily property (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, an 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 to renew the contract – the owner “opts out” of the Section 8 Project-Based Rental Assistance (PBRA) program. Prepayment of certain unrestricted HUD-insured mortgages (generally Section 236 and Section 221(d)(3) projects) is another type of eligibility event.

Several other situations trigger an eligibility

event, depending on the program initially providing assistance. HUD must provide EVs for opt outs and qualifying mortgage prepayments; 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 (legal services advocates assert that this qualification in HUD guidance is contrary to statute).
 - b. Meets HUD’s “reasonable rent” criteria, with 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.

PIH issued a Memorandum (May 22, 2014) to PHAs about the Right to Remain for Tenants who have an EV, and the right to remain continues to be included in the Section 8 Renewal Policy Guide, Chapter 11, page 3.

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 an owner after the housing conversion action, even if that new rent is greater than a 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 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 the household’s adjusted income or the percentage of income the household was paying on the date of the conversion event, whichever is greater. Notice PIH 2019-12 (May 23, 2019) changed the policy for instances in which a household’s income increases to an amount such that the dollar value of the EV minimum rent established by the percentage of income calculation is more than the original (pre-15% income decline) EV minimum rent. In such instances, the household’s EV minimum rent reverts to the EV minimum rent at the time of the eligibility event.

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” (often referred to as LIHPRHA) spells out the various types of such mortgages.

Some properties that received preservation assistance under the “Emergency Low-Income Housing Preservation Act” (often referred to as 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. A Use Agreement is a contract between HUD and a property owner that binds the owner to specific requirements such as the income-eligibility of tenants and maximum rents that are less than market-rate. Some HUD programs use the term Regulatory Agreements which have similar requirements.

SET-ASIDE FOR TPVS AT CERTAIN PROPERTIES

The “FY23 Appropriations Act” continued (and HUD and the Senate proposals for FY24 would continue) the provision setting aside \$5 million of the total amount 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. Each year HUD has issued a Notice providing guidance. The latest Notice is [Notice PIH 2019-01/Notice H 2019-02](#). Beginning with that Notice, HUD no longer issues a Notice each year; instead Notice PIH 2019-01/Notice H 2019-02 will continue to be applicable unless Congress changes the terms of the set-aside. The FY19 Notice applied to the \$5 million appropriated for FY18 and funds remaining from previous years.

To be eligible for this set-aside, one of two triggering events must have taken place:

1. A HUD-insured, HUD-held, or Section 202 loan matures that would otherwise have required HUD permission before the loan could be prepaid. These include Section 236, Section 221(d)(3) Below Market Interest Rate (BMIR), and Section 202 Direct loans.

2. The expiration of affordability restrictions accompanying a mortgage or preservation program administered by HUD. There are two groups of such properties:
 - a. Properties with matured Section 236 insured or HUD-held mortgages, Section 221(d)(3) BMIR insured or HUD-held mortgages, or Section 202 Direct loans for which permission from HUD is not required prior to mortgage prepayment, but the underlying affordability restrictions expired with the maturity of the mortgages.
 - b. Properties with stand-alone “Affordability Restrictions” that expired in FY18 or in the five years prior to the owner’s submission. To be eligible, the project with the expired affordability restriction must not, at the time of the request for assistance, have an active Section 236 insured or HUD-held mortgages, Section 221(d)(3) BMIR insured or HUD-held mortgages, or Section 202 Direct loans.

Before 2018 there was a third possible trigger: 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 included properties with a RAP contract that expired before FY12, or a property with a Rent Supp contract that expired before FY20.

A project must be in a HUD-identified low-vacancy area. HUD updates the low-vacancy areas each year and posts them on the Office of Policy and Development ([PD&R website](#)). The 2018 joint Notice ([Notice PIH 2018-02/H 2018-01](#)) provided many more counties on HUD’s list of low-vacancy areas than in previous years because HUD decided to select counties with public housing and multifamily-assisted properties that had occupancy rates greater than or equal to 90%. Previous Notices used a county’s overall vacancy rate, which included non-assisted rental housing. Advocates had long urged HUD to revise the way it determined low-vacancy areas because many otherwise eligible properties were not

allowed to apply for TPV assistance.

To determine whether a household might become rent-burdened (pay more than 30% of household income for rent and utilities), the 2019 Notice (as was the case for the first time with the 2018 Notice) requires owners to divide the 2018 Small Area FMR in metropolitan areas or FMR in non-metro areas by a household's adjusted income. In the past, the numerator (a proxy for market rents) was HUD's most current low-income limit for a metro area.

Other key provisions that have applied to the set-aside in previous years provided in the joint 2019 Notice include:

- As with previous Notices, only owners may request TPV assistance. Advocates have urged HUD to allow residents to request TPV assistance if an owner is not responsive. Also, like previous Notices, the 2019 version requires owners to notify residents. Starting with the 2018 Notice, owners must also notify any legitimate resident organizations. However, the Notice does not require owners of projects approaching an expiration of restrictions to provide residents a one-year advance notice, as advocates suggested.
- As in the past, applications will be accepted on a rolling basis; however, unlike previous Notices the funds will be not available until any set-aside funds are exhausted. This is an improvement advocates have long sought. In prior years set-aside funds not awarded were no longer available at the end of the relevant fiscal year. Because HUD failed to issue Notices in a timely fashion, significant sums were left unused. For example, for FY16 the Notice was issued on August 18, two months before the end of the fiscal year.
- As in the past, owners must indicate their preference for either enhanced vouchers or project-based vouchers (PBVs). Owners must state whether they are willing to accept the alternative form of assistance if the PIH Field Office is unable to find a PHA willing to administer the owner's preferred assistance type. For example, if an owner prefers PBVs,

the application will have to specify whether the owner consents to enhanced vouchers if the PIH Field Office is unable to find a PHA to administer PBV assistance.

FUNDING

The amount of funding available for TVPs should be determined by HUD estimates of need in the upcoming year and congressional appropriations. For FY24, the Administration proposed \$385 million, the House proposed \$337 million, and the Senate proposed \$445 million. Congress appropriated \$337 million for FY23, greatly exceeding previous years' appropriations of \$100 million in FY22. As of the date this Advocates' Guide went to press, Congress has not passed FY24 appropriations.

FORECAST FOR 2024

On October 26, 2016, HUD published a proposed rule to codify the Enhanced Voucher policies it had long implemented through various policy Notices. The proposed rule would codify in regulation, existing policies regarding eligibility criteria for receiving EVs, the right of EV households to remain in their homes, procedures for addressing "over-housed" families, and the calculation of EV payments. The National Housing Law Project drafted detailed comments that NLIHC signed on to. NHLP concluded that the proposed rule would significantly undermine the right to remain, would authorize PHAs to re-screen tenants on grounds other than income eligibility before they can be protected, would not ensure EVs are issued on time, and would not ensure reasonable rents to owners. HUD's Regulatory Agenda for Spring 2023 indicates an aspirational release of a final EV rule in 2024.

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 a private HUD-assisted property leaves a HUD program, or to ensure

that low-income households have tenant-based assistance to be able to afford rent elsewhere when they lose their homes due to public housing demolition, disposition, or mandatory or voluntary conversion to vouchers.

FOR MORE INFORMATION

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

HUD's (somewhat outdated) Tenant Protection Voucher webpage, https://www.hud.gov/program_offices/public_indian_housing/programs/hcv/tenant_protection_vouchers, including a June 2020 “[Tenant Protection Vouchers \(TPV\) for Public Housing Actions](#)”

HUD Fact Sheet: PHAs are now required to issue this to residents when owners of private, HUD-assisted housing decide to no longer participate in the HUD program, https://www.hud.gov/sites/documents/ENHANCED_VOUCHERS_ENG.PDF.

Notice PIH 2023-07 Revision 1, <https://www.hud.gov/sites/dfiles/PIH/documents/PIH2022-14.pdf>.

Notice PIH 2018-09, <https://www.hud.gov/sites/dfiles/PIH/documents/pih2018-09.pdf>.

The joint Notice H-2019-02/PIH 2019-01, <https://www.hud.gov/sites/dfiles/PIH/documents/PIH-2019-01.pdf>.

Chapter 11 of the Multifamily Office's Section 8 Renewal Policy guidebook, https://www.hud.gov/sites/dfiles/Housing/documents/Section_8_Renewal_Guidebook-%20March_2023.pdf.

Memorandum (May 22, 2014) to PHAs about Right to Remain for Tenants who have an EV, <https://www.hud.gov/sites/documents/ENHANCEDVOUCHERREMINDER.PDF>.