



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-5000

OFFICE OF PUBLIC AND INDIAN HOUSING

MEMORANDUM

Date: August 11, 2016
To: Marianne Nazzaro and John Concannon
From: Matt Gerken
Re: Project-Based Voucher Program Flexibilities Utilized by Moving to Work Agencies

Issue

Public housing authorities (PHAs) across the United States receive HUD funding for the Housing Choice Voucher (HCV) program, formerly known as Section 8. The HCV program includes two types of vouchers: tenant-based vouchers and project-based vouchers (PBVs). Tenant-based vouchers consist of rental subsidies tied to specific households that pay a percentage of a private market unit's rent; program participants lease unit with private landlords. Project-based vouchers, rather, are attached to physical units. PHAs competitively award landlords contracts to rent these units to low-income families. The rent structure for participants PBVs works differently in an important way from tenant based vouchers. In the PBV program, participants pay no more than of their monthly adjusted income towards rent, whereas in the tent based program tenant rent burden can be higher. This happens when the gross rent exceeds the PHA's payment standard. While this is capped at 40% of income when there is a new contract, after the initial year the rent burden can be even higher.

Low-income families using traditional tenant-based vouchers have had to overcome a number of obstacles to actually use their vouchers. They have a specified amount of time, at least 60 days, to both find units that satisfy certain housing quality standards and also locate landlords willing to even accept their housing vouchers. These barriers have also historically prevented low-income families from accessing low-poverty neighborhoods and the benefits these high opportunity areas provide. Certain communities, given variations in rental markets, may find such obstacles less pronounced than others. Tenant-based voucher holders also face significant challenges in tight leasing markets where there may be little to no affordable private rentals. Given these barriers and others, such as transportation and discrimination, low-income families in some instances have no choice but to use their tenant-based vouchers to move into areas of concentrated poverty.

PBVs address a number of the issues surrounding tenant-based vouchers. PBVs ensure that permanent units remain affordable for a longer period of time. Attaching PBVs to multiple units within a property helps service partners provide access to supportive services for vulnerable populations. They help low-income households access lower-poverty neighborhoods and overcome barriers to these neighborhoods, such as unfamiliarity with the area, landlord unwillingness to accept vouchers, and the disconnect between the size of the voucher and the going market rent – if the PBV properties are elected in those areas.

PBV Regulatory Caps and Recent Legislation

PHAs have historically been constrained by two PBV regulatory caps:

- A 25% cap on the number of units allowed to be project-based within a particular project;^{1,2}
- A 20% cap on the amount of voucher funding budget authority that a PHA is allowed to project-base.

The two regulatory PBV caps aimed to both prevent the concentration of poverty in a particular area and promote the mobility of low-income households to low-poverty areas of opportunity.³

Recent legislation has implications for these two PBV regulatory caps. H.R. 3700, the Housing Opportunity through Modernization Act of 2015 (HOTMA),⁴ unanimously passed in both the U.S. House of Representatives and the Senate, and the President signed the bill into law on July 29, 2016. H.R. 3700 updates several aspects of the nation's low-income housing programs. It will, among other things, expand access of low-income families to low-poverty areas, bolster homelessness initiatives, increase work incentives, and preserve tenant quality of life.⁵

H.R. 3700 makes the two regulatory PBV caps more flexible. The bill:

- Converts the 20% of budget authority cap to 20% of overall vouchers under contract;
- Increases the cap to 30% if the public housing authority uses the added 10%:
 - To house the homeless or veterans;
 - To provide supportive housing for individuals with disabilities or the elderly; or,
 - For projects in areas where vouchers are difficult to use.
- Changes the 25%-unit cap in a project to be the greater of 25 units in a project or 25% of a project's units, thus permitting higher concentrations of PBVs in a single development; and,
- Increases the 25% cap in a project to 40% of units in a project where either voucher use is difficult or where the census tract poverty rate is 20% or less.

Moving to Work Project-Based Vouchers

Twenty Moving to Work (MTW) PHAs have used their MTW flexibilities to modify one or both of the PBV regulatory caps in some way:

- Eighteen PHAs completely waive the 25%-unit cap in a project;

¹ According to §983.56 paragraph (b) of the U.S. Housing Act of 1937, projects serving elderly or disabled households and projects serving families receiving supportive services are exempted from this regulation.

² The Housing and Economic Recovery Act of 2008 (HERA) defined "project" to include "a single building, multiple contiguous buildings, or multiple buildings on contiguous parcels of land." See HERA §2835(a)(1)(A)(ii) for more details.

³ For more on the history of project-based vouchers, along with the changes to the Project-Based Voucher Program as a result of the Housing and Economic Recovery Act of 2008 (HERA), see Glassman (2008).

⁴ H.R.3700 - 114th Congress (2015-2016): Housing Opportunity Through Modernization Act. (n.d.). Retrieved from <https://www.congress.gov/bill/114th-congress/house-bill/3700>

⁵ For a brief overview of H.R. 3700, see Sard (2016).

- Four PHAs increase the 20% budget authority cap to either 25% or 30%⁶; and,
- Eight of the twenty PHAs completely waive both caps.

Half of the twenty PHAs incorporated increases in the two regulatory caps into broader local PBV programs involving multiple flexibilities. The twenty PHAs provided multiple reasons for increasing one or both regulatory caps or for their larger PBV programs, including:

- Incentivizing developers to preserve or create affordable housing and to expand housing options for low-income families;
- Helping low-income families access high-opportunity areas, and affirmatively further fair housing;
- Increasing options for low-income families living in high-poverty areas by approving exception payment standards for PBV developments;
- Creating new housing opportunities and supportive services opportunities for special needs populations and other vulnerable populations; and,
- Increasing landlord participation in meeting local housing needs.

Why MTW?

MTW PHAs test innovative, locally-designed strategies that promote cost-effectiveness, self-sufficiency and housing choice. MTW PHAs are allowed to combine their Public Housing Operating and Capital funds and Housing Choice Voucher funds and use the funds interchangeably. MTW status also gives PHAs the opportunity to apply for exemptions from many existing public housing and voucher rules. MTW PHAs have used their MTW status to forgo certain regulations surrounding project-based vouchers.

As mentioned, twenty MTW PHAs have modified one or both of the PBV caps in some way, and half of the 20 MTW PHAs included increasing one or both regulatory PBV caps as part of a broader activity, such as a broader project-based initiative.

The PHAs referenced single fund flexibility as an important component of their project-based voucher activities. For the 10 MTW PHAs that only increase one or both caps in some way and do not include the increase as part of a larger activity, the authorizations that one or more of the ten PHAs have requested allow them to:

- Create local preferences and admissions policies and procedures with regards to their public housing programs (Attachment C, Section C(2));
- Restructure the initial, annual and interim review process in the public housing program, affecting frequency of reviews and methods of income verification (Attachment C Section C4);
- Determine family payments, including tenant rent, the minimum rent, utility reimbursements and the total tenant payment (Attachment C, Section C(11));
- Determine the term and content of their Housing Assistance Payment (HAP) contracts (Attachment C, Section D1a);

⁶ New Haven and San Bernardino increase the 20% budget authority cap to 25%. Baltimore and San Mateo increase the 20% cap to 30%. San Diego also allows for more than 20% allocation as PBV but with a yearly maximum allotment of 5% of overall vouchers authorized as PBV.

- Determine the percentage of housing voucher assistance that can be project-based and have flexibility in the funding of physical improvements on those units (Attachment C, Section D1e);
- Implement a policy different from currently mandated program requirements in establishing payment standards, rents or subsidy levels for tenant-based assistance (Attachment C, Section D2a);
- Implement term limits for HCV units (Attachment C, Section D2d);
- Determine income qualifications for participation in the rental assistance program different from currently-mandated program requirements (Attachment C Section D3a);
- Implement any reasonable policy for both verifying family income and composition and determining resident eligibility different from currently-mandated program requirements (Attachment C Section D3b);
- Certify that housing assisted under MTW will meet housing quality standards (Attachment C Section D5);
- Project-base Section 8 assistance at properties owned either directly or indirectly by the PHA but that are not public housing (Attachment C, Section D7a); and,
- Establish a reasonable competitive process or use an existing local competitive process for project-basing leased housing assistance at units meeting housing quality standards that are owned by non-profit or for-profit housing entities (Attachment C Section D7b).

The other ten MTW PHAs include increasing one or both caps as part of a larger activity involving multiple flexibilities. Of these ten, half (five) MTW PHAs completely waive both regulatory caps as part of larger project-based activities. The authorizations that one or more of these ten MTW PHAs have requested allow them to:

- Determine family payments, including tenant rent, the minimum rent, utility reimbursements and the total tenant payment (Attachment C, Section C(11));
- Determine the percentage of housing voucher assistance that can be project-based and have flexibility in the funding of physical improvements on those units (Attachment C, Section D1e);
- Implement a policy different from currently mandated program requirements in establishing payment standards, rents or subsidy levels for tenant-based assistance (Attachment C, Section D2a);
- Determine contract rents and increases and be able to determine content of contract rental agreements different than current program requirements (Attachment C, Section D2b);
- Determine waiting list procedures, tenant selection procedures and criteria and preferences (Attachment C Section D4);
- Certify that housing assisted under MTW will meet housing quality standards (Attachment C Section D5);
- Project-base Section 8 assistance at properties owned either directly or indirectly by the PHA but that are not public housing (Attachment C, Section D7a);
- Establish a reasonable competitive process or use an existing local competitive process for project-basing leased housing assistance at units meeting housing quality standards that are owned by non-profit or for-profit housing entities (Attachment C Section D7b); and,

- Ensure that all units that receive project-based Section 8 assistance meet either existing housing quality standards or other approved local standards (Attachment C Section D7d).

National Statistics Regarding PBV Caps

The Office of Housing Vouchers within HUD provided data on 536 PHAs as a subset of all PHAs nationally that have project-based vouchers as of March 2016. The data include total spending on PBVs and the PHA's total annual budget authority.⁷ The quotient of these two amounts yields the percent of budget authority each PHA devotes towards PBVs.

For both MTW PHAs and non-MTW PHAs, the data include Rental Assistance Demonstration (RAD)⁸ units. Under HUD's RAD program, a PHA is allowed to convert its public housing units into either PBVs or into Project-Based Rental Assistance (PBRA). All RAD units are exempted from the 20% budget authority PBV regulatory cap by statute. Since the RAD units could not be easily removed from the data, the data do report a portion of the non-MTW PHAs as devoting more than 20% of their budget authority to PBVs.

Of the subset of 536 PHAs, 26 of them are MTW PHAs with PBVs. For these 26 MTW PHAs, as of March 2016:

- The average percentage of budget authority devoted to PBVs is 13%.
- There are 32,683 PBV units under HAP and AHAP.
- 8 of the 26 MTW PHAs devote 15% or more of their budget authority towards PBVs.⁹ The average percentage of budget authority devoted to PBVs for these 8 MTW PHAs is 24%, with a maximum of 37%.

Excluding the 26 PHAs, for the remaining 510 non-MTW PHAs:

- The average percentage of budget authority devoted to PBV is 10%.
- 110 of the 510 (about 22%) of the non-MTW PHAs devote 15% or more of their budget authority towards PBVs. The average percentage of budget authority devoted to PBVs for these 110 PHAs is 24%.¹⁰

⁷ The data are approximate and likely overstate the percentage of budget authority devoted to PBVs. The data on total spending on PBVs includes both units under Housing Assistance Payments (HAP) contract and units under Agreement to enter into a Housing Assistance Payments (AHAP) contract. PBV units under HAP have been project-based, and units under AHAP have only been committed, which skews percentages data.

⁸ Rental Assistance Demonstration: Guide to Choosing Between Project-Based Vouchers (PBVs) and Project-Based Rental Assistance (PBRA) for Public Housing Conversions. (2015, February 27). Retrieved from http://portal.hud.gov/hudportal/documents/huddoc?id=RAD_PBVPBRA_CompareGuide.pdf

⁹ The 8 MTW PHAs, in ascending order of percentage of budget authority devoted to PBVs, are King County Housing Authority, Tacoma Housing Authority, Home Forward, Atlanta Housing Authority, Housing Authority of the County of San Mateo, Seattle Housing Authority, Cambridge Housing Authority, and Boulder Housing Partners.

¹⁰ Many of the non-MTW PHAs devoting more than 15% of their budget authority to PBVs are indeed participating in RAD.

Works Cited

- Federal Register Vol. 79 No. 122: HERA Final Rule. (n.d.). Retrieved from
<http://portal.hud.gov/hudportal/documents/huddoc?id=HERAFinalRule.pdf>
- Glassman, A. (2008). Project-Based Voucher Reforms Will Facilitate Development of Affordable Units but Should Be Taken Further. *Journal of Affordable Housing & Community Development Law*, 18(1), 71-80. Retrieved from
<http://www.jstor.org/stable/25781125>
- H.R.3700 - 114th Congress (2015-2016): Housing Opportunity Through Modernization Act. (n.d.). Retrieved from <https://www.congress.gov/bill/114th-congress/house-bill/3700>
- Rental Assistance Demonstration: Guide to Choosing Between Project-Based Vouchers (PBVs) and Project-Based Rental Assistance (PBRA) for Public Housing Conversions. (2015, February 27). Retrieved from
http://portal.hud.gov/hudportal/documents/huddoc?id=RAD_PBVPBRA_CompareGuide.pdf
- Sard, B. (2016, July 15). Congress Unanimously Approves Bill to Improve Housing Programs. Retrieved from <http://www.cbpp.org/blog/congress-unanimously-approves-bill-to-improve-housing-programs>