

May 29, 2012

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

**RE: Public Housing and Section 8 Programs: Housing Choice Voucher Program:
Streamlining the Portability Process, 77 F.R. 18731**

Dear colleagues,

These comments are submitted on behalf of the undersigned civil rights and fair housing organizations. We strongly support any regulatory reform of the Housing Choice Voucher Program that will expand low income families' housing choice and access to higher opportunity and non-segregated communities. The proposed rule takes an important step in this direction, but much more needs to be done to conform the Section 8 program rules and financial incentives to HUD's duty to promote fair housing and integration. Our comments will primarily focus on the specific issues HUD has requested comments on, and we will also make additional suggestions for improvement to the proposed rule.

Many voucher holders already take advantage of the portability feature. However, we have seen how the portability process can be so administratively complicated that it results in delays and sometimes insurmountable barriers to housing mobility. As HUD notes in the proposed rule, "one of the main purposes of this proposed rule is to make it easier for families with housing vouchers to relocate to areas that may offer greater opportunities." We agree with this goal, and we urge HUD to issue the strongest rule possible to achieve it

Receiving PHAs Should Not Rescreen Porting HCV Holders

We strongly object to the discriminatory "rescreening" of families who are moving to a new PHA's jurisdiction, on several related grounds. First, such rescreening violates the Section 8 statute which expressly authorizes *only* screening of *applicants* ("...public housing agencies may elect to screen *applicants* for the program in accordance with such requirements as the Secretary may establish").¹ The term "applicant" is not expressly defined in the statute, but the statute clearly uses the term to describe a person not yet

¹ 42 U.S.C. §1437f(o)(6)(B) *as amended* by the Quality Housing and Work Responsibility Act of 1998, Pub. L. 105-276, 112 Stat. 2518 (1998). Prior to the inclusion of optional PHA screening of applicants in the 1998 statute, tenant screening was left to private landlords and PHAs played no role. By 1998, portability was well established in the Section 8 voucher program. Congress first authorized portability within metropolitan areas in 1987, and expanded portability rights again in 1990 (statewide) and 1998 (national). Against this backdrop, it is significant that Congress did not indicate in the 1998 statute that rescreening would be permitted for porting tenants already admitted to the program.

admitted to the program. Porting HCV holders have already been admitted to the program, and it is a violation of the statute to rescreen them as a condition of exercising their portability rights.

Second, rescreening for minor criminal offenses will have a predictable discriminatory impact based on race, and is not necessary to protect health or safety, especially where a family is in good standing with their current PHA.² In some cases, it may even be used to chill the exercise of portability or make it difficult for low-income families of color to move to neighboring high opportunity areas. Third, rescreening gives a great deal of discretion to PHA staff, increasing reliance on case-by-case determinations and thus increasing the role of unconscious bias in the decision-making process. Fourth, rescreening based on a prior “arrest” without conviction not only discriminates against individuals from communities and schools with disproportionate arrest rates, but also violates basic principles of due process and fairness. Finally, rescreening tenants is duplicative, and unnecessarily consumes administrative resources at a time when funding for basic, necessary administrative tasks are being cut. Whatever the reasons a PHA might have for wanting to rescreen porting tenants, it is a low priority use of scarce resources that can be put to better use – such as helping voucher families exercise portability rights and fair housing choice.

All HCV Holders Should be Briefed on the Advantages of Moving to a Low-Poverty Census Tract

HUD is seeking comments on whether it should extend briefings for families living in high-poverty census tracts to all families accepted into the HCV program. Currently, only families living in “high-poverty census tracts are briefed on the advantages of moving to an area that does not have a high concentration of poor families.” HUD should expand briefings to include all families. We believe that all families participating in the HCV program should be aware of the benefits of moving to an area that does not have a high concentration of ‘poor families.’ All families have the right to use the portability feature of their Section 8 voucher and therefore should be provided with information packets and briefed on the benefits of moving to an area outside a high-poverty census tract. Included in this briefing should be information about school data and poverty data for the area. This would be a great opportunity for HUD to highlight its partnership with Great Schools, by requiring PHAs to inform families of the website and how to use it. In addition to providing information about schools, PHAs should also provide families with information about crime rates, employment profile, grocery and fresh food access, and transportation and recreation access for nearby communities.

² See, e.g., Bureau of Justice Statistics, *Prison Inmates at Midyear 2009* (“Of the more than 2 million inmates who are incarcerated, 38% are African American, 19% are Latino, and 37% are white. This compares to a national population that is 13% African American and 76% white.”); 2010 *National Survey on Drug Use and Health* (“Evidence of racially disparate treatment of drug arrestees is apparent by viewing the rate of reported drug use among African Americans. According to self-report data from the U.S. Department of Health and Human Services, African Americans constituted 10.7% of current illicit drug users in 2010, but where 12.3% of the population. Yet the FBI reports that African Americans represented 31.8% of those arrested in 2010 for drug offenses.”)

But it is just as important that these briefings include practical information about *how* to move to a low-poverty area. This would include information about portability rights and procedures, practical fair housing information that includes contact information for local fair housing enforcement agencies, and also information about how to search for housing in the mainstream housing market in low poverty areas. HUD should look to housing mobility programs, and their clients for useful insight as to successful search strategies in the mainstream rental market, and then require all PHAs to include information on these strategies in their briefings.

While local areas may vary, this could include instruction in how to use nationally available on-line listings like Craigslist and Zillow, realtors' websites and the many search engines now available to renters.³ Voucher holders should also be informed that many real estate brokers list rental properties. These are all search tools that are used by voucher holders in mobility programs to find housing in the mainstream market, but that are infrequently used by regular voucher holders in high poverty areas.

In addition, voucher holders should be warned to avoid unscrupulous scam artists who prey on desperate voucher holders, charging significant sums (\$75-100) for access to stale or non-existent listings of available properties and landlords who supposedly accept vouchers.

PHAs Should Discontinue Using Landlord Lists and Instead Promote Moving to Areas of Opportunity

HUD is requesting comments on whether providing a list of landlords and other parties willing to lease to Section 8 voucher holders is helpful to families. In our view, the easiest approach would be to prohibit such lists altogether, because providing a list of landlords or other parties who have self-identified as willing to lease to a family will in most cases steer families to Section 8 submarkets and lower opportunity areas, which are often racially concentrated. The PHA's landlord listings may have served a purpose in the past, but they were rarely effective then, and are obsolete now in light of the rapid growth in superior on-line search tools for renters.

If HUD decides to permit landlord lists, it is important that the PHA be required to monitor their list of landlords to ensure the list does not steer porting families toward racially segregated and/or high-poverty census tracts. As a condition of maintaining a list, a PHA should be required to ensure that at least half of its listings are in low poverty and non racially concentrated neighborhoods, including neighborhoods outside the PHA's jurisdiction, and include LIHTC Properties in their landlord lists. PHAs should be required to demonstrate they have developed a fair housing plan to address impediments faced by HCV recipients in the marketplace. PHAs should present the list of landlords as a starting point, and encourage families to look beyond the list of landlords for housing opportunities. PHAs should actively encourage families to speak to housing counseling agencies or other non-profits that are available to help the family find a unit. Taking

³ See, e.g. <http://www.placeofmine.com/>

advantage of this resource may lead families to look for housing in areas of opportunity they were unaware of.

Information on areas of opportunity should only be given to voucher holders with the landlord list if the information given is different from the information included in the PHA briefing or tailored to the individual families needs.

Porting Families Should have the Choice of Which Receiving PHA to Use

HUD should allow a porting family the opportunity to select the receiving PHA when there is more than one PHA in the family's desired location. The porting family is in a better position than the initial PHA to determine which receiving PHA best meets the family's needs. However, the sending PHA should be required to tell families what their options are, and make a recommendation if one PHA is clearly preferable (higher payment standards, etc). If there is only one receiving PHA, the transfer process should be largely invisible to the family.⁴

Reduction or Elimination of Portability Billing Arrangements Between Agencies

HUD's request for suggestions to "eliminate or minimize the administrative burdens associated with the portability feature for PHAs and families" would be most easily addressed by a system of mandatory "absorption" of the porting family into the receiving PHA's system – at least in situations where receiving PHAs have less than 95% of voucher funds in use, and thus have available funds. (For small PHAs, this percentage could be lower). PHAs should be expected to manage their voucher programs to accommodate the normal in flow and out flow of tenant-based vouchers. If a PHA experiences a greater than projected in flow of vouchers, then HUD should allow PHAs to use their reserves or provide an advance to resolve temporary cash flow issues that may result.

Moreover, HUD could encourage PHAs to enter into formal arrangements that minimize the administrative burdens. PHAs in neighboring jurisdictions now often swap vouchers as families move back and forth across jurisdictional lines within a housing market and settle up at a later point in time. This appears to work fairly well. HUD could go

⁴ In the long run, the idea of *selecting a PHA* and then transferring the family's voucher to that PHA's "staff" – and even the idea of multiple PHAs in the same housing market – are anachronisms that do not fit the way that consumers search for housing or that housing markets actually work. Most commonly, consumers search for housing along a corridor, i.e. a major arterial highway or transit line, that will frequently cut across the lines of political subdivisions. Instead of selecting a PHA, voucher holders should be able to *select a unit*. At that point, if the unit is outside the jurisdiction of the original PHA, the family's paperwork should be transferred to a PHA that operates in the area where the unit is located in a process that is largely invisible to the family. The new PHA should honor the family's voucher, conducting the inspection and the review and approval of the Request for Tenancy Approval (RTA), just as they would for a voucher that they had issued. All of the other administrative and financial arrangements should be worked out among the PHAs and HUD behind the scenes --- the complicated issues involved are not fairly the family's problem and should not delay or interfere with the family's ability to lease up wherever they find an approvable unit.

further and explore arrangements whereby PHAs within a regional housing market contribute vouchers to a regional portability “pool.” Contributions to the pool could be based on historical data tracking the flow of vouchers between PHAs in the region. Families wishing to make a portability move could be issued one of the vouchers from the pool, which would be administered regionally and/or honored by all PHAs participating in the pool.

We do not wish to make light of the administrative complications that are the legacy of decisions made long ago to graft a fragmented, localized PHA administrative structure on to a tenant-based subsidy program – trying to fit a round peg into a square hole. But the point is, these are solvable accounting and administrative challenges that should be handled behind the scenes and should not be allowed to impose burdens on families or curtail portability rights. Eventually, tenant choice and mobility will be best served by HUD policy changes that will eliminate the need for portability billing altogether.

Additional Recommendations to Expand Housing Mobility and Choice in the Voucher Program

Overall, the proposed changes to the portability rule are quite positive, but do not go far enough to eliminate barriers and PHA disincentives on the one hand, or on the other hand, to equip families with the tools to make moves to higher opportunity areas. This needs to be addressed in the contemplated reforms to the administrative fee structure, which currently serves as a disincentive to mobility, and in proposed revisions to the Section 8 Management Assessment rule (SEMAP), which could serve as a strong incentive to PHAs to promote resident mobility.

Sincerely,

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