



Summary of Key Provisions of TPV Set-Aside Notice H 2019-02/PIH 2019-01

February 21, 2019

HUD issued a joint Notice implementing use of the \$5 million set-aside in the FY18 Appropriations Act for tenant protection vouchers (TPVs) for low-income households who may have to pay more than 30% of their adjusted income for rent if they are living certain HUD-assisted multifamily housing in a low-vacancy area. The \$5 million is a set-aside from the \$85 million FY18 appropriation for all TPVs. The [joint Notice](#) includes Notice H 2019-02 from the Office of Multifamily Housing Programs and PIH 2019-01 from the Office of Public and Indian Housing. The new joint Notice supersedes Notice PIH 2018-02 (see *Memo*, [2/20/18](#)) which introduced a number of changes from previous years (see *Memo*, [8/22/16](#)).

To be eligible for these TPVs, one of two potential “triggering” events at a property must have taken place in the five years prior to an owner submitting a request for set-aside TPVs or is expected to take place within 180 days. The two potential triggering events involve maturing mortgages or expiring affordability restrictions at various Section 236, 221(d)(3) Below Market Interest Rate (BMIR), or Section 202 Direct Loan properties (see below for more details).

Under the TPV set-aside, tenant protection vouchers may be either enhanced vouchers (EVs) or project-based vouchers (PBVs). Exhibit C of the Notice provides an excellent description of enhanced vouchers and project-based vouchers. See also page [4-52](#) and page [4-48](#) of NLIHC’s *2018 Advocates’ Guide*. One of the new provisions in this Notice adds that if an owner refuses a household with an EV the right to remain, the household may exercise any judicial remedy that is available under state or local law.

TPV and EV Brief Background

TPVs may be provided to low-income residents of project-based HUD-assisted housing when there is a change in the status of their project’s housing assistance 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). 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). Under the set-aside, the HCVs are project-based vouchers (PBVs).

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.

A new provision in this Notice is that if an owner refuses a household with an EV the right to remain, the household may exercise any judicial remedy available under federal law.

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 triggering event, 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 (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 triggering event). 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.

Joint Notice H 2019-02/PIH 2019-01 Will Remain in Effect for the Foreseeable Future

The \$5 million available under the FY18 act will be used in addition to TPV set-aside funds remaining from the FY17 act – a practice that was newly instituted last year in Notice PIH 2018-02. In addition, the new joint Notice states that if Congress continues to provide TPV set-aside authority under the same terms and conditions that it has this year, HUD will not issue a new TPV set-aside Notice every year; instead, HUD will continue to use this new joint Notice for future TPV set-aside appropriations. Another new provision is that applications submitted before this Notice was issued do not need to be resubmitted.

These features are improvements advocates had long sought. In prior years TPV set-aside funds not awarded were no longer available at the end of the relevant fiscal year. Because HUD had 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.

Triggering Eligibility for Set-Aside TPVs

To be eligible for TPVs, one of two potential “triggering” events at a property must have taken place in the five years prior to an owner submitting a request for set-aside TPVs or is expected to take place within 180 days. The two potential triggering events are:

1. The maturity of a HUD-insured, HUD-held, or Section 202 loan that would have required HUD permission to prepay a loan. These include Section 236, 221(d)(3) Below Market Interest Rate (BMIR), and Section 202 Direct Loans. (If a Section 202 direct loan note is silent on whether HUD prepayment approval is required, then the maturity of the direct loan is a triggering event.)
2. The expiration of affordability restrictions accompanying a mortgage or preservation program administered by HUD (e.g. ELIHPA and LIHPRHA). These include matured mortgages of Section 236, Section 221(d)(3) BMIR, or Section 202 Direct Loan properties that do not require HUD permission to prepay, but that have underlying affordability restrictions that expired when the mortgages matured. This category also includes properties with stand-alone HUD-imposed “affordability restrictions” that expired in FY18 or in the five years prior to an owner’s application for set-aside TPVs.

Low-Vacancy Areas

A project must be in a HUD-identified low-vacancy area. New with this Notice, HUD will publish an updated list of low-vacancy areas for a July 1 to June 30 period each year. For applications submitted before this Notice, a property will be considered to be in a low-vacancy area if it was on HUD’s FY17 or FY18 low-vacancy lists. Lists will be published at <https://bit.ly/2Nederh>. This Notice continues last year’s Notice of using an improved methodology for determining low-vacancy. Advocates had long urged HUD to revise the way it determined low-vacancy areas because prior to last year, many otherwise eligible properties were not allowed to apply for TPV assistance.

At-Risk Tenants

To determine whether a household might become rent-burdened (pay more than 30% of household income for rent and utilities), the Notice requires owners to divide the 2018 Small Area Fair Market Rent, SAFMR (for properties in metropolitan areas) or the metro-wide FMR (for properties in non-metro areas) by a household’s adjusted income. Residents have a right to contest an owner’s income determination by asking the PHA to determine income-eligibility.

Owners must notify residents and any legitimate resident organizations in writing that the owner will be applying for set-aside TPVs. The Notice only says this notification must be “prior” to the owner submitting an application; it does not specify a minimum advance notification period. Is a few days adequate? Owners must ask residents for income information but residents are not required to provide income information; however, failure to provide income information makes a household ineligible for TPVs.

As with previous Notices, only owners may request set-aside TPV assistance. Advocates have urged HUD to allow residents to request TPV assistance if an owner is not responsive. In addition, this Notice does not correct an issue that advocates have raised – it does not require owners of projects approaching an expiration of use restrictions to provide residents a one-year advance notice.

Owners Decide Whether to Apply for EVs or PBVs

As in the past, owners must indicate their preference for either EVs or PBVs. The Notice requires owners to 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 EVs if the PIH Field Office is unable to find a PHA to administer PBV assistance.

Other New Provisions

- Last year’s Notice is revised to address turnover of units between the date the owner submits an application and the date of the triggering event, when the owner is submitting a request ahead of the triggering event. If a resident moves in after the owner submits an application but before the triggering event, the resident must reside at the property at the time of the triggering event. Owners must ensure that new residents are informed of the owner’s application for set-aside TPVs.

Any family changes must be shared with the PHA. The Notice describes what owners must do if a family change will result in an increase or decrease in the total number of TPVs needed.

- For Section 202 Direct Loans the Office of Recapitalization will be the initial point of contact.
- Owners no longer need to have a separate Housing Assistance Payment (HAP) contract if they want to add PBVs for non-TPV units at the property. This includes: (a) adding TPV units awarded under a separate set-aside funding award for the same project, and (b) adding units using budget authority allocated to the PHA under the HCV program.

For (b), the added non-TPV units must be subject to the regular PBV:

- Program cap: Using up to 20% of the PHA’s authorized vouchers and an additional 10% to provide for units for people who are homeless, disabled, elderly, or veterans,

as well as to provide units where vouchers are difficult to use – census tracts with a poverty rate less than 20%.

- Project cap: 25% of the units or 25 units in a project, whichever is greater. For projects where vouchers are difficult to use, the cap is raised to 40%. The project cap does not apply to units exclusively for elderly households or households eligible for supportive services.

Joint Notice H 2019-02/PIH 2019-01 is at: <https://bit.ly/2BKc7L8>

General information about TPVs and EVs is on page [4-52](#) of NLIHC's *2018 Advocates' Guide*

General information about PBVs is on page [4-48](#) of NLIHC's *2018 Advocates' Guide*