

To: Sandra Henriquez, Assistant Secretary for Public and Indian Housing Deb Gross, Deputy Assistant Secretary for Policy, Program and Legislative Initiatives

From: Barbara Sard and Will Fischer, Center on Budget and Policy Priorities
Ed Gramlich, National Low Income Housing Coalition
Catherine Bishop, National Housing Law Project
Philip Tegeler, Poverty & Race Research Action Council

Re: **Priorities for PIH Regulations/Guidance**

Date: February 26, 2013

In the last 15 months of the Obama Administration's first term, we joined with other groups to identify priority rules, from a low-income and fair housing perspective, that were already in the pipeline and had the potential to be released before the end of the first term. This effort culminated in a meeting with Secretary Donovan and other senior staff, including Assistant Secretary Henriquez, on August 28, 2012. Fortunately, some of the priority rules discussed at that meeting have been proposed or finalized, *but none of the PIH priorities on our original list have been issued as final rules*. In addition to completing action on these longstanding issues, there are other areas where rulemaking or issuing guidance in the next four years is a priority to improve the effectiveness of PIH's programs for the families they serve.

This memo briefly identifies six additional recommendations for the Housing Choice Voucher (HCV) program; additional recommendations regarding public housing, the Rental Assistance Demonstration and the application process for HCVs and public housing; and two recommendations regarding the current Moving to Work demonstration. In our collective judgment, these recommendations for rule changes or issuance of policy guidance would have the most significant impact on the low-income people who benefit from these vital HUD programs.

We look forward to meeting with you at your earliest convenience to discuss these proposals.

Housing Choice Voucher Program

Status of prior recommendations

We identified four priority areas for rulemaking related to the HCV program in our earlier letters to HUD and in the meeting with the Secretary. The comment period on the proposed changes to the **portability** and **project-based voucher** rules closed more than seven months ago. We understand the text of the final rules has not yet been sent by HUD to OMB for approval. Completing these rules promptly is important to improving the effectiveness of both of these key areas of HCV policy. Prompt action is particularly vital for the PBV rule if it will be necessary to undertake a further rulemaking process. This could be necessary to address the changes recommended in various comments that may be deemed outside the scope of the original proposed rule.

Revising the consortia and SEMAP rules should continue to be of the highest priority for action. Both of these rules are central to efforts to improve the administration of the voucher program, and will also facilitate and incentivize PHAs' efforts to enable a larger share of voucher families to live in safe neighborhoods with access to good schools and other opportunities. Action on these rules will help fulfill HUD's responsibility to affirmatively further fair housing, and also will help achieve the cross-cutting measure of HUD's Strategic Plan to "Increase the proportion of HUD-assisted families in low-poverty and racially diverse communities" (Measure 14).¹

Reducing the administrative burdens of PHAs that form consortia will further HUD's streamlining goal, and if a significant number of PHAs take advantage of the new opportunity — which may require technical assistance as well as revision of the rule — HUD's workload will be reduced as well. Issuing the proposed consortia rule promptly and finalizing it this year should be a top priority, given the multiple goals this rule change will achieve. We recognize that development of a new SEMAP rule is a more complex undertaking, but hope that HUD will be able to issue a proposed rule no later than 2014, so that it may be finalized during the current Administration.

New recommendations

In addition to these four priority rules, new HUD rules or guidance on the following issues would help expand housing choice for voucher holders, enable more families to live in safe areas with access to high-performing schools, and help achieve HUD's goal of increasing the proportion of HUD-assisted families in low-poverty and racially diverse communities.

1. ***Encourage (or require) PHAs to inform voucher program participants about moving options and various aspects of neighborhood "quality" including school quality and crime statistics.*** HUD rules now focus on the initial briefing as the time to provide information about families' choices of where to live.² Experience has shown, however, that families often are not ready to focus on the possibility of moving to an unfamiliar neighborhood until they have gotten accustomed to the rules of the voucher program. Subsequent moves also are less time-constrained, making it easier for families to search in new neighborhoods with lower vacancy rates, which are likely in areas with low crime and good schools. Providing information about various aspects of neighborhood quality (and portability rights) at regular intervals, such as income recertification appointments, as well as when families request a moving voucher, is a relatively easy step for PHAs to take (assuming HUD provides links to the relevant information) and is likely to improve program results.

Policy Recommendation:

HUD should issue a notice to encourage PHAs to provide families with expanded choice-related information at regular intervals, followed by a regulation to require such action.

¹The report of the Bipartisan Policy Center's Housing Commission reinforces our prior recommendations that revision of SEMAP should focus on outcome measures, including the deconcentration of poverty and access to neighborhoods of opportunity. Bipartisan Policy Center, *Housing America's Future: New Directions for National Policy*, February 25, 2013, <http://bipartisanpolicy.org/library/report/housing-future>.

²We commend HUD for seeking comment, as part of the Portability proposed rule, on whether to expand the scope of the requirements for initial briefings.

2. ***Allow PHAs to use HCV funds for security deposits.*** Landlords in better neighborhoods are more likely to insist on a security deposit of at least one month's rent. Few families receiving voucher assistance are able to save the required amount, which could be the equivalent of three months or more of families' rent contributions. As a result, allowing landlords to require security deposits from voucher tenants — a well-intentioned solution to the administrative complexities caused by the prior damage claim policy — has had the unintended effect of making it more difficult for families to use vouchers in neighborhoods with greater opportunity. We see no barrier in current statute or recent appropriations language to HUD allowing PHAs to use HAP funds or HCV administrative fees for security deposits, particularly as part of an initiative to promote access to opportunity. (Such a policy could also be important to enable vouchers to work more effectively for homeless families.)

Policy Recommendation:

HUD should issue guidance to allow PHAs to use HCV funds to make grants to families for security deposits if necessary to enable them to access opportunity neighborhoods or for other special reasons, such as to enable homeless applicants to make use of an offered voucher. At the least, such guidance should clarify that PHAs may use HCV funds for a security deposit loan or guarantee, as the current guidebook is contradictory on this issue.³

3. ***Issue updated guidance on PHA payment standard flexibility and HUD policies for approval of exception payment standards.*** Current guidance on payment standards⁴ makes it difficult for PHAs, particularly smaller PHAs in higher opportunity areas, to adopt payment standards higher than 110 percent of the FMR. The process for HUD approval is both administratively burdensome and time consuming, creating unnecessary barriers for PHAs and for families who may want to find homes near good schools.

Policy Recommendations:

- a. We recommend that HUD adopt a more streamlined approval process for approval of exception payment standards. For example, updated guidance could allow PHAs to use the applicable HUD-established Small Area FMR as the exception payment standard for all or part of a zip code.⁵
 - b. HUD should also permit PHAs to allow exception payment standards on a case-by-case basis for the purpose of affirmatively furthering fair housing, similar to the current guidance on exception payment standards as a reasonable accommodation for persons with disabilities.⁶
4. ***Require PHAs found to have “undue” concentrations of voucher holders to add a strategy to remedy the concentration to their voucher administrative plans.*** It has long been a concern of HUD's, and of some PHAs, that too many voucher holders “cluster”

³ Handbook 7320.10G states that PHAs may provide housing search assistance to voucher families, including “loans or financial assistance to pay for security depositions, utility deposits, and moving costs” (section 8.6 at page 8-15), but also says “The cost of the security deposit is not covered under the housing choice voucher program” (section 8.2 at p. 8-4).

⁴ PIH 2002-20, August 15, 2002.

⁵ HUD recommended this approach in the Federal Register notice establishing the FY2013 FMRs. See 77 F.R. 194, 61165 (October 5, 2012), http://www.huduser.org/portal/datasets/fmr/fmr2013f/FY2013_Final_FMR_Notice.pdf.

⁶ PIH 2013-03, January 22, 2013.

in particular neighborhoods.⁷ The problem does not appear to be widespread, but it is extreme in some metro areas. For example, HUD's analysis of 2000 data found that voucher families occupied more than 10 percent of the total occupied housing units in at least one-fifth of the census tracts in Oakland and Hartford. Neighborhoods with a high concentration of voucher holders tend to be high-poverty neighborhoods, and also to be predominantly minority; some also have a large number of other HUD-assisted units. Some families may be choosing to remain in familiar neighborhoods near community supports, but it is likely that high rates of voucher concentration reflect a lack of PHA outreach to landlords in other neighborhoods, an unwillingness of such landlords to do business with the PHA due to its poor reputation or possibly unlawful discrimination, little if any housing search assistance, over-reliance on PHA-provided landlord lists, or similar causes.⁸ Reducing excessive concentrations of voucher families would improve the effectiveness of local voucher programs, reduce local political friction and enhance support for the program, and advance HUD and PHA efforts to affirmatively further fair housing.

Policy Recommendation:

Issue a new rule defining “undue concentration” and requiring PHAs that exceed the standard to include remedial measures in their administrative plans. The new policy should include a mechanism for HUD to assess PHAs’ performance on making progress toward their remedial goals.

5. ***Implement the requirement that HOME and LIHTC properties not discriminate against voucher holders.*** Owners of developments funded through HOME and LIHTC are prohibited by statute from refusing to lease to families because they are voucher holders, but neither the statute nor existing regulations and guidance define what constitutes prohibited discrimination or provide a procedure for victims of discrimination to seek relief.

Policy Recommendations:

- a. HUD should work with Treasury to publish regulations (or, at a minimum, issue guidance) making clear that practices with the effect of discriminating against voucher holders are prohibited, even if this not their intent.
 - b. HUD and Treasury should also identify in guidance examples of practices that are prohibited, such as requiring voucher holders to meet a minimum income requirement based on the income needed to pay the rent without a voucher subsidy.
 - c. HUD should work with Treasury to develop an administrative procedure to receive and investigate complaints (most likely through the existing HUD FHEO structure).
6. ***Scale up Small Area Fair Market Rents (SAFMRs).*** SAFMRs are an important innovation that can make the voucher program more cost-effective and significantly expand opportunities for voucher holders to live in neighborhoods with low crime, good schools, and other critical amenities. The SAFMR Demonstration will enable HUD to fine tune the

⁷ HUD's 2002 report on HCV location states “[T]he perception of the concentration or clustering of program units in some neighborhoods has sometimes caused support for the program to erode.” Deborah J. Devine et al., “Housing Choice Voucher Location Patterns,” HUD PD&R, August 2002, p. 63.

⁸ HUD's 2002 report discusses the possibility that voucher sub-markets also may result from PHAs’ failure to properly enforce rent reasonableness requirements, but found inconsistent evidence for such a causal connection. Focusing monitoring of compliance with rent reasonableness requirements on such areas could aid HUD as it develops policy in this area.

SAFMR approach, for example by determining what exception payment standard policies may be needed to maximize voucher holders' access to high-opportunity neighborhoods. But the demonstration should not unnecessarily delay broader adoption of SAFMRs.

Policy Recommendations:

- a. HUD should assess interim results from the demonstration within no more than two years of its November 2012 start up, and then move forward promptly with national implementation.
- b. HUD should also support development of LIHTC properties in high opportunity areas by incorporating SAFMRs into Difficult Development Area calculations beginning in fiscal year 2014.

Public Housing

In our letters to HUD in 2011 and 2012 and in the meeting with Secretary Donovan in August 2012, we discussed our strong interest in and support for revised rules to strengthen the standards and procedures governing the *demolition and disposition of public housing* and to improve compliance with PHAs' and other entities responsibilities under *Section 3* to use HUD funds to generate job and training opportunities for residents. Neither of these rules has yet been published for comment. **Prompt action on these two rules remains our highest priority for rulemaking in the public housing program.**

New Recommendations

1. ***Restore resident input in the assessment of PHA performance, through reinstatement of an improved Resident Service and Satisfaction indicator***, also known as the Resident Assessment Sub-indicator (RASS). From Assistant Secretary Henriquez' statements at the August 28th meeting with the Secretary as well as various industry group publications, we understand that HUD is in the midst of developing recommendations for changes to the public housing assessment system (PHAS) rules. On February 23, 2011, PIH issued an interim set of PHAS regulations that did not contain the RASS or any other measure of resident satisfaction. PIH stated in the preamble to the interim rule that resident input into the assessment process is important. PIH further stated that after getting input from residents and PHAs, it intended to have a measure of resident satisfaction and participation in a final rule.

Policy Recommendation:

A final rule should have an independent, stand alone measure of resident satisfaction and resident participation. These important elements should not be embedded as minor points in a "management operations indicator." A group of public housing leaders and advocates submitted a number of suggestions on April 25, 2011 that PIH should incorporate in a final rule. We'd be happy to provide another copy.

2. ***Revise the notice governing implementation of the Rental Assistance Demonstration (RAD) and related forms to incorporate protections for resident rights***. In July 2012, HUD issued a comprehensive PIH Notice 2012-32, Rental Assistance Demonstration—Final

Implementation. This Notice addressed many resident concerns, but needs to be amended to attend to issues that were not or were inadequately addressed. The amendments recommended here should be undertaken swiftly, as a significant number of PHAs have received a Commitment to Enter into a Housing Assistance Payment contract (CHAP) and are nearing the 90 day mark at which point the PHA must have amended its PHA Plan and submitted a certification that due diligence has been performed by the funding source.

Policy Recommendations:

- a. In particular, HUD should:
 - (1) clarify resident lease, grievance and eviction rights,
 - (2) correct the provisions regarding resident rights to organize in units converted to PBVs,⁹
 - (3) require all Financing Plans to include plans for resident participation funding, and
 - (4) require improved notice and comment provisions through the PHA Plan process and with residents of the affected properties at the initial stage and throughout the conversion process, especially if there are substantial changes in RAD conversion plans.

- b. In addition, HUD should create a form lease or lease addendum for public housing properties that are converted to project-based vouchers (PBV) or to project-based rental assistance (PBRA). These leases should include reference to the resident's right to a grievance hearing to object to PHA and owner actions and to notice periods in the event of eviction. Residents' rights to participation, to organize a legitimate resident organization and to receive funding to support resident participation should also be incorporated into the lease. Including these rights in the leases will avoid confusion and ensure that these key rights are recognized and can be enforced.

- c. The implementation notice also should be clearer regarding Section 3 and LEP issues.
 - (1) HUD should require PHAs to submit specific plans to effectuate Section 3 for work identified in the Financing Plan. (Implementing Section 3 in a meaningful way would help effectuate HUD's Strategic Plan, Subgoal 3C).
 - (2) HUD should translate certain key RAD documents for use by PHAs and owners. In order for HUD to determine easily which languages are needed, HUD should require RAD applicants to report to HUD on their populations with Limited English Proficiency and their relative size.

- d. Regarding the choice/mobility feature of RAD, HUD should make publicly available relevant information (including the number of properties, locations, and tenant characteristics) for developments where HUD granted the RAD applicant a good cause exemption from the choice/mobility feature, or has approved a cap on the share of turnover vouchers required to be made available to families wishing to move or the share of families in a project that will be permitted to move with turnover vouchers in a year. Consistent with applicants' AFFH obligations, HUD also should provide technical assistance to owners of converted properties to define how HUD is evaluating "success" in expanding locational choice for residents, and to ensure that the choice/mobility

⁹ As noted in a January 23, 2013 memo from NHLP to HUD, HUD should make all of the provisions of 24 CFR § 245 subpart B regarding tenant organizations, including the enforcement language, applicable to properties converted to PBVs and correct the error of imposing all of the obligations regarding residents' right to organize solely on PHAs when the obligations should be imposed upon the owners and their agents as well as the PHA, if applicable.

feature is effective in expanding locational choice. In designing its evaluation of the RAD program and its impact on resident choice, HUD should include a thorough assessment of how the program affects choice-mobility outcomes for those properties converted to PBRA as well as PBV.

Applying for Housing Assistance

HUD should make two priority policy changes to improve the application process for HCVs and public housing.

1. ***Revise rules to ensure application processes meet fair housing requirements.*** Residency preferences are not the only barrier to access to vouchers or public housing in higher opportunity communities.¹⁰ Many common PHA application and waitlist procedures can also have a discriminatory effect, making it more difficult for non-residents or persons with disabilities (and other protected groups) to access housing assistance. These include, for example, maintaining waitlists in order of time of application, time-limited “windows” of application availability, requiring in-person applications, favoring on-line applications, posting notice of applications (and distributing paper applications) in local venues, and more generally, failure to widely advertise (and affirmatively market) the opening of waitlists. HUD has recognized the problems with such procedures in PIH Notice 2012-34, which includes a number of helpful suggestions for PHAs.¹¹ But because the guidance is contrary to common PHA practices, and many PHAs, particularly smaller ones, may ignore the notice, stronger and more directive actions will be needed.

Policy Recommendation:

HUD should revise the rules governing applications for assistance for its rental assistance programs, addressing the problems described above and incorporating the suggestions in PIH Notice 2012-34.

2. ***Issue guidance on use of regional or other consolidated waiting lists.*** Establishing waiting lists that are used by multiple agencies could save housing authorities administrative costs over the long run, and also increase access to the regional pool of vouchers and public housing units for all families, including those who are not savvy at online tracking of waitlist openings at multiple PHAs. HUD regulations do not prohibit such arrangements, and they can be accomplished without the need for any consortium agreements or waivers. Most voucher PHAs in Massachusetts use a single centralized waiting list, which has been operating for about a decade and has resulted in easier access for applicants and significant administrative savings for the agencies. Such consolidated waiting lists also could reduce administrative burdens for private owners with project-based HUD subsidies; including these additional resources would make the lists even more useful for low-income families searching for affordable housing.

Policy Recommendation:

HUD guidance should encourage PHAs within a metropolitan area to merge their waitlists into a single regional list or to establish a statewide waiting list, at least for all future applications. In

¹⁰ We will provide recommendations regarding changes to the residency preference rule separately.

¹¹ See “*Accessing Opportunity: Recommendations for Marketing and Tenant Selection in LIHTC and Other Housing Programs*” (PRRAC, December 2012), at pp. 39-40 (www.prrac.org/pdf/affirmativemarketing.pdf).

addition, HUD should facilitate the development of the technology for comprehensive regional waiting lists that include project-based subsidies administered by private owners.

MTW

We have two priority recommendations for policy changes in HUD's implementation of requirements under the current MTW demonstration.

1. ***Ensure compliance with the “substantially the same” requirement.***

- a. We appreciate that HUD has taken steps to enforce the statutory requirement regarding the number of families Moving-to-Work agencies assist. Without a substantive definition of “assistance,” however, the new “baseline methodology” PIH-2013-02 establishes will be of limited effectiveness. HUD's draft of a revised MTW reporting form would allow any family under 80 percent of median income that receives even a dollar of MTW-funded housing assistance to count as assisted -- including families in LIHTC units where the only MTW role was a small development contribution many years earlier.

Policy Recommendation:

HUD should establish a definition that counts as “assisted” only families living in units receiving substantial MTW funding that significantly reduces their rents. This is essential to fulfilling HUD's statutory responsibility, and failing to do so would raise serious doubts about whether any MTW expansion would be implemented in a manner that protects low-income people.

- b. In addition, several provisions of the recent PIH Notice 2013-02 will weaken HUD's effort to enforce the substantially the same requirement, including loose requirements for sanctions, setting the “baseline” number of families an agency must assist at the number they served when they entered MTW even if they are funded to assist many more, and a policy of subtracting all public housing units removed through demolition and disposition from an agency's baseline even though many of these units were never included in the baseline because they were vacant when the agency entered MTW.

Policy Recommendation:

HUD should revise the baseline methodology to adjust properly for additional units funded and the removal of units that were vacant at initial entry to the demonstration, and to specify stronger sanctions for non-compliance.

2. ***Encourage MTW agencies to expand housing choice.*** A serious weakness of the MTW program is the lack of content for the “expanding housing choices” goal, which should reflect the AFFH and other fair housing directives. This definitional vacuum leaves the “housing choices” goal void of measurable criteria, impairing HUD's ability to assess programmatic outcomes and to ensure that the program operates in accordance with Congressional intent. Nearly half of the MTW agencies do not address the “housing choices” goal at all in their current MTW plans, including a number of PHAs in highly segregated metro areas. HUD's incentivizing of such efforts in its 2012 NOFA was helpful, but more widely applicable and

clearly delivered guidance on the “choice” aspect of the program remains needed for existing MTW agencies.

Policy Recommendation:

HUD should provide guidance for this goal that —

- a. Promotes choice-oriented initiatives by PHAs with measurable outcomes; and
- b. Aligns such initiatives with fair housing requirements, including the responsibility to affirmatively further fair housing.

cc: Peter Kovar, Acting Chief of Staff; Jonathan Harwitz, Deputy Chief of Staff
John Trasvina, Assistant Secretary for Fair Housing & Equal Opportunity
Erika Poethig, Acting Assistant Secretary for PD&R
Milan Ozdinec, Deputy Assistant Secretary Office of Public Housing and Voucher Programs
Mike Dennis (HCV), Shauna Sorrells (PH), Ivan Pour(MTW), Ainars Rodins [SAC]