

HUD Issues New Guidance to Ensure Full Implementation of Voucher Portability

A key feature of the voucher program is portability—the ability of a voucher holder to use the voucher assistance outside the jurisdiction of the public housing agency (PHA) that initially issues the family its voucher. In the past, voucher participants have complained that they have been frustrated by PHAs' actions and denied the right to port. In response, the Department of Housing and Urban Development (HUD) has gradually taken steps to address the problem of full portability. Most recently it has set forth a policy which, if followed, should assure full portability for eligible voucher families.

There are limited grounds upon which a PHA may deny a family's request to move. In a recent PIH notice,¹ HUD set forth the six reasons, which are:

- the family's action or failure to act as it pertains to termination from the program, including for alcohol abuse and criminal and illegal drug activity;²
- the PHA has adopted a policy that requires a non-resident family initially to lease up for twelve months in the jurisdiction of the issuing PHA;³
- the applicant family is not income eligible in the area in which they initially wish to lease up;⁴
- the PHA has adopted policies on the timing and frequency of moves, and the requested move does not comply with those policies;⁵
- the PHA does not have sufficient funding;⁶ and
- the family has moved out of its assisted unit in violation of the lease, except this provision does not apply if the family has complied with all other obligation of the voucher program and has moved out in order to protect a victim of domestic violence.⁷

Note that reasons numbered 2 and 4 are reasons that may temporarily deny the right to port, whereas reasons 1 and 3 may be more permanent, if the alleged reason for the denial persists.

Historically, many PHAs have denied portability on

the basis that they lacked sufficient funding. Such claims arise when a family wants to move to an expensive area (i.e., an area with a higher payment standard) and the receiving PHA will not absorb the porting family. The new notice explains and restricts the circumstances in which a PHA may deny portability moves because of insufficient funds.⁸ A PHA may deny a request to move to a higher-cost area if the PHA would be unable to avoid termination of voucher assistance for current participants during the calendar year.⁹ The notice also provides that a "PHA **may not** deny a request due to insufficient funding . . . simply because the family wished to move to a higher-cost area."¹⁰ The PHA must be able to document that granting the port would result in the termination of other families. Such documentation may include pending rent increases and the attrition rate for families leaving the voucher program. But the projected costs may not include the cost of vouchers issued to families who have not leased up. Significantly, a PHA may not deny a family the right to port for insufficient funding if it wants to serve other families on the waiting list. If a PHA denies the family's request to port for such a reason, it may not admit other families to the program until it has determined that there are sufficient funds to assist the porting family and has notified the family that it may now move to the higher-cost area.¹¹ Once the PHA determines that there is sufficient funding, it must promptly notify the family and process the request to port. If HUD determines that the PHA improperly denied a family's request to port due to insufficient funding, it will impose a sanction on the PHA, which may include a reduction of the PHA's administrative fee.¹²

The notice also addresses sanctions for failure of the receiving PHA to bill the initial PHA, failure of the initial PHA to make timely payments, and failure of the receiving PHA to inform the initial PHA that the family is no longer a participant.

Conclusion

It appears that HUD has finally issued sufficiently clear guidance. No family may be permanently denied the right to port because of insufficient funding. At the very minimum, every family—except those who are over-income or for whom there are grounds to terminate—will be able to port within a reasonable period of time. The only limitation may be for a PHA with no attrition in its voucher program. Such a situation is highly unlikely, as on

¹Housing Choice Voucher Portability Procedures and Corrective Actions, PIH 2008-43 (HA) (Dec. 3, 2008).

²24 C.F.R. §§ 982.552, 982.553 (2008).

³§ 982.353(c).

⁴§ 982.353(d)(1).

⁵§ 982.314(c)(2).

⁶§ 982.314(e)(1).

⁷42 U.S.C.A. § 1437f(r) (West, WESTLAW through P.L. 111-2 approved 1-29-09); § 982.353(a).

⁸For more information on portability, see Antonia M. Konkoly, *Portability Rights of Housing Choice Voucher Participants: An Overview*, 38 Hous. L. Bull. 170 (Aug. 2008).

⁹*Id.* at 173.

¹⁰Housing Choice Voucher Portability Procedures and Corrective Actions, PIH 2008-43 (HA) (Dec. 3, 2008) (emphasis in original).

¹¹*Id.*

¹²*Id.* The penalties include, but are not limited to, a reduction in the administrative fee of up to 5% for the two quarters following the quarter that HUD identified the improper denial.

average nationwide there is approximately a 10% annual attrition rate for vouchers.

As a practical matter, a family who is initially denied the opportunity to port should follow up with a letter expressing continued interest in porting. If one or possibly two months go by without an offer to port, the tenant should re-contact the PHA and make a complaint to HUD.

Advocates who are reviewing the Annual Plans for a local housing authority should recommend changes to the Section 8 Administrative Plan which reflect this clarification of HUD policy. ■

Public Housing Plan Requirements Continue to Erode

Since passage of the Quality Housing and Work Responsibility Act of 1998,¹ public housing authorities (PHAs) have been required to publish for public review and comment, and to file with the Department of Housing and Urban Development (HUD), Five-Year and Annual Plans that have provided significant information for residents and other interested parties about PHA intentions and operations. This article discusses changes wrought to PHA Five-Year and Annual Plan requirements by both HUD and Congress that alter the amount and accessibility of information maintained by PHAs.

Revised Template and Its Effective Date

Emblematic of these changes is the dramatic reduction of the required HUD Plan Template from more than fifty pages to a two-page form with three pages of instructions.² Approved in April 2008,³ use of the revised template is required for all PHAs having fiscal years beginning April 1, 2009, and in each quarter thereafter.⁴ PHAs must submit their plans to HUD seventy-five days before the end of the current fiscal year. For example, the first wave of PHAs subject to the revised template was required to submit their plans to HUD by January 16, 2009. Because PHAs must give forty-five-day notice prior

¹Quality Housing and Work Responsibility Act of 1998 (QHWRA), codified at 42 U.S.C. 1437c-1; see 24 C.F.R. Part 903.

²See NHLP, *HUD Is Poised to Drastically Alter the PHA Plan Process*, 38 Hous. L. Bull. 68 (2008).

³HUD-50075 (4/2008), at <http://www.hud.gov/offices/adm/hudclips/forms/files/50075.pdf>.

⁴Public Housing Agency (PHA) Five-Year and Annual Plan Process for all PHAs, PIH 2008-41, (Nov. 13, 2008) (hereafter PIH 2008-41). Every PHA fiscal year begins on the first day of a calendar quarter, e.g. April 1, July 1, October 1 and January 1. Note that this reflects a one-year delay in the utilization of the revised template from the April 1, 2008, initial use date set forth in the instructions to the template.

to holding the required public hearings on their proposed plans and must then incorporate the public and resident advisory board (RAB) comments into their submissions to HUD, residents and advocates should look for notice of such hearings at least four months (45 + 75 = 120 days) in advance of the beginning of their PHA's fiscal year.

PHA Annual Plan Submission Dates⁵

FY Beginning	Annual Plans Due (75 days before the start of the PHA's fiscal year)	FY Ending
April 1, 2009	January 16, 2009	March 31, 2010
July 1, 2009	April 17, 2009	June 30, 2010
October 1, 2009	July 18, 2009	September 30, 2010
January 1, 2010	October 19, 2009	December 31, 2011

Note that the above chart, which appears in PIH Notice 2008-41, does *not* alert interested parties of the deadline for publication of notice of the public hearing.

Five-Year and Annual Plan Yet to Conform to VAWA

The Violence Against Women and Department of Justice Reauthorization Act of 2005 (VAWA)⁶ mandates that PHA Five-Year Plans report on “the goals, objectives, policies, or programs [of the PHA] that will enable the housing authority to serve the needs of child and adult victims of domestic violence, dating violence, sexual assault, or stalking.” (hereinafter collectively referred to as domestic violence).⁷ Each Annual Plan must contain “a statement of any domestic violence, dating violence, sexual assault, and stalking prevention programs: (i) a description of any activities, services, or programs provided or offered by an agency. . . to child or adult victims of domestic violence. . . ; (ii) . . . that help child and adult victims . . . to obtain or maintain housing; and (iii) . . . [that] prevent domestic violence . . . or to enhance victim safety in assisted families.”⁸

The revised template⁹ does not comply with VAWA. NHLP, along with other advocates and organizations, requested that HUD address the deficiencies. As recently as November 13, 2008, HUD acknowledged that “the VAWA requirement for the Annual Plan submission to HUD is not included in the revised template,” and stated that “HUD expects to modify its current template to incorporate the Annual Plan requirements of VAWA shortly.” On November 28, 2008, HUD issued an Interim Rule

⁵*Id.* at 6.

⁶Pub. L. No. 109-162, 119 Stat. 2960, 3040 (2006).

⁷*Id.* at 119 Stat. 3040, § 603

⁸*Id.* See NHLP, *PHAs and Advocates Begin Early Efforts to Implement VAWA*, 37 Hous. L. Bull. 193 (2007).

⁹HUD-50075 (4/2008) available at <http://www.hud.gov/offices/adm/hudclips/forms/files/50075.pdf> (hereafter HUD-50075).