



August 28, 2024

U.S. Department of Housing & Urban Development
Office of General Counsel, Regulations Division
451 7th Street SW, Room 10276
Washington, DC 20410-0500

Comments submitted electronically at <http://www.regulations.gov>

Re: Comments from the National Housing Law Project, National Low Income Housing Coalition and the National Alliance to End Homelessness.

Thank you for the opportunity to comment on the Department of Housing and Urban Development's Request for Information, "Direct Rental Assistance (DRA)." The following comments are submitted on behalf of the National Housing Law Project (NHLP), National Low Income Housing Coalition (NLIHC) and National Alliance to End Homelessness (NAEH).

NHLP's mission is to advance housing justice for people living in poverty and their communities. NHLP achieves this by strengthening and enforcing the rights of tenants and increasing housing opportunities for underserved communities. Our organization also provides technical assistance and policy support on a range of housing issues to legal services and other advocates nationwide. NHLP hosts the national Housing Justice Network (HJN), a vast field network of over 2,000 community-level housing advocates and resident leaders. HJN member organizations are committed to protecting affordable housing and residents' rights. NHLP's policy advocacy is directly informed by HJN.

NLIHC is dedicated solely to achieving racially and socially equitable public policy that ensures people with the lowest incomes have quality homes that are accessible and affordable in communities of their choice. Our members include state and local housing coalitions, residents of public and assisted housing, nonprofit housing providers, homeless service providers, fair housing organizations, researchers, public housing agencies, private developers and property owners, local and state government agencies, faith-based organizations, and concerned citizens. While our members include the spectrum of housing interests, we do not represent any segment of the housing industry. Rather, we focus on policy and funding improvements for extremely low-income people who receive and those who need federal housing assistance.

NAEH is a nonpartisan, nonprofit organization whose sole purpose is to prevent and end homelessness. According to the 2023 Annual Homeless Assessment Report (AHAR), on any

given day more than 650,000 people experience homelessness, with 40 percent of them being unsheltered and sleeping on the streets or in other places not meant for human habitation. The impacts of federal, state, and local policies and practices that have led to historical and ongoing discrimination against people of color and marginalized groups shows up in federal homelessness data. People of color are especially overrepresented, with Black Americans experiencing homelessness at three times the rate of the general population, and American Indians and Alaska Natives at five times the rate. The same overrepresentation can be said for the criminal justice system in the United States.

NHLP, NLIHC and NAEH support HUD's DRA study and in particular, the research aimed to inform policy changes to the voucher program that will increase housing choice and mobility. However, we highlight a number of issues below that HUD must consider when designing the research program to protect tenants from housing instability, prevent evictions, and support the long-term health of the voucher program. NHLP, NLIHC, and NAEH recommend a rigorous evaluation to inform HUD's evidence-based policies related to the voucher program.

I. Tenants and advocates must be involved in designing the research study.

We urge HUD staff to consult with tenants as they design a DRA pilot. Families who receive a voucher know first-hand the barriers to obtaining and maintaining safe and affordable housing. Although HUD's planning process is underway, it is not too late to seek input from tenants on HUD's framework for a DRA pilot but also on individual Public Housing Authority (PHA) proposals to participate. For example, tenants will be able to report the biggest barriers in any given community to using their vouchers, which could act as a focus of the research. Our understanding is that no tenant input has been sought in designing any pilot, despite the fact that HUD tenants are the most important stakeholder and will be the subject of the research itself. Not only have tenants not been informed, HUD has engaged PHAs and the industry advocates (who have interests beyond ensuring housing stability among the most vulnerable tenants), resulting in decisions far beyond the vague discussion in the RFI.

It is also critical to engage Moving to Work (MTW) tenants with respect to the pilot, especially tenants participating from the original 39 MTW PHAs. As discussed in more detail below, these PHAs are not subject to the updated Operating Notice that provides important tenant protections and safeguards against financial hardship. There is also less opportunity for tenants to engage in planning processes at the original MTW PHAs. HUD should include a requirement for local resident input on any proposed MTW DRA pilot. These sessions should be facilitated by third party neutral researchers and could occur as listening sessions or qualitative interviews and should be recorded, transcribed, and coded to ensure accuracy in theme identification and implementation of recommendations.

II. Tenant Protections must be in place to avoid housing instability and prevent evictions.

While it's yet unknown the extent to which the voucher rules will apply to families participating in the DRA pilot, it is critical to apply tenant protections to the program (a) for research purposes, in order to study family outcomes, families should receive the same protections in both the control and the research group and (b) most importantly, to avoid housing instability and evictions as a result of participation in the pilot. Even if the housing authority remains less visible in the DRA pilot study compared to the role it plays in voucher administration, HUD should protect tenants from landlord abuse, such as steep rent increases and evictions without cause, through a lease addendum, for example, provided by the tenant.

HUD could require that local PHAs sign a simple agreement with a landlord that would legally obligate them to tack on the lease addendum to their existing lease. This is similar to what landlords currently do in the voucher program, although the agreement to use the lease addendum would take the place of a more lengthy HAP contract.

Ideally, all parties would sign the lease addendum (tenant, PHA, and landlord) and the lease addendum would be provided by the PHA to the landlord. Given tenants' lack of bargaining power, HUD should not solely rely on tenants to provide a required lease addendum to a landlord. If HUD does require that the tenant provide the lease addendum directly to the landlord, HUD should also insist that all DRA pilot leases be approved by the local PHA. In the event that a landlord refuses to sign the lease addendum, PHA staff would find out when they inspect the lease, and subsequently could negotiate with the landlord to sign the addendum or inform the voucher family that they must keep looking for a unit.

A lease addendum should contain, at a minimum, the following rights:

- **Good cause for eviction**, so that landlords can only evict for legitimate reasons. The addendum should use the definition of good cause used in other HUD programs and specify that simply holding over after a notice of lease non-renewal does not constitute good cause for eviction. This includes compliance with the Violence Against Women Act (VAWA). Allowing evictions without cause will open the door to landlord abuse because ending a tenancy can occur for illegal and unfair motives under the guise of an eviction where no cause need be stated. Only in a small minority of jurisdictions do tenants have the right to a just cause eviction. HUD should consider conducting a DRA pilot both in jurisdictions where just cause eviction is the law and therefore all rental contracts will default to it, as well as in jurisdictions where there is no just cause protections, to test whether a tenancy addendum or similar mechanism work to protect tenants from eviction.
- Protection from **illegal side payments**. Without a HAP contract in place, a landlord is under no additional legal obligations with respect to harmful policies related to rent. There would be few ways to stop a landlord from over-charging a tenant once the landlord is made aware of the direct cash assistance, for example. Illegal side payments are already rampant in the voucher program, and rental housing junk fees have proliferated in recent years on the private market.

- Protections from **harmful rent increases**. While we would like to see an alternative to the rent reasonableness methodology (which can certainly act as a barrier to housing for voucher families) there should be mechanisms in place to protect the tenant from being faced with huge and unreasonable rent increases by the landlord. In jurisdictions where rent increases are allowed by state/local law, but the increase would cause hardship, HUD should consider studying, as part of its rigorous research, the impacts of requiring PHAs to increase the subsidy amount, even though this is a departure from the voucher rules.
- Tenants should not pay more than **30% of their adjusted income for rent and utilities, and subsidies should match the PHA's voucher payment standards**. Fundamental to the voucher program is that families pay 30% of their adjusted income for rent and utilities. Direct cash assistance should mirror that amount. In addition, cash payments should be calculated using the local Fair Market Rent (FMR) and Small Area Fair Market Rent (SAFMR), when applicable. Particularly in mandatory SAFMR jurisdictions, use of SAFMR is critical so that voucher families can access safe and sustainable housing. If assistance provided to DRA households is not the same as that provided to Housing Choice Voucher (HCV) households, the pilot will not be able to unambiguously assess the performance of DRA assistance to conventional HCV assistance.
- **Protections from subsidy terminations**. Under no circumstances, should a voucher families' subsidy be at risk due to participation in the pilot. HUD must put in place back-end protections for tenants so a PHA can't terminate participation if a family falls victim to a bad landlord, even if the family is ultimately evicted.
- **Conditions**. HUD could include protections from constructive eviction due to substandard conditions, utility shut off, or failure to respond to maintenance requests in the lease addendum. The housing stock available to low-income tenants is frequently hazardous or maintained in disrepair. Where the landlord does not maintain the unit, the tenant should have the ability to bring a TRO without retaliation.

Finally, HUD should consider screening participating and prohibiting serial eviction/filers and worst offenders in a community from being part of the study. It is now possible to track this information based on eviction records and addresses.

III. HUD should continue to ensure that voucher families live in housing in good condition.

By statute, HUD must ensure that voucher families are living in safe and habitable housing.¹ Housing conditions are also critical to maintain a family's health and well-being. However, in many areas, the top reason cited by landlords for their lack of participation in the

¹ Pub. L. No. 104-134, tit. II, § 204, 110 Stat. 1321, 1321-281 (1996).

voucher program is the wait times for inspections, which can be unreasonable. Landlords should not be asked to keep units open for extended periods of time. We support testing an alternative to voucher inspections that will streamline the leasing process and increase tenant access to safe, decent and sanitary housing opportunities.

Given the pervasiveness of environmental hazards, HUD should take special note of how units will be inspected for conditions like the presence of lead, radon, mold, and risk of CO poisoning. Nationally, over 40 percent of homes in the United States have one or more health and safety hazards, with the majority concentrated in low-income communities. Black renter households disproportionately suffer the conditions associated with substandard housing, including asthma, respiratory distress, carbon monoxide and lead poisoning, and cancer. Black women with children face evictions at higher rates than any other segment of the population. In evaluating alternative inspections, HUD should clarify how environmental hazards will be detected.

Alternatives to traditional **initial Housing Quality Standards (HQS) inspections** include:

- **Tenant checklists** may be empowering for residents. However, there must be a process in place by which tenants can seek a formal in-person inspection from a professional because many housing conditions are not visible or apparent to an untrained eye.
- **Pre-approval process.** We support testing a pre-approval process whereby units can be inspected at any time of the year in advance of a lease-up. That would ease the transition time from when a voucher family is accepted to live in the unit, and they move in. Like the alternative inspection flexibility allowed by the Housing Opportunities Through Modernization Act (HOTMA), HUD could expand the list of acceptable inspections to include, for example, municipal inspections and local code enforcement, anytime within the previous year.
- **Video Inspections.** HUD should consider requesting information from PHAs and families about the impact of remote video inspections. What did HUD learn from video inspections during the pandemic? Were these types of remote inspections successful or did they lead to families living in poor housing conditions? Were tenants able to detect housing quality factors not readily visible? Do all households have smartphones or are they adept at using them for video?
- **Apply HOTMA-like inspection rules to DRA.** Under the new HOTMA rules, tenants can move into a unit prior to an HQS inspection so long as the unit has had a similar inspection in the past 24 months (if the PHA has adopted this policy). In that case, the PHA must inspect the unit within 30 days. So long as the unit does not fail the inspection for life-threatening conditions, HAP payments may begin. HUD should consider adopting a similar policy for DRA pilot participants. HUD could allow families to self-certify that there are no life-threatening conditions upon move-in, and then allow families to move

into a unit prior to inspection, so long as an inspection takes place within a reasonable time. HUD could also require that PHAs cross-reference with a department of health or building files that include citations for conditions/safety violations.

Of course, these inspection alternatives all rely on some housing authority involvement in the move-in process, although minimal compared to time and resources currently required to run an extensive inspection process (or contract one out).

With respect to **ongoing inspections**, tenants should be able to request an inspection if they experience poor conditions at any time. HUD should also require PHAs to perform regular inspection of voucher units. However, note that under the voucher rules, when a unit fails inspection, the common remedy is for the PHA to withhold or abate rent. That remedy will put DRA tenants at risk of nonpayment of rent. At the least, eviction protections must be in place so that families are not evicted because the tenant withholds rent for poor conditions. HUD could also allow families to use the cash assistance for moving expenses and security deposits where the unit is in disrepair.

If the RFI results in a pilot, HUD should aim to select at least some statistically significant number of cities that require pre-rental risk assessments or rental registries that require landlords to comply with building, public health, and habitability laws. Because these inspections are built into the housing model, there will be no delay in leasing

IV. HUD must provide oversight of MTW agencies engaged in DRA research.

Any research conducted at one of the original 39 MTW agencies should be carefully monitored so that tenants are protected from potential hardships. Compared to the 100 expansion agencies, which have important protections in place for families who experience a loss of income or other adverse circumstances, there is no such policy required for the original 39 MTW PHAs. Consequently, we have seen the original MTW agencies implement harmful work requirements and time limits that negatively impact housing stability and even lead to evictions. HUD should not allow participation in the demonstration by any agency that has implemented policies that put families' health and safety at risk.

HUD should prohibit MTW agencies from providing "shallow subsidies" as part of a DRA research study. Allowing an MTW PHA to provide a DRA household with a shallow subsidy would cause that household to be rent burdened. PHAs should not be allowed to count tenants with high rent burdens (and therefore at risk of eviction and subsidy termination) as "assisted" under any circumstances. That is true for families participating in the MTW program as well as families participating in any DRA research study. In addition, allowing shallow subsidies would undermine any research comparison between DRA and HCV use.

Since the MTW program began, HUD has failed to consistently define and track whether PHAs are meeting the statutory requirement to assist "substantially the same" total number of

eligible low-income families as would have been served without single-fund flexibility.² There has been no transparency with respect to this statutory requirement, which has contributed to the fact that less families are being served by participating PHAs.

Similarly, HUD should further define local non-traditional activities and require a cap on these activities for the original 39 agencies, as it does for MTW expansion agencies. Currently, no more than 10% of expansion agencies' HAP budget can be spent for local, non-traditional activities. This is an important protection because MTW agencies often serve less poor households.

V. HUD should consider additional protections for specific groups.

Survivors of domestic violence, dating violence, sexual assault, stalking, and human trafficking. HUD must ensure that all housing and homeownership relief programs are designed in such a way to account for the specific dynamics of gender-based violence and human trafficking and comply with the letter and spirit of VAWA. It is critical that HUD consider policies that protect families from the harms related to the abuse, much of which is economic in nature. Because cash assistance is generally tied to a household, like a voucher, it is critical for HUD to include in a pilot study pathway for survivors to secure their own assistance, should the cash assistance be controlled or taken away by a person harming them or the survivor is attempting to leave and needs their own housing assistance in order to do so. Another example is confidentiality. HUD must require states and localities to ensure the safety and confidentiality of survivors accessing the funding meet the VAWA confidentiality requirements and not enter survivor information into any shared databases be held as strictly confidential. All DRA application systems must consider the safety of survivors, including in terms of communications. There should be questions on the safe method of communications, including by authorizing another person or advocate to serve as their point of contact using HUD Form 92006 or something similar.

Mixed-Status Immigrant Families. Special attention should be paid to the impacts of a DRA pilot on mixed-status immigrant families. HUD should carefully consider the impacts of providing cash assistance directly to the participant household in lieu of a voucher payment to a landlord.

Families with a member with a disability. The voucher program informs families of the right to a reasonable accommodation when obtaining and maintaining housing, at various key points in the lease-up process. During the voucher briefing, for example, families are made aware of this right and can ask for assistance with the housing search process. HUD should consider how to affirmatively reach out to families with a member who experiences a disability and educate DRA study participants about their fair housing rights. PHAs should be available to facilitate accommodations on behalf of voucher families, especially those needing assistance with such critical tasks as rent payments and meeting other tenancy obligations.

² Pub. L. No. 104-134, tit. II, § 204, 110 Stat. 1321, 1321-281 (1996).

VI. Waitlists

We agree with HUD's initial assessment that families should come off the voucher waitlist and be fully informed of the risks and benefits of participation in the study. We also propose a set aside of at least 10% of DRA for people experiencing homelessness in coordination with Continuums of Care (CoCs) in the Pilot Program.

VII. HUD should ensure the pilot is low barrier.

At a minimum, HUD should aim to understand what aspect of the DRA is creating barriers to access, as other universal income pilots have studied. HUD should collect data on what families spent the cash on, if not rent, such as food or school supplies. In addition, HUD should determine whether the paperwork and documentation was prohibitive, whether families needed to open a bank account, and whether a prior record of eviction or poor credit are the barriers to obtaining housing.

VIII. Conclusion

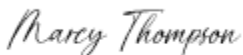
Our organizations believe the pilot should not proceed unless there are resources to both monitor its implementation to address problems as they arise (particularly pertaining to lease protections) and to conduct rigorous research/evaluation. HUD has implied that it does not have the staff capacity or resources to engage outside researchers or evaluators.

Thank you for your consideration of our comments and recommendations. Please contact Deborah Thrope (dthrope@nhlp.org) should you wish to clarify our position on these important issues.

Sincerely,



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