



## **Materials: Subsidized Housing Basics, Part 2: Public Housing and Section 8 Voucher Programs**

### **Contents**

1. Powerpoint Presentation on Public Housing and Section 8 Vouchers
2. Outline: Public Housing
3. Timeline for PHA Plan Process
4. Outline: Section 8 Vouchers
5. Payment Standard Chart for Section 8 Vouchers
6. Portability Information Packet: *Survivors Have Rights and Protections to Move with a Voucher*

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# Public Housing & Voucher Programs: A Basic Overview for Advocates

CATHERINE BISHOP  
DEBORAH THROPE  
NATIONAL HOUSING LAW PROJECT

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## HOUSING JUSTICE

National Housing Law Project

## GoToWebinar Interface

1. Viewer Window



2. Control Panel



## Housekeeping

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- Materials were emailed to registrants this morning and will be emailed again after the webinar, along with evaluations.
- Materials and recording will be posted at [www.nhlp.org/OVWgrantees](http://www.nhlp.org/OVWgrantees).
- CA and NY attorneys seeking MCLE credits will receive MCLE certificates after the webinar.
- Poll: Which best describes you?

## Webinar Series on the Basics

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- Overview of the public housing and Section 8 voucher programs.
  - Two of the largest HUD programs that are affordable to the very lowest income families
- Other HUD programs, including Project-based Section 8, Sections 202, 236, 811, HOME, HUD homelessness programs and HOPWA covered in two other webinars - March 20, 2:00-3:15 pm EST and late April. All attendees will receive registration links.
- On 11/20/2013, we held Part 1 of webinar series on the Low-Income Housing Tax Credit and Rural Development programs. Recording and materials available at <http://nhlp.org/node/1484/>
  - Webinar on VAWA 2013's housing protections

## Why Does This Matter?

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- Advocates working with survivors of domestic and/or sexual violence may encounter public housing or the voucher program because:
  - It is housing survivors can afford on their own.
  - Access to this housing may help survivors escape perpetrators.
  - Survivors may need assistance navigating the admissions process for this housing.
  - To improve survivors' chances of securing permanent housing, it is critical for advocates to understand how to work with public housing agencies (PHAs).

## Why Does This Matter? (cont'd)

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- Advocates working with survivors of domestic and/or sexual violence may encounter public housing and the Section 8 voucher program because:
  - Client may need to seek a rent adjustment as a result of factors related to domestic violence or sexual assault.
  - Client may need to relocate with the Section 8 voucher or to another public housing unit as a result of domestic violence or sexual assault.
  - Advocates may need to negotiate with PHAs or a private voucher landlord to stop evictions, subsidy terminations, or other negative actions against survivors.
- ***Remember: Client's rights and options will vary depending on the federal housing.***

## What We'll Cover

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- **Basic overview of the public housing and Section 8 Voucher programs.**
  - Orientation to the programs, distinguishing characteristics and eligibility, admissions, rents, and terminations/evictions
- **Resources that provide more information about these programs.**
- **How to locate and identify this housing in your jurisdiction.**

## Review of the materials

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- **Two outlines with attachments:**
  - Public housing
  - Voucher Program, and
  - A memo “Survivors Have Rights and Protections to Move with a Voucher”
- **Purpose of the materials is to offer a brief overview of the programs, provide cites to relevant law, and provide more extensive resources.**

## Comparison of the Two Programs

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- **Public Housing:**
  - <1.2 million units; 36% female headed with children; 53% elderly and/or disabled head of household (H of H); 45% African Amer.; 24% Hispanic; 2,112,911 total number of household members of which 38% are minors; avg. income of \$13,827; 67% are ELI; 51% lived in the housing 5 yrs or less. (Data 2/2014)
- **Voucher Program:**
  - >2.3 million units; 44% are female headed with children; 49% elderly and/or disabled H of H; 46% African Amer.; 15% Hispanic; 4,586,519 total number of household members; 70% ELI; avg. income \$13,052; 43% used voucher 5 years or less (Data 2012)
- <https://pic.hud.gov/pic/RCRPublic/rcrmain.asp>
- See also <http://www.huduser.org/portal/picture2008/index.html>

## Comparison of the Two Programs

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## Public Housing

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## Public Housing

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- **How Program Works: Who Is Involved/Roles**
  - Congress authorizes the public housing program, sets standards and appropriates funds.
  - HUD oversees the program, issues rules and guidance. contracts with and monitors the PHAs and allocates the funds.
  - Generally, the PHA owns, manages and maintains the housing, selects and evicts the tenants and establishes local rules and creates the lease.
    - ✦ Some public housing units are privately owned and/or managed
  - Other parties: PHA Board of Commissioners, Resident Advisory Board (RAB) and resident organizations/councils.

## What Rules Apply to Public Housing?

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- **Layers of legal authorities:**
  - Federal statutes and HUD regulations published in Code of Federal Regulations (CFR)
  - Other administrative guidance, such as HUD Notices; Federal Register Notices; Notices of Funding Availability and Public Housing Occupancy Guidebook, which is available at <http://www.hud.gov/offices/pih/programs/ph/rhiip/phguidebook.cfm>
  - Detailed rules regarding tenant leases and grievance procedures, 24 C.F.R. 966
  - PHA develops its own local policies in its Admission and Continued Occupancy Plan (ACOP)
  - PHA develops and submits a 5 Year and Annual Plans to HUD

## How Can I Find Public Housing?

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- To obtain public housing, client generally must apply with the local PHA in the jurisdiction in which she works, lives or wants to live
- To find the PHA in your area, go to either
- [www.hud.gov/offices/pih/systems/pic/haprofiles/](http://www.hud.gov/offices/pih/systems/pic/haprofiles/)
- [http://portal.hud.gov/hudportal/HUD?src=/topics/rental\\_assistance](http://portal.hud.gov/hudportal/HUD?src=/topics/rental_assistance)

## How to Tell If a Client Is in Public Housing

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- **Factors to consider:**
  - Property owned by PHA
  - Property managed by PHA
  - Language of the lease
  - Availability of “grievance hearing”/“grievance procedure”
  - Signage at the property
  - Tenant income recertified and verified annually by PHA
  - Ask PHA, HUD, local legal services program or National Housing Law Project

## Eligibility & Admission: Basics

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- **Family is eligible if income is 80% of area median income (AMI)**
  - ✦ 40% of all new admissions must be extremely low income (30% of AMI)
- **Family has one member who is a U.S. citizen or with qualifying immigration status**
- **Most PHAs have a waiting list, which may be a central list and/or site-based (maybe combined with voucher list?)**
- **Poll: True or False - The federal poverty level is used to determine income eligibility for federally subsidized housing.**

## Eligibility & Admissions: Basics

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- PHA may establish preferences, such as for homeless individuals, residents of the jurisdiction, families with working adults, and/or survivors of domestic and sexual violence
- **Advocates should determine**
  - The bedroom sizes of the public housing units
  - Whether the public housing is for general occupancy or designated for families with an elderly and/or disabled head of household
  - Status of the wait list. Is it open or closed? What is the average wait time? How is wait time affected by preferences?

## Eligibility & Admission: Basics

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- **Screening**
  - PHAs must screen and reject applicants for certain criminal activity
  - PHA may reject those who abuse alcohol and for other criminal activity
  - Most PHAs consider prior rent-paying and eviction history
- **PHA must**
  - Consider mitigating circumstances, and
  - Notify applicant of reason for rejection and the right to an informal hearing.

## Public Housing: Rent

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- Most tenants pay 30% of adjusted income
- Adjusted income: Annual income from all sources minus exclusions/deductions (e.g. minor's income or lump sum additions due to delayed start of SSI or SS) with adjustments (e.g. \$480/year/dependent, child care expenses for work, etc.)
- PHA sets minimum rent between \$0 and \$50
- Utility Allowance: PHA sets "reasonable" amount for tenant paid utilities, credited to tenant share of rent
- Income Recertification: Annual and interim for changes in tenant income, status or circumstances

## Sam

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- Sam is a survivor of domestic violence. He has obtained a restraining order and his partner the abuser has moved out. The abuser prevented Sam from working and controlled all of the household finances. What should Sam do?
- Poll question
- What more would you like to know?

## Public Housing: Eviction

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- **Tenant may be evicted only for serious or repeated lease violation or other good cause**
  - Lease provisions are critical for determining good cause
  - PHA may bifurcate lease and evict only the abuser
- **Tenant entitled to notice of reasons**
  - Length of notice mandated by federal law, may be different from state law (14-day notice for non payment), but also references state law
- **Tenant entitled to grievance hearing before eviction**
  - Exceptions for illegal drug activity, criminal activity that threatens health and safety and quiet enjoyment of other residents, and felony conviction

## Public Housing Grievance Hearing

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- **A grievance: any dispute re: PHA action or failure to act in accordance with the lease or PHA regulations, which adversely affects the tenant's rights**
  - May include challenges to rent, damage charges, condition of the unit or income determination and evictions
- **Process includes informal review and settlement before a grievance hearing (prompt and reas. place)**
- **Grievance hearing: review and copy documents pre hearing, may be represented, confront and cross examine, written decision based on facts presented, before impartial hearing officer (panel); appeal**

## Eva

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- Eva received an eviction notice from the PHA because the police have been called multiple times to her public housing unit. She tells you that she often called the police, as did her neighbors, because of the abuse. Eva has a restraining order preventing the abuser from coming to the public housing property.
- What steps would you take to help Eva?

## Section 8 Housing Choice Voucher Program (HCVP)

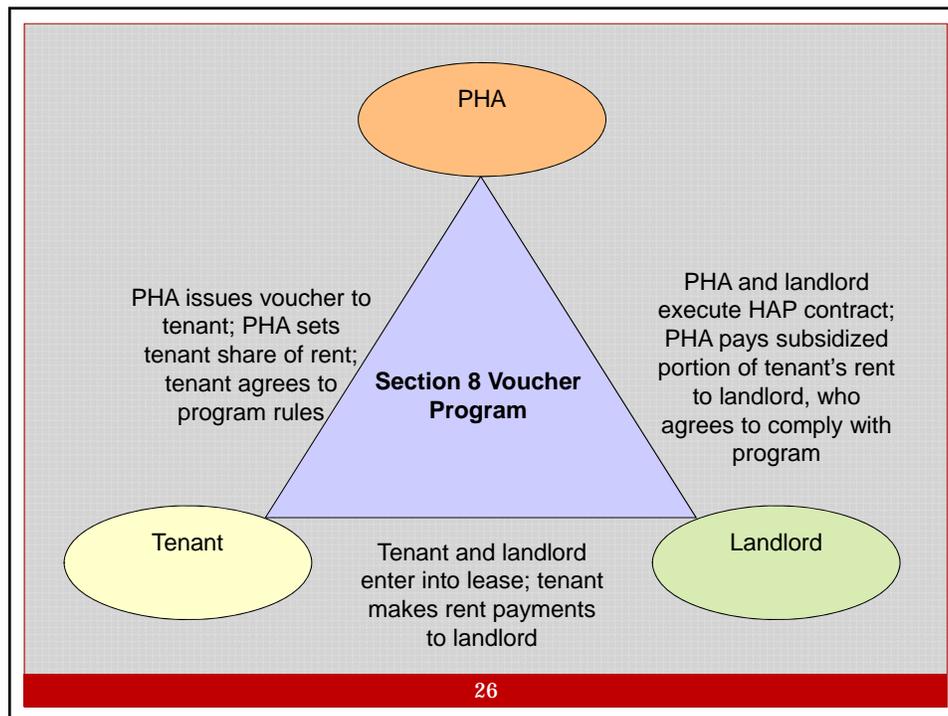
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## Section 8 Voucher Program

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- **How Program Works: Who is Involved/Roles**
  - HUD provides funds to public housing agency (PHA)
  - PHA administers the voucher program locally
  - Tenant finds a private landlord
  - PHA and landlord enter into Housing Assistance Payments (HAP) contract
    - ✦ PHA makes payments to landlord
    - ✦ Landlord agrees to comply with the program
  - Private landlord and tenant sign a lease
    - ✦ Tenant agrees to pay her share of the rent



## What Rules Apply to the Voucher Program?

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- **Layers of legal authorities:**
  - Federal statute, HUD regulations, Housing Choice Voucher Program Guidebook, HUD Notices ([www.hud.gov/hudclips](http://www.hud.gov/hudclips))
  - Section 8 Administrative Plan: contains the PHA's locally developed rules
  - HUD Voucher Lease Addendum (HUD-52641-A)
  - Landlord may use its own lease that also governs the tenancy, but the standard HUD lease addendum prevails

## Where Can My Client Get a Voucher?

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- Client applies for voucher by filling out an application with the PHA
- Client can apply for a voucher with multiple PHAs, even if she does not reside in the PHA's jurisdiction
  - May be subject to residency preferences
- List of PHAs available at [www.hud.gov/offices/pih/pha/contacts/](http://www.hud.gov/offices/pih/pha/contacts/)
- Information on the number of vouchers & utilization by PHA
  - [www.cbpp.org/cms/index.cfm?fa=view&id=3586](http://www.cbpp.org/cms/index.cfm?fa=view&id=3586)
  - [portal.hud.gov/hudportal/HUD?src=/program\\_offices/public\\_indian\\_housing/programs/hcv/psd](http://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/programs/hcv/psd)

## Waiting Lists

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- Each PHA maintains a list of applicants.
- Sometimes these lists are combined with the waiting list for public housing.
- How the lists are created is determined locally.
- Some waiting lists are very long (7-9 years). Clients must update their information with the PHA.
- Some waiting lists are closed.
- PHAs advertise when the waiting list will be open to new applicants.

## How to Tell If Client Has a Voucher

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- **A client may be a Section 8 voucher tenant if:**
  - Client was given a voucher by a PHA
  - Client had to find the unit and a willing landlord
  - Client annually recertifies her income with the PHA
  - Landlord is usually a private landlord without any other federal assistance
  - Client's lease includes Section 8 tenancy addendum
  - Client tells you she has previously moved and was able to keep her Section 8 assistance
  - Other tenants at the property may not be subsidized.

## “Special” Vouchers

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Some vouchers are targeted to families with special needs such as:

- Family Unification vouchers for families with children exiting foster care.
- VASH vouchers (Veteran Affairs Supportive Housing) for homeless veterans
- Welfare to Work vouchers for families transitioning off of welfare
- There may be other “set-aside” vouchers in your community.

## Voucher Program Admissions: Two Steps

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- **Step 1: PHA determines who will receive a voucher.**
  - Most applicants “very low-income” (VLI)—income cannot exceed 50% of area median income (AMI); in very limited circumstances may be low-income.
  - PHAs must target 75% of vouchers to “extremely low-income” households—30% of AMI or below.
  - PHAs must deny applicants with certain criminal history and/or based upon immigration status.
  - PHA may establish additional screening factors.
  - PHA must notify applicants of reasons for rejection and that they can request an informal review.
- **Step 2: Private landlord may screen applicant.**
  - Often includes review of tenancy and credit and criminal history.

## Voucher Rents

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- Voucher tenant's share of the rent is set by the PHA.
- Tenant's rent is determined by these factors:
  - Tenant's income;
  - Maximum subsidy the PHA will pay (the payment standard); and
  - The rent the landlord is charging for the unit.
- Tenant's share of rent is typically 30% of adjusted income.
  - However, exception if tenant chooses housing with a total rent higher than the PHA's payment standard.
- Can be required to pay a minimum rent of up to \$50.
- Tenant entitled to hearing on rent calculation.
- PHA recertifies tenant's income annually.
- Tenant can ask PHA for recertification if income changes.

### Poll:

What is the Defining Feature of the Voucher Program?

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## Tenant-based Assistance/Portability

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- Subject to certain limitations, tenants can take their vouchers and move anywhere in the United States where another PHA operates a voucher program.
- For this reason, Section 8 vouchers are often referred to as “tenant-based” assistance.
- A tenant can move anywhere in the jurisdiction of the PHA
  - PHA may set limits, e.g., limit # of moves/year
- Portability: Tenant requests to move from the jurisdiction of the PHA that issued her voucher to the jurisdiction of another PHA.

## Kim

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- Three months ago, Kim rented an apartment from a private landlord using a Section 8 voucher.
- Kim broke up with her ex-boyfriend due to domestic violence. He has repeatedly threatened to break into her apartment and harm her. Kim feels that she must move to another state to protect herself.
- The PHA’s policy is that tenants can move only once during a 12-month period and must get the Landlord to agree to break the lease.
- What can Kim do to relocate and keep her Section 8 voucher? How would you help her?

## Evictions and Voucher Terminations

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- Evictions and Voucher Terminations are two separate but related processes:
- **Evictions:** Landlord uses judicial procedure to evict voucher tenant
  - During initial lease term, landlord may only evict for grounds set forth in lease
  - At the end of the lease term, landlord may terminate the tenancy without cause (*subject to* local & state eviction control protections)
  - If tenant is evicted for a serious lease violation, it's also grounds for terminating the voucher

## Voucher Terminations

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- PHA uses administrative procedure called an informal hearing to terminate tenant's voucher assistance.
- PHA must give notice of the reason for the proposed termination and an opportunity for an informal hearing.
- Good cause required: PHA is limited to terminating assistance only on the grounds listed in HUD's regulations.

# PHA Plan Process

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## PHA Plan Process

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Action	Jan 1 FY Start date	April 1 FY Start Date	July 1 FY Start Date	Oct. 1 FY Start Date
PHA should begin to develop plan for coming year. RAB and tenants should review prior year plan, develop issues, determine progress on prior year goals and strategies. Current year approved plan attachments and supporting documents are available for review	May (Prior Year) 8 mos	Aug (Prior Year) 8 mos.	Nov (Prior Year) 8 mos.	Feb  8 mos
PHA should have available a draft plan and should be discussing the plan with RAB and tenants and other advocates, such as housing advocates, disability rights groups, homeless advocates and other agencies such as welfare and jurisdiction consolidated plan agency	Mid-July (Prior Year) 5.5 mos	Mid-Oct (Prior Year) 5.5 mos	Mid-Jan. 5.5 mos	Mid- April 5.5 mos
Notice of hearing, proposed plan on file for review, RAB members names published	Mid-Aug (Prior Year) 4.5 mos	Mid-Nov. (Prior Year) 4.5 mos	Mid-Feb 4.5mos	Mid-May 4.5 mos
Public hearing (time should be allowed between public hearing and date plan is due at HUD to make revisions based upon public comment)	First week Oct (Prior Year) 3 mos	First week Jan 3 mos	First week April 3 mos	First week July 3 mos
Plan due at HUD	Mid-Oct. (Prior Year) 2.5 mos	Mid- Jan 2.5 mos	Mid- April 2.5 mos	Mid- July 2.5 mos
HUD approves plan and notifies PHA. PHA provides RAB with a copy of approved plan, notice of approval and funding awards. Or plan rejected	Jan 1	April 1	July 1	Oct. 1

## Process to Influence PHA Policies

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- **The Plan process rules are the same for many PHAs**
  - Exception for “qualified PHAs” (less than 550 combined PH and V units and not troubled or failing) and MTW PHAs
  - Some PHAs may file a streamlined Plan
- **All PHAs must have and consult with a Resident Advisory Board (RAB)**
  - There are rules on how they are established, their function and how they are supported by PHA
- **Mid-year changes for substantial amendments to the Plan—PHA can define “substantial amendment.”**
  - Same public and RAB process before HUD submission.

## PHA Plan Process

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- **ACOP and Administrative Plan are often revised as part of Annual Plan**
- **Examples of issues that advocates may want to raise**
  - Training of PHA staff on DV issues
  - Implementation of VAWA 2013
    - ✦ Notices regarding rights of survivors
    - ✦ Use of and modification of HUD forms
  - Transfer policies
  - Moving with a voucher
  - Confidentiality
  - Admission preferences for survivors
  - Use of mitigating circumstances for admission to voucher program, termination of a voucher and eviction

## Takeaway Points

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- A client's rights in subsidized housing will be affected by the type of housing she's in.
- Contact NHLP for help in determining what program is involved and what rules may apply.

## Wrap-up: Ana

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- **Ana tells you:**
  - Her husband was forced to move out after she got a restraining order. He was the sole wage earner.
  - She needs a lower rent because she can't afford it on her own. Her husband insisted on handling all interactions w/the owner.
  - Ana believes she is in subsidized housing, because each year her husband told her to sign forms about the family's income.
  - Husband paid rent to the owner. There is no signage at the property mentioning the housing authority.
- **What program do you think Ana is in? How would you help her?**

## Upcoming Webinars

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- March 20: Subsidized Housing Basics, Part 3: HUD Multifamily Programs
- TBA: Subsidized Housing Basics, Part 4: McKinney-Vento Programs and HOPWA
- More information: [kng@nhlp.org](mailto:kng@nhlp.org) or 415-546-7000 x. 3117

## Contact Information

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**Karlo Ng, (415)-546-7000 x. 3117**  
[kng@nhlp.org](mailto:kng@nhlp.org),

**Deborah Thrope, (415)-546-7000 x. 3124**  
[dthrope@nhlp.org](mailto:dthrope@nhlp.org)  
<http://www.nhlp.org/OVWgrantees>

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# Public Housing Overview

February 2014



## Key Components of Public Housing

- **Number of Units and Characteristics of Families**

- About 1.2 million units
- 32% of households headed by elderly persons and 21% by disabled; 36% female-headed households with children
- 45% headed by African Americans
- 24% headed by Hispanics/Latinos
- 68% were reported as extremely low income (ELI); average income is \$13,730
- 51% live in public housing for less than 5 years

Information such as the above is available nationally, by state, Public Housing Agency (PHA) and development at

[http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/public\\_indian\\_housing/systems/pic/50058/rcr](http://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/systems/pic/50058/rcr)

- **Ownership**

- Public Housing Authority (PHA) owns public housing.
  - Created pursuant to local state enabling legislation.
  - Most are governed by board of commissioners.
    - Exceptions include situations where state law dictates a different result, and statewide PHAs. In such situations there may be alternative arrangements.
    - With some exceptions, a tenant or other “program participant” must be on the board. 42 U.S.C.A. § 1437(b); 24 C.F.R. §§ 964.400-964.430.
  - The jurisdiction of the PHA can include entire state, one or more cities, one or more counties, or other geographical area.

- **Parties Involved and Their Roles**

- HUD (both Headquarters in Washington, D.C. and the local office).
- HUD evaluates the PHA in accordance with the Public Housing Assessment System (PHAS). 24 C.F.R. Part 902.
- PHA consults with a Resident Advisory Board (RAB) and develops annual and five-year plans that HUD may review and approves. 42 U.S.C.A. § 1437c-1; 24 C.F.R. Part 903.
- Resident Councils (RC) if they exist must be recognized by the PHA, if the RC complies with 24 C.F.R. §§ 964.105(a), 964.130(b) and 964.135(d)). RCs may be organized by development(s) and/or jurisdiction-wide.

- **How Program Works: Subsidy Mechanism**

- Congress appropriates and HUD distributes to PHAs operating and capital funds

- Subsidies are provided pursuant to an Annual Contributions Contract (ACC) between HUD and a PHA
- **Key Regulatory Features**
  - Federal statute, regulations and forms.
    - Statute: 42 U.S.C.A. §§ 1437 to 1437e, 1437g to 1437z, 1437z–2 to 1437z–6, 1437aaa–2 to 1437aaa–6.
    - Regulations: 24 C.F.R. Part 5, and 900 *et seq.* (See Parts 960 and 966).
    - Public Housing Occupancy Guidebook (June 2003), [www.hud.gov/offices/pih/programs/ph/rhiip/phguidebook.cfm](http://www.hud.gov/offices/pih/programs/ph/rhiip/phguidebook.cfm).
    - Annual Contribution Contract, HUD Form 53010 D, E, H, I, etc. (contract between HUD and PHA), [www.hud.gov/offices/adm/hudclips/](http://www.hud.gov/offices/adm/hudclips/)
    - HUD notices and forms, available [www.hud.gov/offices/adm/hudclips/](http://www.hud.gov/offices/adm/hudclips/)
  - Locally developed rules, policies and contracts.
    - State enabling statute for PHAs.
    - PHA 5 Year and Annual Plans developed locally and must be available locally. HUD also posts the PHA Plans on the HUD website, [http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/public\\_indian\\_housing/pha](http://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/pha); see also 24 C.F.R. Part 903; form HUD 50075; HUD, PHA Plan Desk Guide
    - Admission and Continued Occupancy Plan (ACOP) developed locally and must be available locally for review.
    - Tenant lease and grievance procedure is developed locally, but detailed federal regulations must be followed. 24 C.F.R. Part 966.
- **Finding Out Where this Housing is Located in Your Community**
  - For each PHA there is a profile listed on the HUD website which provides basic contact information, the total number of public housing units and the number of developments. See [www.hud.gov/offices/pih/systems/pic/haprofiles/](http://www.hud.gov/offices/pih/systems/pic/haprofiles/). In the PHA Plan materials (available locally), PHAs may provide a list of the name and address of each PHA development.
  - HUD's Picture of Subsidized Households data set also provides some information for individual public housing sites, [www.huduser.org/portal/datasets/assthsg.html](http://www.huduser.org/portal/datasets/assthsg.html); See also the Resident Characteristics Report, *supra*. See also the National Housing Preservation Database, <http://nlihc.org/library/other/preservation> (which combines all of the HUD databases)
- **Tips for Determining What Kind of Housing is Involved**
  - Owned and managed by the PHA, to which tenants pay their rent.
  - Age of the building, could have been built any time between the 1930s and the present and signage at the development
  - Tenant lease
  - Tenant is aware that there is a grievance procedure.
  - Tenant has income verified and rent recertified annually by the PHA.

## **Major Applicant and Tenant Issues**

- **ADMISSIONS**

- **Waiting list:** how compiled and maintained.

- PHA may have site-based waiting lists, a central waiting list, or any combination. 42 U.S.C.A. § 1437d(r); 24 C.F.R. § 903.7(b)(2).
- PHAs typically advertise when the waiting list is open and adopt a process to provide that getting on the on the list is accessible.
- Waiting list for public housing may be combined with Voucher list.
- Best Practice: Waiting list open for a period of time, applicants place on list determined by lottery “no first come first serve”.

- **Eligibility:**

- Income: Low income (80% of Area Median Income) and Very Low Income (50% of AMI).
- Targeting: at least 40% of all new admissions must be families with Extremely Low Income (ELI) (30% of AMI). 42 U.S.C.A. § 1437n(a).
- The AMI for every jurisdiction is updated annually and available at <http://huduser.org/datasets/il.html>.
- Restrictions on Assistance to Non-Citizens: In general a family must have one member of the household who is a citizen or who has eligible immigration status under one of the categories set forth in 42 U.S.C.A. § 1436a(a). If any members of the household are not citizens or lack eligible immigration status, the assistance (i.e., rent) for the family is prorated. *Id.*; 24 C.F.R. §§ 5.500–5.528. See also HUD Guidebook 7465.7G for an explanation of how prorationing works for public housing.
- Some housing is not general occupancy and is limited to families whose head of household is elderly and/or disabled families. 42 U.S.C.A. § 1437e.
- Social Security Number requirements: 24 C.F.R. § 5.216; PIH 2012-10

- **Preferences:**

PHAs may adopt local preferences for applicants. The preferences may include preferences for families whose heads are working (which must also include families whose heads are elderly or disabled), residency preferences, and preferences for victims of domestic violence and families who are homeless or threatened with homelessness. 42 U.S.C.A. § 1437d(c)(4); 24 C.F.R. § 960.206. Determination of preferences is made in the PHA Plan process and should be included in the ACOP.

- **Screening:**

- Standards: the information considered for each applicant and the standards adopted by the PHA must be reasonably related to individual attributes of an applicant. When adverse information is received, the PHA must consider the time, nature, extent and seriousness of the offense. PHA may also consider rehabilitation of an applicant. 24 C.F.R. §§ 960.203(a) & (d).

- Criminal activity: PHAs must screen and reject applicants for certain criminal behavior, including: if any household member has been evicted from federally assisted housing within past 3 years for drug-related criminal activity (except that applicant may demonstrate changed circumstances), if an applicant is currently engaged in illegal use of drugs, if any household member has ever been convicted of methamphetamine production on federally assisted housing premises, and if any member is a registered lifetime sex offender. 24 C.F.R. § 960.204.
- Criminal activity: PHA may also screen for a history of criminal activity involving acts of physical violence to persons or property and for abuse of alcohol which may threaten the health and safety of others. 24 C.F.R. §§ 960.203(c)(3) and 960.204(b).
- Poor tenant history (evictions or termination from housing programs and poor credit history). Information about past debt to a PHA is accessible to PHAs and may be a basis for denial
- Local PHA rules control, provided above standards are followed.
  
- **Notification and opportunity to contest**  
Applicants must be notified of ineligibility and provided an opportunity to contest the determination in an informal hearing. 42 U.S.C.A. § 1437d(c)(3); 24 C.F.R. § 960.208.
  
- **Admission policy** must be available locally; admission issues are addressed in the PHA Plan. 42 U.S.C.A. § 1437c-1(d)(3). The ACOP should set forth the PHA's complete admission policy.
  
- **RENTS**
  - **Generally:**
    - HUD has developed an Enterprise Income Verification (EIV) program which uses computer matching with a number of federal agencies to get government income as well as wage income and new-hire data, which helps to minimize errors in tenant income but can also create problems for tenants.
    - Public housing residents usually pay rent based upon a percentage of their adjusted income or occasionally gross income, paying the higher of 30% of adjusted income or 10% of gross. In a few jurisdictions there is also a "welfare rent." Tenants must pay the minimum rent and they may opt to pay a flat rent. 42 U.S.C.A. § 1437a.
  
  - **Income-based rents**  
Most residents pay monthly rent based upon one-twelfth of 30% of adjusted annual income.
  
  - **Annual Income and Exclusions**  
Annual income includes all income that the family anticipates that it will receive in the coming year. There are many exclusions, deductions and disallowances from anticipated income. Some of these include the Earned Income Disregard/Disallowance (EID), income from full-time students who are not head

of household, income for foster care, income of live-in aides, deferred lump sum additions to family income due to the delayed start of SSI or social security payments, etc. 24 C.F.R. § 5.609; *see also* 42 U.S.C.A. § 1437a(d) (EID).

- **Adjusted Income after Deductions**

- The standard mandatory annual deductions include:
  - \$480 for each dependent,
  - \$400 for each elderly or disabled family,
  - For each elderly or disabled family, unreimbursed medical and reasonable attendant care or auxiliary apparatus costs that exceed 3% of annual income,
  - Child care expenses (for children under age 13) that allow a family member to work, and any other locally adopted deductions. 42 U.S.C.A. § 1437a(a)(5); 24 C.F.R. § 5.611.
- If a resident loses welfare due to sanctions due to fraud or failure to comply with an economic self-sufficiency program, tenant rent will *not* be adjusted and the lost welfare income will be imputed. 42 U.S.C.A. § 1437j(d); 24 C.F.R. § 5.615.

- **Minimum Rent and Hardship Exemption**

A PHA may set minimum rent between zero and \$50. Any tenant who is charged a minimum rent is eligible for a hardship exemption if the tenant is threatened with eviction for failure to pay the minimum rent, or there is a reduction in income due to a change in family circumstances. If the family qualifies for the hardship exemption, the minimum rent is suspended for 90 days and the tenant may not be evicted for nonpayment of rent. The tenant may have to repay the minimum rent with reasonable repayment agreement. PHAs often fail to notify tenants of hardship exemption. 42 U.S.C.A. § 1437a(a)(3); 24 C.F.R. § 5.630.

- **Utility Allowance**

Residents who pay their own utilities are entitled to an allowance for the consumption of a reasonable level of utilities by an energy conservative household. This allowance is deducted from the tenant portion of the rent. 24 C.F.R. § 5.603 (definition of utility allowance). If tenant income is so low that the allowance exceeds the tenant portion of the rent, the family is entitled to a utility reimbursement, or the PHA may pay the reimbursement directly to the utility company. Residents are only entitled to the utility reimbursement if their rent is income-based. 24 C.F.R. §§ 5.632 and 960.253(c)(3).

- **Other Rents (Flat Rents, Ceiling Rents)**

*Flat rent:* every PHA is required to adopt a flat rent based upon the market rent for the unit, taking into account its location, quality and size. The flat rent should be designed to encourage self-sufficiency. A family paying a flat rent may request a financial hardship to switch to an income-based rent. Ceiling rents have been eliminated. 42 U.S.C.A. § 1437a(2); 24 C.F.R. § 960.253(f).

- **Recertification**
  - Annual recertification required.
  - PHA may decide when and how to require interim rent recertification when tenant income increases (information in PHA's ACOP).
  - Interim recertification required if family reports decrease in income, except for loss of certain welfare income. See above re loss or reduction of welfare benefits. 24 C.F.R. § 960.257.
- **Ability to challenge rent level**
  - Public housing grievance procedures.
- **GRIEVANCE PROCEDURES**
  - Public housing residents may request a grievance hearing to dispute PHA action or inaction involving tenant lease or PHA policies. Eviction actions involving certain criminal activity may be exempt from the grievance process. 42 U.S.C.A. § 1437d(k); 24 C.F.R. §§ 966.51–966.57. State and local law may provide greater protections and HUD generally holds that such procedural protections are not pre-empted.
- **EVICCTIONS**
  - **Notice: length and content**
    - 14 days for nonpayment of rent.
    - 30 days or a shorter state law period for all other situations.
    - Notice must specify the grounds, inform resident of the right to examine PHA documents, of the right to a grievance hearing or an explanation of why it is not available, etc. 42 U.S.C.A. § 1437d(l); 24 C.F.R. § 966.4(l)(3).
  - **Good cause required** for any termination, both at end of term and midterm.
  - **Good cause defined as:**
    - Serious or repeated violation of material terms of the lease, including nonpayment of rent and failure to comply with household obligations.
    - Drug-related criminal activity that occurs *on or off* the premises.
    - Criminal activity that threatens health, safety or right to peaceful enjoyment of other residents or staff.
    - Other good cause as provided for in lease.
    - Cause requirements found in 42 U.S.C.A. § 1437d(l); 24 C.F.R. § 966.4(l).
- **COMMUNITY SERVICE**
  - Community service (includes self-sufficiency activity) is required for adult family members who are not exempt (96 hours of service per year or 8 hours/month). 42 U.S.C.A. § 1437j(c); 24 C.F.R. 960, subpart F.
  - Those who are working, elderly and disabled, etc. are exempt.
  - A family may be evicted because of the failure of a member to perform community service or may be compelled to exclude that family member.

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## TIME LINE for PHA Plan Process

Action	Jan 1 FY Start date	April 1 FY Start Date	July 1 FY Start Date	Oct. 1 FY Start Date
PHA should begin to develop plan for coming year. RAB and tenants should review prior year plan, develop issues, determine progress on prior year goals and strategies. Current year approved plan attachments and supporting documents are available for review	May (Prior Year)  8 mos	Aug (Prior Year)  8 mos.	Nov (Prior Year.)  8 mos.	Feb   8 mos
PHA should have available a draft plan and should be discussing the plan with RAB and tenants and other advocates, such as housing advocates, disability rights groups, homeless advocates and other agencies such as welfare and jurisdiction consolidated plan agency	Mid- July (Prior Year) 5.5 mos	Mid- Oct (Prior Year) 5.5 mos	Mid- Jan.  5.5 mos	Mid- April  5.5 mos
Notice of hearing, proposed plan on file for review, RAB members names published	Mid- Aug (Prior Year) 4.5 mos	Mid- Nov. (Prior Year) 4.5 mos	Mid- Feb  4.5mos	Mid- May  4.5 mos
Public hearing (time should be allowed between public hearing and date plan is due at HUD to make revisions based upon public comment)	First week Oct (Prior Year) 3 mos	First week Jan  3 mos	First week April  3 mos	First week July  3 mos
Plan due at HUD	Mid- Oct. (Prior Year) 2.5 mos	Mid- Jan  2.5 mos	Mid- April  2.5 mos	Mid- July  2.5 mos
HUD approves plan and notifies PHA. PHA provides RAB with a copy of approved plan, notice of approval and funding awards. Or plan rejected	Jan 1	April 1	July 1	Oct. 1

# Section 8 Voucher Overview

October 2013



## Key Components of the Section 8 Voucher Program

- **Number of Units and Characteristics of Families:**
  - 2.377 million vouchers nationwide
  - 46% headed by African-Americans; 15% headed by Hispanics/Latinos (may be either African-American or Caucasian); average tenant income \$12,866; 28% are disabled non elderly; 21% are elderly; 44% are female-headed households with children; 71% are Extremely Low Income (ELI).
  - Information such as the above is available nationally, by state, or by public housing agency (PHA) at <http://pic.hud.gov/pic/RCRPublic/rcrmain.asp>
  - Information on number of vouchers allocated to a local PHA is stated in the PHA Plan, available locally and is also posted on the HUD website for each PHA.
  
- **Ownership**

Tenants receive a voucher from a PHA and find a willing landlord. That landlord is typically a private landlord with no other federal assistance. However, it is possible that the landlord does receive other federal assistance, such as tax credits.
  
- **Parties Involved and Their Roles**

Congress appropriates funds for an administrative fee and housing assistance payments for the Housing Choice Voucher (HCV) program. HUD allocates the funds, the PHA administers the program locally, and the tenant finds a willing landlord who agrees to accept the voucher. The PHA determines if the unit meets the Housing Quality Standards (HQS), whether the rent charged for the unit is reasonable and if lease contains required addendum. PHA enters into a contract with the landlord.

  - PHAs administer the voucher program.
  - A PHA is created by local and state enabling legislation.
  - Most PHAs are governed by a Board of Commissioners (there are some exceptions)
  - The jurisdiction of a PHA can be statewide, countywide, citywide or by other geographical or political area.
  - Voucher tenant(s) must serve on the Resident Advisory Board (RAB) that the PHA must consult with regarding the PHA 5 Year and Annual Plan
  
- **Key Regulatory Features**
  - Federal statute, regulations and forms.
    - Statute: 42 U.S.C.A. § 1437f(o).
    - Regulations: 24 C.F.R. Part 982 (comprehensive regulations for the voucher program).
    - 24 C.F.R. Part 5 (General HUD Program Requirements which may also be applicable to other low income housing programs).

- HUD, Voucher Program Guidebook, 7420.10G (April 2001), available at <http://www.hud.gov/offices/adm/hudclips/>, and <http://www.hud.gov/offices/pih/programs/hcv/forms/guidebook.cfm>
- HUD Notices and HUD Forms are available at <http://www.hud.gov/offices/adm/hudclips/>
- Form HUD-52641 Housing Assistance Payments Contract (HAP Contract) Section 8 Tenant-Based Assistance Housing Choice Voucher Program (08/2009) (contract between PHA and the landlord).
- Form HUD-52641-A, Tenancy Addendum, Section 8 Tenant-Based Assistance Housing Choice Voucher Program (08/2009) (lease addendum between the landlord and the voucher participant).
- Form HUD-52646 Voucher Housing Choice Voucher Program (7/2000)
- Locally developed rules, policies and contracts:
  - PHA 5-year and Annual Plan is developed locally and must be available locally. HUD also posts the PHA plans on the HUD web site. [http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/public\\_indian\\_housing/pha](http://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/pha); see also 24 C.F.R. Part 903; form HUD 50075; HUD, PHA Plan Desk Guide
  - Section 8 Administrative Plan, 24 C.F.R. § 982.54. This document is sometimes attached to the PHA Annual Plan.
  - In addition to the Lease Addendum mentioned above, the tenant may also sign the landlord's lease.
- **Finding this Housing in Your Community**

A key feature of the voucher program is housing choice and portability of the voucher. A family may use a voucher in any area within the jurisdiction of the initial issuing PHA or in the jurisdiction of another PHA. 24 C.F.R. § 982.353. A PHA may attempt to restrict housing choice and/or portability. But such restrictions are generally illegal, and HUD is making greater efforts to limit the discretion of PHAs. See Notice PIH 2012-42.

  - HUD as part of the effort to affirmatively further fair housing has created a prototype geospatial tool which provides information on the location of HUD assisted housing including the location of units with vouchers. [http://www.huduser.org/portal/affht\\_pt.html#dataTool-tab](http://www.huduser.org/portal/affht_pt.html#dataTool-tab)
- **Tips for Determining What Kind of Housing Is Involved**
  - Tenant was given a voucher by the PHA.
  - Tenant had to find the unit and a willing landlord.
  - PHA annually inspects the unit and conducts annual rent recertification.
  - Landlord is most often a private landlord without any other federal assistance.
- **Related Subprograms or Set-Asides for Special Uses**
  - There are many types of voucher programs that are targeted to families with special needs, such as Welfare to Work, Family Unification, Mainstream, Designated Housing, Enhanced Vouchers, Tenant Protection Vouchers and VASH (Veteran Affairs Supportive Housing). With the exception of Enhanced Vouchers, Tenant Protection Vouchers and VASH, PHAs apply for these special programs by responding to Notice of Funding Availability (NOFA) announcements. The PHA Annual Plan should list the

special voucher programs administered by the local PHA. These vouchers are in addition to the PHAs basic allocation of vouchers. For some of these programs, if the voucher is returned it must be reissued to a family that meets the criteria of the sub-program

- At the local level, the PHA may opt to have a voucher homeownership program, permitting voucher payments to enable a family to purchase a home. 42 U.S.C.A. § 1437f(y); 24 C.F.R. § 982.625 et seq.
- A PHA may also opt to have a project-based voucher (PBV) program. The PBV is attached to the unit, but tenant may move with a housing choice voucher after first year. The owner retains the PBV assistance for the unit. 42 U.S.C.A. § 1437f(o)(13); 24 C.F.R. part 983.

## MAJOR APPLICANT AND TENANT ISSUES FOR VOUCHER PROGRAM

### ● ADMISSIONS

The admission process for a voucher applicant is divided between the PHA and a landlord. The PHA creates a wait list, conducts eligibility review and screens for certain criminal history and may do more extensive screening. The landlord may also screen the voucher tenant. Aside from the federal civil rights laws, there are no special federal rules governing the landlord regarding the admission of a voucher tenant, except that certain federally assisted landlords may not discriminate against voucher holders and some states or localities have similar nondiscrimination laws.

- **Waiting list**
  - PHA maintains a list of applicants.
  - List for voucher applicants may be combined with public housing lists.
  - How lists are created is determined locally. Lists may be developed through lottery process. For example, 18,000 applicants apply and a wait list of 3,000 is created by lottery.
  - Vouchers are issued for various bedroom sizes depending on the size and needs of the family.
- **Eligibility**
  - Income: Low Income (80% of Area Median Income (AMI) or Very Low Income (50% of AMI). 42 U.S.C.A. § 1437(o)(4).
  - Targeting: 75% of all new admissions must be families with Extremely Low Incomes (ELI) (30% of AMI). 42 U.S.C.A. § 1437n(b).
  - The AMI for each jurisdiction is updated annually and available at <http://huduser.org/portal/datasets/il.html>.
  - Restrictions on Assistance to Non-Citizens: In general a family must have one member of the household who is a citizen or who has eligible immigration status under one of the categories set forth in 42 U.S.C.A. § 1436a(a). If any members of the household are not citizens or lack eligible immigration status, the assistance for the family is prorated. *Id.*; 24 C.F.R. §§ 5.500–5.528.

- Social Security Number (SSN): A SSN is required. But, individuals in mixed immigration status families, who are not claiming to qualify for subsidy, are exempt from SSN requirements. PIH Notice 2012-10.
  
- **Preferences**

PHAs may adopt local preferences for applicants. For example, preferences for families whose head of household and/or other adults are working (which preference also must include families whose head of household is elderly or disabled to avoid discrimination against protected classes), residency preferences, preferences for victims of domestic violence, and families who are homeless or threatened with homelessness. 42 U.S.C.A. § 1437f(o)(6)(A); 24 C.F.R. § 982.207. Any preferences should be included in the Section 8 Administrative Plan, a supporting document to the PHA Annual Plan. The PHA may have no preferences.
  
- **Screening**
  - Standards: PHA may not discriminate because members of family are unwed mothers, recipients of welfare or have children born out of wedlock. 24 C.F.R. § 982.202(b)(3).
  - Criminal activity: PHAs must screen and reject applicants for certain criminal behavior including: if any household member has been evicted from federally assisted housing within past 3 years for drug related criminal activity (except that an applicant may demonstrate rehabilitation or changed circumstances), if an applicant is currently engaged in illegal use of drugs, if any household member has ever been convicted of methamphetamine production on the premises of federally assisted housing, and if any member is a registered lifetime sex offender. 24 C.F.R. § 982.553; 42 U.S.C.A. §§ 13,661 (3 yrs. for eviction) 13,663 (sex offender), 1437n(f) (methamphetamine).
  - Criminal activity: PHA may also establish standards which would deny eligibility to an applicant who has engaged in other criminal activity or abused alcohol which may threaten the health and safety of others. 24 C.F.R. §§ 982.553(a)(2) and (3). Not all PHAs conduct the discretionary screening. 42 U.S.C.A. § 1437f(o)(6)(B).
  - Poor tenant history: PHA is not required to screen for this, but local rules may permit this practice.
  - Poor rent-paying history or bad credit: Same as poor tenant history. Information about past debt to a PHA is accessible to PHAs and may be a basis for denial
  - Local policies are contained in the Section 8 Administrative Plan.
  - Landlord may screen for criminal history, tenant history, credit history, etc.
  
- **Procedural Protections**
  - Applicants must be notified of the reasons for rejection by the PHA and that they are entitled to an informal review. 24 C.F.R. §§ 982.552 and 982.554; *Baldwin v. Hous. Auth. Camden NJ*, 278 F.Supp.2d 365 (D.N.J. 2003).
  
- **RENTS**
  - **Generally:**

- HUD adopted an Enterprise Income Verification (EIV) program which uses computer matching with a number of federal agencies to get government income as well as wage income and new hire data. This reduces errors but often creates problems for residents, due to, for example, changed circumstances or different reporting periods.
- Rent contributions for voucher residents are a function of their required statutory contribution and the amount by which the actual unit rent exceeds (if at all) the local payment standard (see discussion below). Statutory contributions are based upon a percentage of a tenant's adjusted income or gross income, with tenants generally paying the higher of 30% of adjusted income or 10% of gross. 42 U.S.C.A. § 1437f(o)(2)(A). In a few jurisdictions, there is also a "welfare rent." Tenants may be subject to a minimum rent (see discussion below). Voucher tenants must pay the minimum rent.
- **Payment Standard**
  - The payment standard is the maximum subsidy that a PHA will pay on behalf of a family. PHAs usually set the payment standard between 90% and 110% of the Fair Market Rent (FMR). Information on the level of payment standard may be in the PHA Plan. HUD annually publishes the FMRs in the Federal Register. PHAs may seek HUD approval to increase the payment standard to an amount up to and above 120% of the FMR. See e.g., HUD Notices PIH 2005-9, PIH 2009-44 and PIH 2011-28.
  - To accommodate a family with members who are disabled, PHAs may also increase the payment standard within the basic range and/or seek HUD approval of a higher payment standard. 24 C.F.R. § 982.503; PIH 2013-3 (allows a PHA to increase the payment standard up to 120% without seeking HUD waiver).
- **Annual Income and Exclusions**
  - Annual income includes all income that the family anticipates that it will receive in the coming year. There are many exclusions, deductions and disallowances from anticipated income. Some of these exclusions include the Earned Income Disregard/disallowance (EID), which is available only to disabled members of a voucher household; income from full-time students who are not the head of household; income for foster care; income of live-in aides; deferred lump sum additions to family income due to the delayed start of SSI or social security payments, etc. 24 C.F.R. § 5.609.
- **Adjusted Income after Deductions**
  - To determine the amount of the tenant's contribution, a PHA determines for each family an adjusted annual income.
  - The standard mandatory annual deductions include:
    - \$480 for each dependent,
    - \$400 for each elderly or disabled family,
    - For each elderly or disabled family, unreimbursed medical expenses and cost of reasonable attendant care or auxiliary apparatus to allow a family member to work that exceeds 3% of annual income

Child care expenses (for children under 13) that allow a family member to work. 42 U.S.C.A. § 1437a(a)(5); 24 C.F.R. § 5.611.

- If a resident loses welfare due to sanctions because of fraud or failure to comply with an economic self-sufficiency program, tenant rent will not be adjusted and the lost welfare income will be imputed for purposes of setting the tenant's contribution for rent. 24 C.F.R. § 5.615; 42 U.S.C.A. § 1437j(d).
- **Minimum Rent and hardship exemptions**

A PHA may decide to charge no minimum rent, or a minimum rent of up to \$50 per month. If a PHA decides to charge a minimum rent, it should be set forth in the PHA's Administrative Plan. Any tenant who pays a minimum rent is eligible for a hardship exemption, if the tenant is threatened with eviction for failure to pay the minimum rent or there is a reduction in income due to a change in family circumstances. If the family qualifies for the hardship exemption, the minimum rent is suspended for 90 days and the tenant may not be evicted during that period for nonpayment of rent. The tenant may have to repay the minimum rent with a reasonable repayment agreement. 24 C.F.R. § 5.630; 42 U.S.C.A. § 1437a(a)(3). PHAs often fail to advise tenants of the hardship exemption.
- **Utility Allowance**

Residents who pay their own utilities are entitled to an allowance for the consumption of a reasonable level of utilities by an energy conservative household. This allowance is deducted from the tenant portion of the rent. 24 C.F.R. § 5.603 (definition of utility allowance). If tenant income is so low that the allowance is greater than the tenant portion of the rent, the family is entitled to a utility reimbursement, or the PHA may pay the reimbursement directly to the utility company. However, the benefit of the utility allowance for voucher recipients is often minimal because rent plus the utility allowance cannot exceed the payment standard and rents are often set at the payment standard. 24 C.F.R. §§ 5.632 and 982.514(b).
- **Recertification**
  - Annual recertification required for all families.
  - PHA decides when, how and if to require interim rent recertification when tenant income increases. 24 C.F.R. §§ 903.7(d), 982.54.54(d)(18).
  - Interim recertification required if family reports decrease in income (exceptions for loss of certain welfare income). 24 C.F.R. § 982.516; 42 U.S.C.A. § 1437f(o)(5).
- **Other rent issues**
  - Tenant rent, including a reasonable utility allowance, *cannot* exceed 40% of income for a new unit or for a unit upon initial resident participation in the program. 24 C.F.R. § 982.508; 42 U.S.C.A. § 1437f(o)(3).
  - PHAs must review the rent to be charged by the landlord to determine if it is reasonable. If it is not reasonable, the PHA may decline to enter into a Housing Assistance Payments (HAP) contract with the landlord. 42 U.S.C.A. § 1437f(o)(10).

- **INFORMAL HEARING**
  - Tenant may request an informal hearing for certain acts of the PHA, including income determinations and the computation of the housing assistance payment and proposed termination of the voucher. 24 C.F.R. § 982.555.
  
- **EVICCTIONS AND TERMINATIONS**
  - **Notice (content and term)**
    - Midterm evictions: written notice must specify the grounds, at or before commencement of eviction; HUD rule states notice can be satisfied by the judicial complaint, 24 C.F.R. §982.310(e); term of notice set by state law.
    - End-of-term evictions: no federal requirements; state law may require notice of specified length for termination at lease expiration.
    - Copy of eviction notice must be given to the PHA by the landlord and also by the tenant.
  
  - **Lease Term**
    - PHA may set initial lease term for one year or less. 42 U.S.C.A. § 1437f(o)(7); 24 C.F.R. § 982.309.
  
  - **Good cause required at end of lease term?**
    - Not required by statute or regulation.
    - Some leases or local law may require good cause for all terminations of tenancy, even for end-of-term or month-to-month.
    - Because voucher may be combined with other federally subsidized housing, the good cause requirements of those programs may also apply.
  
  - **Good cause required during lease term**
    - 24 C.F.R. § 982.310(a) (serious or repeated violation of lease; violation of applicable laws imposing tenant obligations).
    - Good cause includes drug-related activity *on or near* (on premises if offender is “other person under control”) or criminal activity that threatens health and safety of the premises. 24 C.F.R. §982.310(c).
    - Owner has discretion to consider all circumstances. 24 C.F.R. §982.310(h).
  - PHA obligated to make voucher payments on behalf of tenant until court ordered evicted. 24 C.F.R. § 982.311(b).
  - **State or local law** may impose additional requirements.
  - **Required proof by landlord:** preponderance of evidence that breach occurred.
  - **Pre-judicial administrative review?** None.
  
- **Section 8 Voucher terminations**
  - Grounds: eviction for serious lease violation (not just having committed the alleged violation), 24 C.F.R. § 982.552(b)(2) (termination *required*, also for immigration status or failure to submit consent forms); many other grounds *authorized* (e.g., violation of family obligations such as failure to supply required information, not allowing PHA inspection, failing to give PHA notice of move, not using unit as sole residence, committing fraud or drug-related or threatening criminal activity or alcohol abuse; also owing money to PHA,

- breach of repayment agreement, threatened or actual abusive behavior to PHA staff ). 24 C.F.R. § 982.552(c)(1), incorporating family obligations at § 982.551.
- PHA has discretion to consider all circumstances. § 982.552(c)(2).
- Notice and hearing protections for voucher termination: 24 C.F.R. § 982.555.

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## Section 8 Vouchers: Effect of Payment Standard at 90%, 100% and 110% of Fair Market Rent

Fair Market Rent (FMR) in Your City is **\$737** (w. utilities) for a 2 BR Unit. Sample Client: Household adjusted income is \$11,000 (**\$917/month**); 30% of monthly adjusted income of \$917 is **\$275**.

### Scenario #1: Payment Standard =90% of FMR (\$663)

<b>Gross Rent</b>	<b>\$700</b>	<b>\$800</b>	<b>\$900</b>
<b>Payment Standard</b>	\$663	\$663	\$663
<b>Tenant Share</b>	<b>\$312</b> (\$275 + \$37)	<b>\$412</b> (\$275 + \$137)	<b>\$512</b> (\$275 + \$237)
<b>Result</b>	Payment Standard is lower than the rent, so tenant share <b>34%</b> of income.	Tenant share is <b>45%</b> of income. <b>PHA may not allow tenant to use voucher for this apartment.</b>	Tenant share is <b>56%</b> of income. <b>PHA may not allow tenant to use voucher for this apartment.</b>

### Scenario #2: Payment Standard =100% of FMR (\$737)

<b>Gross Rent</b>	<b>\$700</b>	<b>\$800</b>	<b>\$900</b>
<b>Payment Standard</b>	\$737	\$737	\$737
<b>Tenant Share</b>	<b>\$275</b>	<b>\$338</b> (\$275 + \$63)	<b>\$438</b> (\$275 + \$163)
<b>Result</b>	Payment Standard is greater than the rent + utilities, so tenant share is <b>30%</b> of income.	Payment Standard is lower than the gross rent, so tenant share is <b>37%</b> of income.	Tenant share is <b>48%</b> of income. <b>PHA may not allow tenant to use voucher for this apartment.</b>

### Scenario #3: Payment Standard = 110% of FMR (\$810)

<b>Gross Rent</b>	<b>\$700</b>	<b>\$800</b>	<b>\$900</b>
<b>Payment Standard</b>	\$810	\$810	\$810
<b>Tenant Share</b>	<b>\$275</b>	<b>\$275</b>	<b>\$365</b> (\$275 + 90)
<b>Result</b>	Payment Standard is higher than the rent, so tenant share is <b>30%</b> of income.	Payment Standard is higher than the rent; tenant share is <b>30%</b> of income.	Payment Standard is lower than the rent, so tenant share is <b>39.8%</b> of income.

Based on chart developed by Judith Liben, Mass. Law Reform Institute.

## Survivors Have Rights and Protections to Move with a Voucher

The hallmark of the voucher program is the ability of families to select a unit and to move from one unit to another and not forfeit the rental assistance. HUD generally refers to the process of relocating with a voucher as a “move with continued tenant-based assistance.”<sup>1</sup> Moves with continued assistance can occur both within and outside the jurisdiction of the public housing agency (PHA) that issued the family’s voucher. The term “portability” refers to those moves with a voucher outside of the jurisdiction of the issuing PHA.

Moves with continued assistance are often critical for survivors. They raise a host of issues for survivors, primarily of three types: (1) issues that are typical of any move for a survivor; (2) issues related to the applicability of the Violence Against Women Act (VAWA); and (3) issues involving unique features of the voucher program. The first two categories of issues include safety planning for survivors to move with the voucher, documenting that the individual has experienced domestic violence and is subject to the protections of VAWA, confidentiality of the information that is provided, and possibly removing the perpetrator from the voucher. These issues are all discussed in *Maintaining Safe and Stable Housing for Domestic Violence Survivors, A Manual for Attorneys and Advocates*.<sup>2</sup> Note however that the manual has not been updated since the enactment of the Violence Against Women Reauthorization Act of 2013 (VAWA 2013).<sup>3</sup> For a summary of VAWA 2013’s key housing provisions, please see NHLP’s article *VAWA 2013 Continues Vital Housing Protections for Survivors and Provides New Safeguards*.<sup>4</sup>

This memo highlights some of the unique issues, policies and procedures that apply to voucher holders who have experienced domestic violence and seek to move with continued assistance. When advising survivors in this situation, advocates should become familiar with various rules and policies governing such moves. HUD has published regulations and sub-regulatory issuances regarding moving with continued assistance and portability. In addition, each PHA’s policies regarding moves with continued assistance and portability are included in the PHA’s Administrative Plan for the voucher program.<sup>5</sup> Advocates should seek improvements to the Administrative Plan if it is inconsistent with the HUD regulations or to address gaps in the HUD regulations.<sup>6</sup>

### When a Family May Move

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<sup>1</sup> 42 U.S.C.A. § 1437f(r) (West 2014) (portability); 24 C.F.R. § 982.314 (2014).

<sup>2</sup> <http://www.nhlp.org/files/NHLP%20Domestic%20Violence%20and%20Housing%20Manual%202.pdf> [hereinafter *NHLP, DV Manual*]. See, e.g., § 2.5 (safety planning for survivors moving with a voucher), § 6.4 (documenting domestic violence for VAWA eligibility), § 6.5 (confidentiality of documentation and information), and § 6.9.2 (removing perpetrator from the voucher).

<sup>3</sup> 42 U.S.C.A. §§ 14043e-11, 1437d note (West 2014).

<sup>4</sup> [http://nhlp.org/files/VAWA%202013%20Bulletin%20Article%20\(Jan%202014\).pdf](http://nhlp.org/files/VAWA%202013%20Bulletin%20Article%20(Jan%202014).pdf)

<sup>5</sup> See, e.g., Boston Housing Authority, Leased Housing Division Administrative Plan for Section 8 Programs As Amended December 6, 2011, Chapter 12, Portability, available at <http://www.bostonhousing.org/pdfs/LHS2012AdminPlan.pdf>

<sup>6</sup> See NHLP, *DV Manual*, *supra* note 2, at Ch. 8, for a discussion of the PHA Plan process and Administrative Plan.

The voucher regulations state that a family is permitted to move with continued assistance in any of the following situations:<sup>7</sup>

- The PHA has terminated the Housing Assistance Payments (HAP) contract between the owner and the PHA.
- The owner and the tenant mutually agree to terminate the lease.
- The owner has given the tenant a notice to vacate, commenced an eviction action or obtained a judgment of possession.
- The tenant has the right to terminate the lease and has given the owner a notice of lease termination.
- A family member has been a victim of domestic violence, dating violence, or stalking,<sup>8</sup> and the move is needed to protect the family member's health or safety.

A survivor's right to move may be precipitated by any of these reasons. However, if the precipitating event is additionally related to the fact that a family member is a victim of domestic violence, dating violence or stalking, that fact should be brought to the attention of the PHA and/or the landlord because survivors have additional protections. For example, if the landlord has commenced an eviction against the family because of the acts of the abuser, the survivor could assert that she is entitled to a bifurcation of the lease.<sup>9</sup> If the abuser is evicted, the survivor benefits not only because the abuser may no longer live in the unit, but also because it should strengthen her claim to retain the voucher, which may then be used to move. Additionally, if the PHA is terminating the HAP contract with the owner because of actions by the abuser, the survivor could inform the PHA of the relationship between the abuse and the reasons for the HAP termination and seek appropriate relief, which may include preserving housing assistance for the survivor.

### **When a PHA May Deny or Delay Granting a Request to Move**

Generally, PHAs are prohibited from discouraging a family from choosing to live anywhere within the PHA's jurisdiction or outside the PHA's jurisdiction (at least as permitted under the portability rules).<sup>10</sup> In limited circumstances, however, a PHA may deny a voucher family's request and thereby refuse to issue the family a voucher to move. HUD guidance

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<sup>7</sup> 24 C.F.R. § 982.314(b) (2014).

<sup>8</sup> Under VAWA 2005, HUD regulations provided protections for victims of domestic violence, dating violence and stalking regarding moving with continued voucher assistance. 24 C.F.R. 982.314(b)(4) (2014). VAWA 2013 did not change these statutory provisions concerning moving with continued assistance/portability. Therefore, there is no mention of extending coverage for victims of sexual assault in the portability context. Nevertheless, it appears that HUD agrees that victims of sexual assault also should be on the list of those permitted to move with continued assistance.

<sup>9</sup> 24 C.F.R § 5.2009 (2014).

<sup>10</sup> 24 C.F.R. § 982.301(a)(2) (2014).

authorizes a PHA to deny a family's request to move only if it has grounds to do so under the voucher regulations.<sup>11</sup> However, as explained below, the VAWA rules may provide separate grounds to revisit a PHA's denial of the request to move that was made under the ordinary voucher rules.

A PHA may deny a voucher family's request to move only for one of the following six reasons:

**(1) Program Violations.** A PHA may deny the move because of the voucher family's action or failure to act in accordance with program regulations.<sup>12</sup> This very broad category includes the obligation of the household not to engage in drug-related criminal activity or violent criminal activity or other criminal activity that threatens the health, safety or right to peaceful enjoyment of other residents and persons residing in the immediate vicinity. Another obligation is that the family may not commit a serious or repeated violation of the lease. In these situations, VAWA protections may provide significant rights to survivors. If there is a lease violation, an incident of actual or threatened domestic violence, dating violence, sexual assault or stalking may not be construed as a serious or repeated lease violation by the victim.<sup>13</sup> In the case of crimes by household members or guests, any offending activity directly related to domestic violence, dating violence, sexual assault or stalking cannot generally be cause for termination of the tenancy or assistance of the victim.<sup>14</sup>

Unfortunately, the VAWA protections do not directly address other program violations, such as failure to report that a family member no longer resides in the unit and/or absences from the unit, as well as failure to allow an inspection of the unit. Nevertheless, if there is a link between the violence and the program violation, those facts should be asserted to support a policy argument that the purpose of VAWA is to protect the survivor. Hence, a survivor should not be denied a moving voucher because of the domestic violence, especially if the domestic violence caused the other program violations and the failure of the PHA to issue the voucher results in the termination of the family from the program.<sup>15</sup>

**(2) Non-resident Applicants.** PHAs may adopt policies limiting a family's right to move out of the jurisdiction for a period of 12 months, if the head of household or spouse did not have legal residence in the PHA's jurisdiction at the time that the family submitted the voucher

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<sup>11</sup> Housing Choice Voucher Family Moves with Continued Assistance, PIH 2012-42 (Oct. 2, 2012), 12 [hereinafter *PIH 2012-42*]

<sup>12</sup> *Id.* (citing 24 C.F.R. §§ 982.552, 982.553); *see also* NHLP, DV Manual, *supra* note 2, at Ch. 7, Evictions and Subsidy Terminations in Federally Subsidized Housing and § 6.8, VAWA's Protections Against Evictions and Subsidy Terminations.

<sup>13</sup> 42 U.S.C.A. § 14043e-11(b)(1), (b)(2) (West 2014); 24 C.F.R. § 982.551(e) (2014); *see* NHLP, DV Manual, *supra* note 2, at § 6.8, discussing VAWA's Protections Against Evictions and Subsidy Terminations.

<sup>14</sup> 42 U.S.C.A. § 14043e-11(b)(3)(A) (West 2014); 24 C.F.R. § 982.551(l) (2014); *see also* NHLP, DV Manual, *supra* note 2, at § 6.8, discussing VAWA's Protections Against Evictions and Subsidy Terminations.

<sup>15</sup> NHLP, DV Manual, *supra* note 2, at § 6.8.2 Limitations on VAWA Protections.

application.<sup>16</sup> This provision is often referred to as an initial 12-month residency requirement. It was enacted in reaction to families seeking vouchers in jurisdictions with short waiting lists, where they did not live and had no intention of residing. A PHA with such a policy may reject a family's request to move if the family did not initially reside in the PHA's jurisdiction and is seeking to move outside of the jurisdiction during their first year in the voucher program. Denying the move would violate VAWA, which provides that an applicant may not be denied admission or assistance, terminated from participation in or evicted because the tenant is or has been a victim of domestic violence, dating violence, sexual assault or stalking. Denying such a request to port is also inconsistent with HUD's directive regarding other portability rules.<sup>17</sup>

**(3) *Income Ineligibility.*** The initial PHA must deny portability if the family has never leased up in the initial PHA's jurisdiction and is not income-eligible in the jurisdiction to which the family wants to move.<sup>18</sup> Such a decision would not prevent the family, including a survivor family, from porting to another jurisdiction where it is income-eligible or moving elsewhere within the jurisdiction of the initial PHA. If necessary, survivors should ask the PHA for assistance in identifying jurisdictions where they are income-eligible to facilitate the move.

**(4) *Timing and Frequency of Moves.*** PHAs may adopt policies restricting the timing and frequency of voluntary moves, such as prohibiting more than one voluntary move in a 12-month period.<sup>19</sup> However, these restrictions do not apply if a family member has been a victim of domestic violence, dating violence or stalking and the move is needed to protect the family member's health or safety.<sup>20</sup>

**(5) *Moving Out During the Lease Term.*** The PHA may ordinarily deny a voucher family's request to relocate if the family moved out of its assisted unit in violation of the lease.<sup>21</sup> However, this provision does not apply if the family has complied with all other program obligations and moved to protect a victim of domestic violence, dating violence or stalking upon a reasonable belief that he or she was imminently threatened by further violence if he or she

<sup>16</sup> 42 U.S.C.A. § 1437f(r)(1)(B)(i) (West 2014); 24 C.F.R. § 982.353(c) (2014); PIH 2012-42, *supra* note 11, at 13; *see also* 42 U.S.C.A. § 1437f(r)(1)(B)(i) (West 2014).

<sup>17</sup> *Compare* 24 C.F.R. § 982.314(c)(2) (2014) (move with continued tenant-based assistance) and Streamlining Administrative Practices in Housing Choice Voucher Program, PIH Notice 2012-15 (Feb. 27, 2012), 4-5 [hereinafter *PIH Notice 2012-15*] (interpreting 24 C.F.R. § 982.314(c) which states that a PHA "must not deny moves . . . for a family requesting assistance under the Violence Against Women Act (VAWA)") *with* 24 C.F.R. § 982.353(c) (2014), which does not reference VAWA. Section 982.314 requires that the move is needed to protect the health or safety of the family or family member. A similar regulatory requirement may be necessary to convince a PHA to waive the 12-month residency requirement.

<sup>18</sup> 24 C.F.R. § 982.353(d) (2014).

<sup>19</sup> *Id.* § 982.314(c)(2). The housing authority's Administrative Plan must state any restrictions on the number of times a voucher family may move. *Id.* § 982.54(d)(19).

<sup>20</sup> *Id.* § 982.314(c)(2) (2014) and PIH Notice 2012-15, *supra* note 17, at 4-5.

<sup>21</sup> 42 U.S.C.A. § 1437f(r)(5) (West 2014); 24 C.F.R. § 982.353(a) (2014).

remained in the assisted dwelling unit.<sup>22</sup> Although the survivor does not jeopardize her voucher and her right to portability if she breaks the lease, she may still have financial obligations under the lease, such as remaining rent or other fees, for which VAWA does not resolve liability. Nevertheless, an advocate should assist the survivor in negotiating a reduction or elimination of the charges, since in most states the landlord has an obligation to mitigate damages by taking reasonable steps to re-rent the premises. Additionally, advocates should evaluate whether the family has rights under state fair housing or other laws (including state domestic violence laws) to end the lease without further liability, such as where the move is needed as a reasonable accommodation for a tenant with disabilities.<sup>23</sup>

**(6) *Insufficient Funding.*** A PHA may deny a voucher family's request to move if the PHA does not have sufficient funding within the budgetary allocation, including any voucher Housing Assistance Payment (HAP) reserves to support the move.<sup>24</sup> Generally, a PHA cannot deny a request to move simply because the family is moving to a higher cost unit or a higher cost area.<sup>25</sup> The PHA can deny the move only if, because of the move, it would be unable to avoid terminations of other voucher participants in the current calendar year.<sup>26</sup> The PHA must notify the local HUD office that it is denying the move due to insufficient funds and submit financial documentation.<sup>27</sup> In addition, the PHA must include in its Administrative Plan a policy regarding denials of moves due to insufficient funds and may not admit other families to its voucher program until it complies with that policy.<sup>28</sup> Unless the PHA's policy makes an exception for domestic violence survivors, a policy of denying moves for insufficient funding is not affected by VAWA. If the PHA denies the move because of expense, the survivor could still move to a safe unit that costs the same or less than the current unit.

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<sup>22</sup> 42 U.S.C.A. § 1437f(r)(5) (West 2014); 24 C.F.R. § 982.353(b) (2014); Housing Choice Voucher Family Moves with Continued Assistance, PIH 2012-42, *supra* note 11, at 13. VAWA 2013 did not change this provision. Thus, victims of sexual assault are not expressly protected. Nevertheless, it is anticipated that such victims will be protected pursuant to HUD rules and PHA rules and practice.

<sup>23</sup> *See, e.g.,* Rodriguez v. Morgan, 2012 WL 253867 (C.D. Cal. Jan. 26, 2012) (landlord failed to reasonably accommodate tenant with disabilities when he failed to respond to tenant's request for mutual rescission of the lease).

<sup>24</sup> 24 C.F.R. § 982.314(e)(1) (2014), *see* HUD VMS Data Reports at [http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/public\\_indian\\_housing/programs/hcv/psd](http://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/programs/hcv/psd) (which provide some information regarding voucher usage and reserves).

<sup>25</sup> PIH 2012-42, *supra* note 11, at 13.

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*; *see also* Public Housing and Section 8 Programs: Housing Choice Voucher Program: Streamlining the Portability Process, 77 Fed. Reg. 18,731 (Mar. 28, 2012) (proposed rule requiring PHA to provide written notification to local HUD field office when the PHA determines it is necessary to deny moves based on insufficient funding).

<sup>28</sup> PIH 2012-42, *supra* note 11, at 14. The Administrative Plan must address how the PHA will inform families of moves denied for financial reasons, how long a request to move will be held open and how the family will be notified when funds become available. Moreover, the 5 Year Plan for the PHA must include a statement regarding domestic violence.

Significantly, a HUD notice provides if the PHA has approved a family's request to move, it may withdraw the approval due to insufficient funds only if the family can remain in the original unit.<sup>29</sup> A survivor may have to argue that the family cannot remain because it would be unsafe to stay in the unit.

### **What Should a Family Consider Prior to or When Moving?**

Survivors should take numerous steps involving the PHA and the landlord when moving. If the family wants to move to a new unit, the family must notify both the PHA that issued the voucher to the family and the owner before moving.<sup>30</sup> Typically, if the family has a long-term lease, it must determine if it can terminate the lease and what liabilities might result, or it must get the owner's agreement to break the lease mid-term. As noted above, a survivor has unique rights to break a lease and not lose the voucher.

Requesting a voucher to move may be the first time that the survivor is confronted with the need to provide documentation of domestic violence.<sup>31</sup> If the family is moving, it should consider where it wants to move and look for a unit before informing the owner or the PHA. A survivor will want to take into consideration whether the location is safe. PHAs are required to have a policy in the Administrative Plan regarding absence from the unit.<sup>32</sup> If the survivor must temporarily relocate for safety reasons, she should promptly inform the PHA and such notice ought to be in writing.<sup>33</sup> Moreover, many PHAs have policies limiting the number of days a tenant may be absent from a voucher unit before her assistance will be terminated. Furthermore, the voucher regulations provide that in no case may a unit be without a household member for more than 180 consecutive days.<sup>34</sup> If the survivor has moved out, she should also promptly inform the PHA as one of the tenant obligations is to inform the PHA of changes in family composition.<sup>35</sup> When the survivor informs the PHA that she will move or will be absent from the unit, she should tell the PHA that the information as to where she will move must remain confidential and that no one should be informed of her new or prior address.<sup>36</sup> In addition, she should ask for the voucher in her name.

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<sup>29</sup> *Id.* at 14-15. *But see* Koroma v. Richmond Redev. & Hous. Agency, 2010 WL 1704745 (E.D. Va. Apr. 27, 2010) (prior to issuance of PIH 2012-42, PHA that initially stated it would absorb porting tenant's voucher could reverse its decision because of funding shortfalls).

<sup>30</sup> 24 C.F.R. § 982.314(d)(2) (2014); *see also* Cain v. Allegheny Hous. Auth., 986 A.2d 947 (Pa. Commw. Ct. 2009) (reversing voucher termination based on tenant's alleged failure to notify PHA that she was moving, because tenant had previously notified PHA that she needed to move because landlord had threatened her with eviction).

<sup>31</sup> *See* NHLP, DV Manual, *supra* note 2.

<sup>32</sup> 24 C.F.R. §§ 982.54(d)(10) and 982.312(d)(1) (2014).

<sup>33</sup> *But see* 24 C.F.R. § 982.314 (2014) (a PHA may not terminate assistance if the family already moved out, regardless of prior notification to the PHA). *See also* Cain v. Allegheny Hous. Auth., 986 A.2d 947 (Pa. Commw. Ct. 2009) (reversing voucher termination based on tenant's alleged failure to notify PHA that she was moving, because tenant had previously notified PHA that she needed to move because landlord had threatened eviction).

<sup>34</sup> 24 C.F.R. § 982.312(a) and (c) (2014).

<sup>35</sup> *Id.* § 982.551 (h)(3) and (i).

<sup>36</sup> 24 C.F.R. § 982.307(b) requires the PHA to inform the new owner of the family's current and prior address, but it also states that in cases involving domestic violence, dating violence, and stalking, 24 C.F.R. part 5, subpart L,

## Timing of Moves

Often a voucher holder who is a survivor must move quickly. HUD regulations do not provide a timeframe for how quickly a PHA must respond to a voucher family's request to move.<sup>37</sup> There may be some guidance in the PHA Administrative Plan.

The PHA must give the family at least an initial 60-day search time, which may be extended for another 60 days or longer.<sup>38</sup> Families may find the standard search time of 60 days insufficient.<sup>39</sup> There may be reasons that the survivor will need more time, because she was unable to search due to the abuse, including fear of being followed or physical harm. Therefore, it is important to know the PHA's standard practice and to determine what is needed to get extensions of the search time. For example, if the PHA routinely extends the voucher search time for new applicants, it ought to extend the search time for current families who want to move. Even if the PHA is less generous in extending the voucher search time for applicants, there are arguments for allowing longer extensions for a current tenant.<sup>40</sup>

In addition, PHAs have discretion to adopt policies that suspend the voucher search term while the family is waiting for the unit to be approved,<sup>41</sup> as well as other policies responsive to survivors' needs. Advocates should urge PHAs to adopt such responsive policies. For example, the issuance of vouchers to move should be expedited in the case of domestic violence, extensions should be freely granted and policies allowing for suspension or tolling of the search time should be adopted. Such policies are consistent with the objectives of the voucher program and the PHA's obligation not to discourage a family from moving,<sup>42</sup> as well as with VAWA.

## PHAs' Additional Responsibilities Regarding Portability

Special portability procedures apply if a family is moving outside of the jurisdiction of the PHA that initially issued the voucher.<sup>43</sup> A family may use its voucher to lease a unit

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applies. From this language, advocates should argue that the PHA ought not to release such information for a survivor.

<sup>37</sup> As a reference point, if there is too much delay, it may be helpful to point out that HUD rules require in the portability context that the receiving PHA issue a voucher within two weeks after it has received the relevant documentation. PIH 2012-42, *supra* note 11, at 4.

<sup>38</sup> 24 C.F.R. § 982.302 (2014).

<sup>39</sup> *See Jackson v. Jacobs*, 971 F. Supp. 560 (N.D. Ga. 1997) (preliminary injunction ordering initial PHA to restore Voucher tenant's assistance after she was unable to find housing in receiving PHA's jurisdiction).

<sup>40</sup> There is no harm in extending the search time for a current voucher resident, who is still in the unit. A search voucher for an existing tenant does not deprive someone else on the waiting list of a voucher, it merely provides an opportunity to transfer the current voucher to another landlord. If the survivor has already moved out of the unit, arguably 180 days should be allowed by reference to the time period for when a voucher automatically terminates. *See e.g.*, 24 C.F.R. 982.312(a), (c) (2014).

<sup>41</sup> 24 C.F.R. § 982.303(c) (2014); *see also* Public Housing and Section 8 Programs: Housing Choice Voucher Program: Streamlining the Portability Process, 77 Fed. Reg. 18,731, 18732 (Mar. 28, 2012).

<sup>42</sup> *See* 24 C.F.R. § 982.301(a)(2) (2014).

<sup>43</sup> PIH 2012-42, *supra* note 11, at 2.

anywhere in the United States where there is a PHA operating a voucher program.<sup>44</sup> Because portability involves two PHAs, HUD has issued guidance regarding the responsibilities of the agencies. The PHA that issued the voucher to the family is known as the “initial PHA.”<sup>45</sup> The PHA in the jurisdiction where the family will be moving is called the “receiving PHA.”<sup>46</sup>

Portability begins when a voucher family contacts the initial PHA and expresses interest in moving to the jurisdiction of another PHA. The portability rules provide that the initial PHA must promptly notify the receiving PHA that the family will move to the jurisdiction of the receiving PHA and provide the family with contact information for the receiving PHA.<sup>47</sup> The receiving PHA *must* provide a porting family with voucher assistance and may not delay issuing a voucher for purposes of conducting background checks.<sup>48</sup> Further, the receiving PHA’s local preferences or priorities for selecting applicants are not relevant to the porting family, and the receiving PHA may not place the porting family on its voucher waiting list.<sup>49</sup> HUD guidance provides that the receiving PHA *must* issue a voucher to the porting tenant within two weeks of obtaining all of the tenant’s documentation.<sup>50</sup> The receiving PHA determines the unit size and payment standard for which the family is eligible under its own Administrative Plan policies.<sup>51</sup>

Although the receiving PHA may not delay in issuing a voucher to a porting family, it may take subsequent action. For example, the receiving PHA may seek to terminate the family after it has ported for program violations committed during the family’s tenure in the receiving jurisdiction.<sup>52</sup> Some receiving PHAs may go further, by screening families’ criminal history after they already have ported.<sup>53</sup> If the receiving PHA has more stringent criteria than the initial PHA, it may attempt to terminate the family’s assistance due to criminal history involving acts prior to the porting.<sup>54</sup> This practice arguably violates HUD regulations, which state that the receiving

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<sup>44</sup> 24 C.F.R. § 982.1 (2014).

<sup>45</sup> *Id.* § 982.4.

<sup>46</sup> *Id.*

<sup>47</sup> *Id.* § 982.355(c)(2); PIH 2012-42, *supra* note 11, at 5.

<sup>48</sup> 24 C.F.R. § 982.355(c)(4), (10) (2014); PIH 2012-42, *supra* note 11, at 5 (requiring receiving PHA to promptly issue Voucher to porting family, but allowing PHA to conduct screening after voucher is issued); *see also* Miller v. McCormick, 605 F. Supp. 2d 296, 310 (D. Me 2009) (“[O]nce admitted, a family’s status as a participant becomes portable and it may transfer its eligibility from jurisdiction to jurisdiction without undergoing a new eligibility assessment.”); 64 Fed. Reg. 56,894, 56,902 (Oct. 21, 1999) (receiving PHA may screen only if the family is not a participant).

<sup>49</sup> 24 C.F.R. § 982.355(c)(10) (2014).

<sup>50</sup> PIH 2012-42, *supra* note 11, at 4.

<sup>51</sup> 24 C.F.R. § 982.355(c)(7) (2014).

<sup>52</sup> *Id.* § 982.355(c)(10).

<sup>53</sup> PIH 2012-42, *supra* note 11, at 4-5 (stating that a receiving PHA may take subsequent action against a porting family based on their criminal background).

<sup>54</sup> *See* Binns v. City of Marietta Hous. Assist. Program, 2010 WL 1138453 (N.D. Ga. Mar. 22, 2010) (challenging receiving PHA’s refusal to issue voucher to porting family, allegedly due to disabled family member’s criminal record); Lawrence v. Brookhaven Dep’t of Hous., Cmty. Dev. & Intergovernmental Affairs, 2007 WL 4591845 (E.D.N.Y. Dec. 26, 2007) (holding that the receiving PHA was acting within its authority to reexamine the voucher holder’s eligibility when she moved into its jurisdiction, and that it was also within its authority to terminate her assistance after discovering a prior drug conviction); Public Housing and Section 8 Programs: Housing Choice

PHA “does not redetermine eligibility for a portable family,”<sup>55</sup> and the voucher statute, which limits PHAs’ authority to conduct elective screening to “applicants” for the voucher program.<sup>56</sup> In any case, survivor families porting with a voucher should become familiar with the screening policies of the receiving PHA, especially if a member of the survivor family has a criminal background.

The receiving PHA may choose to either bill the initial PHA for assistance on behalf of the porting family or absorb the family into its program.<sup>57</sup> If the receiving PHA agreed to absorb the family, it cannot reverse that decision due to insufficient funding.<sup>58</sup> If billing issues arise, the PHAs ought to resolve the problem while the family continues to be served.<sup>59</sup>

## Hearing Requirements

Hearing requirements vary depending upon the situation. HUD regulations state that a PHA’s refusal to process or provide assistance under portability procedures constitutes termination of assistance for an applicant as well as a participant.<sup>60</sup> As a result, in any case where an initial or receiving PHA refuses to process or provide assistance under portability procedures, the family must be given the opportunity for an informal review or hearing.<sup>61</sup>

The right to a hearing for refusal to process a request to move should also apply to other moves.<sup>62</sup> Moreover, if the move is needed to escape domestic violence and to protect the family member’s health or safety, the refusal to process a request is tantamount to a termination. If the PHA refuses to process or provide the family a moving packet, it must offer the family a hearing.<sup>63</sup>

In practice, however, beyond the grounds specified in the rules for when a family may move, PHAs may sometimes delay issuing a voucher when it determines that the family owes money to the owner or that there are outstanding issues between the owner and the family

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Voucher Program: Streamlining the Portability Process, 77 Fed. Reg. 18,731, 18733 (Mar. 28, 2012) (acknowledging that screening by receiving PHAs has created hardships for families).

<sup>55</sup> 24 C.F.R. § 982.355(c)(1) (2014); *see also* Miller v. McCormick, 605 F. Supp. 296, 310 (D. Me 2009).

<sup>56</sup> *See* 42 U.S.C.A. § 1437f(o)(6)(B) (West 2014).

<sup>57</sup> 24 C.F.R. § 982.355(c)(5) (2014).

<sup>58</sup> *Id.*

<sup>59</sup> *See* Avanesova v. Hous. Auth. of City of Los Angeles, 2004 WL 5913378 (C.D. Cal. Dec. 20, 2004); PIH 2012-42, *supra* note 11, at 4.

<sup>60</sup> 24 C.F.R. § 982.552(a)(2), (3) (2014).

<sup>61</sup> PIH 2012-42, *supra* note 11, at 5 (receiving PHA must provide a hearing); *See also* Orullian v. Hous. Auth. of Salt Lake City, 2011 WL 6935039 (D. Utah Dec. 30, 2011) (tenant required to move because of an eviction notice should have been given a moving packet or the right to a hearing); *Avanesova*, 2004 WL 5913378 (porting tenant was denied due process when receiving PHA refused to enter into a contract with the landlord); *but see* Koroma v. Richmond Redev. & Hous. Agency, 2010 WL 1704745 (E.D. Va. Apr. 27, 2010) (porting tenant was not entitled to a hearing from receiving PHA that refused to process his portability request; note however that the ruling was prior to PIH 2012-42, *supra* note, 11, which states a contrary policy position).

<sup>62</sup> 42 U.S.C.A. 1437f(r) (West 2014) (statutory language treats all moves as portability moves and makes no distinction between moves within or outside the jurisdiction of the PHA).

<sup>63</sup> Orullian v. Hous. Auth. of Salt Lake City, 2011 WL 6935039 (D. Utah Dec. 30, 2011).



regarding tenant damage to the unit or generally whether the family is in “good standing” with the owner. The PHA may be concerned that the family is moving from unit to unit leaving behind disgruntled owners, who will discredit the program and make it harder to recruit new owners to the program. These policies can endanger a survivor’s safety by unnecessarily preventing the family from moving. Although the rules are insufficiently clear about whether the PHA may delay issuing a voucher in such a situation, the survivor could request a hearing.<sup>64</sup> Advocates should urge PHAs to consider the safety needs of domestic violence survivors when they consider a request to move, including portability. Advocates can also refer to VAWA provisions that a victim should not be denied assistance or terminated due to domestic violence and that the federal housing agencies are obligated to develop emergency transfer plans for use by PHAs.<sup>65</sup>

Unfortunately, the federal rules are also not clear regarding the timing of the requested hearing. Additionally, survivors should be aware that when a voucher is awarded to the survivor, the abuser, who is on the same voucher, will have a right to a hearing to challenge the withdrawal of the voucher.<sup>66</sup> Such a challenge may delay the issuance of the voucher.<sup>67</sup> In the event that the PHA is unable to determine which household member is the victim, both parties may also seek a hearing.<sup>68</sup> Some PHAs resolve this issue by giving both parties a voucher.

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<sup>64</sup> 24 C.F.R. § 982.552(a)(3) (2014) (termination of assistance includes refusing to process or provide assistance under portability procedures).

<sup>65</sup> 42 U.S.C.A. § 14043e-11(e) (West 2014).

<sup>66</sup> *See, e.g.,* Badri v. Mobile Housing Board, 2011 WL 3665340 (S.D. Ala. Aug. 22, 2011).

<sup>67</sup> *In re Herman v. NYC Dep’t of Hous. Pres. & Dev.*, 2012 WL 3984482 (Sept. 10, 2012).

<sup>68</sup> *Id.*