

# Housing Choice Voucher Reform: A Primer for 2021 and Beyond

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America's largest subsidized housing program, the "Section 8" Housing Choice Voucher (HCV) program, is a crucial anchor for millions of low income families, providing a secure home for children to grow and thrive. The program was designed, in part, to provide housing choice for families in the private rental market, beyond the limited locations provided by traditional public housing or other subsidized housing programs.<sup>2</sup> But these goals of housing security and geographic choice have sometimes proved elusive, and despite important reforms that were undertaken during the Obama Administration, there is much left to be done. This policy brief will summarize the essential legislative and administrative reforms that remain to ensure that the Section 8 program delivers on its promise of choice and opportunity for low income families.

## *Structural barriers to security and choice in the HCV program*

The major flaws in the Section 8 program were visible almost from the start of the program in the mid 1970's, and became more acute as the Section 8 program expanded, soon eclipsing public housing and the project-based rental subsidy programs as the largest low income housing program in the country. The key structural problems in the program included:

- An insufficient supply of vouchers to meet an overwhelming demand
- Rent caps ("Fair Market Rents") set at the median or 40th percentile of rents in each entire region, often effectively confining families to lower rent neighborhoods

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2 The "Congressional findings and declaration of purpose" of the Housing and Community Development Act of 1974 include "the reduction of the isolation of income groups within communities and geographical areas and the promotion of an increase in the diversity and vitality of neighborhoods through the spatial deconcentration of housing opportunities for persons of lower income and the revitalization of deteriorating or deteriorated neighborhoods." 42 U.S.C. 5301(c)(6).

- Widespread housing discrimination against families with vouchers (combined or concurrent with persistent racial discrimination)
- Intense pressure on families searching for housing to use the voucher or lose it, often exacerbated by too-short search times
- Security deposits, application and broker fees, and other barriers to entry in higher-cost neighborhoods that cannot be covered by HCV funds
- Inadequate “administrative fees” paid to public housing agencies (PHAs) that incentivize rapid placement of families in poor neighborhoods
- Restrictions and barriers to interjurisdictional use of vouchers across PHA areas of operation (including “portability” procedures)
- An accountability system (the “Section 8 Management Assessment Program” or SEMAP) that prioritizes utilization rates and success rates over poverty deconcentration, neighborhood quality, and family choice.
- Local preferences for admission to the program that have often marginalized low income families with children
- A balkanized and inefficient voucher delivery system run by thousands of PHAs – with multiple PHAs often serving the same regional housing market
- Landlord listings and other tenant information systems that have the effect of steering families into poor, segregated neighborhoods, and limiting access or information about lower poverty neighborhoods and communities
- Voucher allocation systems that have not always directed vouchers to the neediest families

Many of these issues were explored at the first National Housing Mobility Conference in 1994, and laid out in the conference paper, “Transforming Section 8: Using Federal Housing Subsidies to Promote Individual Housing Choice and Desegregation,”<sup>3</sup> which viewed the process through the eyes of a composite legal services client, “Ms. Griffin.” Numerous academic journal articles have reinforced these points,<sup>4</sup> researchers have documented the

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3 Philip Tegeler, Michael Hanley and Judith Liben, “Transforming Section 8: Using Federal Housing Subsidies to Promote Individual Housing Choice and Desegregation,” 30 *Harvard Civil Rights-Civil Liberties Law Review* 451 (1995).

4 Deborah Thrope, “Achieving Housing Choice and Mobility in the Voucher Program: Recommendations for the Administration,” 27 *Journal of Affordable Housing* 145 (2018); Stacy Seicshnaydre et al., “Missing Opportunity: Furthering Fair Housing in the Housing Choice Voucher Program,” 79 *Law & Contemp. Probs.* 173 (2016); Philip Tegeler, Megan Haberle and Ebony Gayles, “Affirmatively Furthering Fair Housing at HUD: A First Term Report Card,” *Journal of Affordable Housing & Community Development Law* (May 2013); Stefanie

concentration of vouchers in poor neighborhoods,<sup>5</sup> and lawyers and policy advocates have long pressed HUD and local PHAs to reform the program.<sup>6</sup> Several recent books have joined the chorus on the limitations of the voucher program and the need for reform,<sup>7</sup> and the issue has even landed on the policy agenda during the 2020 presidential campaign.<sup>8</sup> Over the past 40 years, a few reforms have come, but at a glacial pace.

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DeLuca, Philip M.E. Garboden & Peter Rosenblatt, "Segregating Shelter: How Housing Policies Shape the Residential Locations of Low-Income Minority Families," *ANNALS of the American Academy of Political and Social Science*, vol. 647:1 (2013); Mark A. Malaspina, Note, "Demanding the Best: How to Restructure the Section 8 Housing-Based Rental Assistance Program," 14 *Yale L. & Pol'y Rev.* 287 (1996).

- 5 See, e.g., Alicia Mazzara and Brian Knudsen, *Where Families With Children Use Housing Vouchers: A Comparative Look at the 50 Largest Metropolitan Areas* (CBPP-PRRAC, January 2019), [https://prrac.org/pdf/where\\_families\\_use\\_vouchers\\_2019.pdf](https://prrac.org/pdf/where_families_use_vouchers_2019.pdf); Alex F. Schwartz, Kirk McClure, and Lydia B. Taghavi, "Vouchers and Neighborhood Distress: The Unrealized Potential for Families with Housing Choice Vouchers to Reside in Neighborhoods with Low Levels of Distress," *Cityscape* Vol 18:3 (2016); Kirk McClure, Alex F. Schwartz, and Lydia B. Taghavi, "Housing Choice Voucher Location Patterns a Decade Later," *Housing Policy Debate* Vol 25:2 (2015);
- 6 See, e.g., *Federal Policy Changes Can Help More Families with Housing Vouchers Live in Higher-Opportunity Areas* (Center on Budget & Policy Priorities, September 2018); see generally advocacy resources compiled at <https://prrac.org/other-housing-mobility-resources-2004-2014/> and <https://prrac.org/all-articles-under-the-housing-mobility-initiative/>.
- 7 In *Evicted: Poverty and Profit in the American City* (2016), Matthew Desmond calls for a universal voucher program, and in *The Voucher Promise: "Section 8" and the Fate of an American Neighborhood*, Eva Rosen also calls for universal vouchers, while also proposing targeted reforms to the HCV program, such as pre- and post-move counselling to voucher-holders, supplementary financial support, and added landlord incentives for HCV participation. Observing the limitations of simply "scaling up" the HCV program in its current form, Rosen notes that "[S]caling up vouchers in their current form is not enough; if we are to even entertain the notion of using housing vouchers to address the problems of poverty and housing instability, we must directly confront the program's limitations .... when it comes to scaling up, 'the devil is in the details,' as some experts argue. How we scale up could produce very different kinds of outcomes for recipients and neighborhoods." (pp. 247-248) See also Richard Rothstein, *The Color of Law* (2017) at pp. 207-211.
- 8 Several presidential candidates for the 2020 Democratic primary nomination proposed reforms to the HCV program. See PRRAC's summary at [https://prrac.org/the-2020-democratic-candidates-positions-on-affordable-housing-and-fair-housing-issues/#\\_edn35](https://prrac.org/the-2020-democratic-candidates-positions-on-affordable-housing-and-fair-housing-issues/#_edn35). Presumptive Democratic nominee Joe Biden has more recently committed to making the HCV system into a universal entitlement program, and has endorsed the Fair Housing Improvement Act of 2019 (S.1986), which would prohibit discrimination based on source of income against renters receiving federal benefits.

## A short history of Section 8 voucher reform

- 1987-90:** Elimination of restrictions on portable use of Section 8 certificates<sup>9</sup>
- 1994:** Moving to Opportunity for Fair Housing (MTO) Demonstration Program launched<sup>10</sup>
- 1998:** Elimination of the “take one – take all” provision of the voucher program<sup>11</sup>
- 2001:** Adoption of the 50th percentile Fair Market Rent in the most concentrated rental markets<sup>12</sup>
- 2010:** Settlement of the ICP v. HUD case and initial implementation of Small Area Fair Market rents<sup>13</sup>
- 2015:** Section 8 voucher mobility included in the Affirmatively Furthering Fair Housing rule<sup>14</sup>
- 2015:** Partial updating of portability procedures and addition of tenant information requirements<sup>15</sup>
- 2016:** Passage of the Small Area Fair Market Rent rule<sup>16</sup>
- 2018-20:** Approval of the Housing Mobility Demonstration in the 2019 and 2020 budgets and release of the Housing Mobility Demonstration NOFA<sup>17</sup>

- 9 Housing and Community Development Act of 1987, Pub. L. No. 100-242, § 145, 101 Stat. 1815, 1852 (portability within metropolitan areas); Cranston-Gonzalez National Affordable Housing Act, Pub. L. No. 101-625, § 551, 104 Stat. 4079, 4224 (1990) (portability within states or contiguous states); codified as amended at 42 U.S.C. § 1437f(r)(1) (nationwide portability); but see Housing and Community Development Act of 1992, Pub. L. No. 102-550, § 147, 106 Stat. 3672, 3715 (permitting PHAs to require initial 12-month local lease requirement for out of town applicants).
- 10 See <https://www.nber.org/mtopublic/>.
- 11 Quality Housing and Work Responsibility Act of 1998, Pub. L. No. 105-276, Tit. V § 554, 112 Stat. 2461, 2514-2670 (1998).
- 12 24 C.F.R. § 888.113 (2001)
- 13 Inclusive Communities Project, Inc. v. U.S. Dept. of Housing and Urban Development, No. 3:07-CV-0945-O. (N.D. Tex. 2009); See “Notice of Demonstration Project of Small Area Fair Market Rents (FMRs) in Selected Metropolitan Areas for Fiscal Year (FY) 2011” 75 Fed. Reg. 27808 (May 18, 2010), *available at* <https://www.govinfo.gov/content/pkg/FR-2010-05-18/pdf/2010-11731.pdf>
- 14 80 F.R. 42271 (2015); See AFFH Guidebook at <https://www.nhlp.org/wp-content/uploads/HUD-AFFH-Rule-Guidebook-Dec.-2015.pdf>. The AFFH Guidebook (currently suspended by the Trump Administration) identifies voucher concentration as a contributing factor to the perpetuation of segregation. The manual states that “affirmatively furthering fair housing includes the obligation to overcome historic patterns of segregation and disparities in access to opportunity. The strategic siting of affordable housing and strategic use of voucher programs can help families move from high-poverty, highly segregated neighborhoods, such as [racially or ethnically concentrated areas of poverty], to housing options in low-poverty neighborhoods. The strategic development of affordable housing in high opportunity areas coupled with voucher mobility programs can be effective tools to combat racial segregation, disproportionate housing needs, and disparities in access to opportunity.” (pp. 131).
- 15 “Housing Choice Voucher Program: Streamlining the Portability Process,” 80 Fed. Reg. 50564 (August 20, 2015).
- 16 “Establishing a More Effective Fair Market Rent System; Using Small Area Fair Market Rents in the Housing Choice Voucher Program Instead of the Current 50th Percentile FMRs,” 81 Fed. Reg. 80567 (November 16, 2016).
- 17 “Section 8 Housing Choice Vouchers: Implementation of the Housing Choice Voucher Mobility Demonstration” 85 Fed. Reg. 42890 (July 15, 2020), *available at* <https://www.govinfo.gov/content/pkg/FR-2020-07-15/pdf/2020-15037.pdf>.

## *Housing Choice Voucher reform in 2021 and beyond*

To address the continuing shortcomings in the HCV program, and to help the program achieve its tremendous potential, multiple reform strategies are needed. Many of these were considered during the Obama Administration, but never implemented.

### **Addressing the insufficient supply of vouchers to meet an overwhelming demand**

Our federally subsidized low income housing programs reach only one quarter of eligible families, and waitlists for the Housing Choice Voucher can extend for several years before a family reaches the top. HCVs cannot satisfy all of our low income housing needs (we also need to substantially increase our supply of public housing and other “social housing” here in the U.S.), but several recent legislative proposals would reverse the sluggish growth of the HCV program over the past few years. Notably, the bipartisan Family Stability and Opportunity Vouchers Act of 2019, cosponsored by Senators Young (R-IN) and Van Hollen (D-MD) would create 500,000 new housing vouchers over a five-year period, prioritizing families with young children, and including housing mobility services to expand housing choices for participating families.<sup>18</sup> In the wake of the COVID crisis, Presidential candidate Joe Biden has called for a universal housing voucher program. As Matthew Desmond eloquently explains in *Evicted: Poverty and Profit in the American City*, “A universal voucher program would change the face of poverty in this country. Evictions would plummet and become rare occurrences. Homelessness would almost disappear. Families would immediately feel the income gains and be able to buy enough food, invest in themselves and their children through schooling or job training, and start modest savings. They would find stability and have a sense of ownership over their home and community.”<sup>19</sup>

### **Addressing restrictive Fair Market Rents by expanding the Small Area FMR rule**

HUD’s longstanding system for setting Fair Market Rents (FMRs) has been repeatedly criticized for limiting voucher holders’ ability to move into higher opportunity neighborhoods and for its tendency to steer families into higher poverty areas.<sup>20</sup> After commencing the reform process

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18 <https://www.congress.gov/116/bills/s3083/BILLS-116s3083is.pdf>. The bill is based on a policy proposal developed by the Center on Budget and Policy Priorities and the Urban Institute (see <https://www.mobilitypartnership.org/helping-young-children-move-out-poverty-creating-new-type-rental-voucher>).

19 Desmond, *Evicted: Poverty and Profit in the American City*, pp. 308-309.

20 See, e.g., Comptroller Gen. of the U.S., CED-77-19, *Major Changes Are Needed in the New Leased-Housing Program*, at 16, 21 (1977), <http://www.gao.gov/assets/120/113728.pdf>; Barbara Sard, “How to Promote Housing Integration and Choice Through the Section 8 Voucher Program,” Testimony before the National Commission on Fair Housing and Equal Opportunity, October 6, 2008, <http://www.cbpp.org/files/10-6-08hous-testimony.pdf>; Florence Wagman Roisman, “End Residential Racial Segregation: Build Communities That Look Like America,” 2 *Harv. L & Pol’y Rev.* 1, 3 (2008); Margery Austin Turner, Susan Popkin, & Mary Cunningham, *Section 8 Mobility & Neighborhood Health* 31-33 (2000); Philip Tegeler, Megan Haberle and Ebony Gayles, “Affirmatively Furthering Fair Housing at HUD: A First Term Report Card,” *Journal of Affordable Housing & Community Development Law* (May 2013).

with a Small Area FMR demonstration (in response to a lawsuit filed in Dallas),<sup>21</sup> in 2016 HUD took the first major step to reform this system, issuing the final Small Area Fair Market Rent rule, which sets voucher rent caps at the average (40th percentile) rent in each zip code, rather than across the entire metropolitan area.<sup>22</sup> The new rule, which finally went into effect in April 2018 after a temporary suspension,<sup>23</sup> is mandatory in 24 metro areas where vouchers are most concentrated, and may be voluntarily adopted by PHAs in other metropolitan areas.<sup>24</sup> The goals of the new rule are to open up higher cost, lower poverty areas for voucher families, and at the same time to equalize the incentives for tenants and landlords across different types of neighborhoods. The rule also helps to address the problem of overpayment that occurs in some neighborhoods where voucher rents exceed the market rents.<sup>25</sup> The rule is intended to be relatively cost-neutral for HUD over time when implemented across an entire metro area, with FMR increases in high rent zip codes offset by FMR decreases in low rent zip codes. The 2016 Small Area FMR rule was an important first step, but it only reaches 24 metropolitan areas. While some PHAs with metropolitan-area jurisdiction can achieve similar results with voluntary adoption of SAFMRs,<sup>26</sup> many regions have multiple PHAs covering the same housing market, and there is no incentive for voluntary adoption for PHAs in higher-cost communities, where there will be no cost savings to balance the higher payment standards in high opportunity zip codes.<sup>27</sup> For this reason, mandatory expansion of the rule is the most effective approach.

Based on our experience in monitoring the implementation of the 2016 rule, we recommend several policy changes to accompany an expansion of mandatory SAFMRs to additional metropolitan regions:

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- 21 *Inclusive Communities Project, Inc. v. U.S. Dept. of Housing and Urban Development*, No. 3:07-CV-0945-O. (N.D. Tex. 2009); See “Notice of Demonstration Project of Small Area Fair Market Rents (FMRs) in Selected Metropolitan Areas for Fiscal Year (FY) 2011” 75 Fed. Reg. 27808 (May 18, 2010), available at <https://www.govinfo.gov/content/pkg/FR-2010-05-18/pdf/2010-11731.pdf>
  - 22 “Establishing a More Effective Fair Market Rent System; Using Small Area Fair Market Rents in the Housing Choice Voucher Program Instead of the Current 50th Percentile FMRs,” 81 Fed. Reg. 80567 (November 16, 2016).
  - 23 See “Guidance on Recent Changes in Fair Market Rent (FMR), Payment Standard, and Rent Reasonableness Requirements in the Housing Choice Voucher Program (HUD 2018),” PIH Notice 2018-01, available at <https://www.hud.gov/sites/dfiles/PIH/documents/PIH-2018-01.pdf>
  - 24 See “Advocates’ Guide to Voluntary Adoption of Small Area FMRs, available at [https://prrac.org/wp-content/uploads/2018/07/NHLP\\_PRRAC\\_Voluntary\\_SAFMR\\_One-Page.pdf](https://prrac.org/wp-content/uploads/2018/07/NHLP_PRRAC_Voluntary_SAFMR_One-Page.pdf)
  - 25 See Matthew Desmond, Kristin L. Perkins, “Are Landlords Overcharging Housing Voucher Holders?” *City & Community* 15:2 (2016)
  - 26 Small Area FMRs can be voluntarily adopted for an entire area of operation, or applied in selected zip codes using Exception Payment Standards. See *A Guide to Small Area Fair Market Rents (SAFMRs) How State and Local Housing Agencies Can Expand Opportunity for Families in All Metro Areas* (Center on Budget & Policy Priorities and PRRAC, May 2018), available at <https://prrac.org/pdf/cbpp-prrac-guide-to-safmrs.pdf>.
  - 27 See “Implementing the Small Area Fair Market Rents in the HCV Program: Plano Housing Authority Case Study (HUD 2018),” available at <https://files.hudexchange.info/resources/documents/SAFMRsPlano-Texas-Housing-Authority-Case-Study.pdf>.

- To address the varying rent levels *within* some metropolitan zip codes, HUD should permit PHAs to apply different payment standards (in the 90-110% payment standard range) to different parts of a SAFMR zip code, where ACS or local data indicate a wide discrepancy in rents in different parts of the zip code.
- HUD should allocate additional vouchers/budget authority and additional administrative fees to PHAs that disproportionately include higher cost zip codes, to offset part of the financial impact of the mandatory SAFMR in their area of operation.
- Congress should appropriate additional funds to support landlord recruitment and housing search assistance for PHAs located in mandatory SAFMR regions, where the PHA's area of operation includes neighborhoods with significant concentrations of poverty.
- Creating a portability fund? As noted above, the sharp rent differentials created by racial segregation and exclusionary zoning can have difficult fiscal implications for PHAs in high cost areas. Similarly, to the extent that PHAs in low cost areas are being "billed" under the current portability system by PHAs in high cost areas, higher costs can negatively impact the sending PHA's budget, without any countervailing cost savings. In regions where SAFMRs have been adopted across the board, HUD should redistribute its cost savings back to the PHAs to compensate them for the small decreased number of vouchers that result from the SAFMR shift.<sup>28</sup>

### **Addressing widespread housing discrimination against families with vouchers (and overcoming landlord reluctance to participate)**

As documented most recently by a 2018 HUD-Urban Institute national study, discrimination against voucher holders is widespread.<sup>29</sup> As of August 2020, 13 states and over 90 local governments have adopted "source of income discrimination laws" to protect HCV families.<sup>30</sup>

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- 28 Cf. Mary Cunningham and Philip Tegeler, "Portability and Housing Choice: Preserving the Right to Inter-Jurisdictional Portability Using a Central Reserve Fund," in *Keeping the Promise: Preserving and Enhancing Housing Mobility in the Section 8 Housing Choice Voucher Program* (PRRAC, December 2005).
- 29 Mary K. Cunningham, Martha Galvez, Claudia L. Aranda, Robert Santos, Doug Wissoker, Alyse Oneto, Rob Pitingolo, James Crawford, *A Pilot Study of Landlord Acceptance of Housing Choice Vouchers: Executive Summary*, U.S. Department of Housing and Urban Development Office of Policy Development and Research (2018). See also local area studies, including Equal Rights Center, *Next Generation Segregation: A Civil Rights Testing Investigation and Report* (Washington, DC 2018), <https://equalrightscenter.org/wp-content/uploads/next-generation-segregation-report.pdf>; Michael Lepley & Lenore Mangiarelli, The Housing Center, *Housing Voucher Discrimination and Race Discrimination in Cuyahoga County*, (Cleveland, 2017); Austin Tenants' Council, *Voucher Holders Need Not Apply: An Audit Report on the Refusal of Housing Choice Vouchers by Landlords in the Austin MSA*, (2012); Greater New Orleans Fair Housing Action Center, *Housing Choice in Crisis: An Audit Report on Discrimination against Housing Choice Voucher Holders in the Greater New Orleans Rental Housing Market* (2009); Lawyers Committee for Better Housing, *Locked Out: Barriers to Choice for Housing Voucher Holders, Report on Section 8 Housing Choice Voucher Discrimination* (2002), <https://lcbh.org/reports/locked-out-barriers-choice-housing-voucher-holders>.
- 30 See PRRAC's updated *Appendix B: State, Local, and Federal Laws Barring Source of Income Discrimination* for a full list of jurisdictions that ban "source of income discrimination," <https://prrac.org/pdf/AppendixB.pdf>.

In 2019, after passage of new statewide laws in New York and California, we estimated that about half of HCV families are living in jurisdictions that have rules against voucher discrimination in place.<sup>31</sup>

In 2012, HUD took the important step of requiring grantees, in the general guidelines for all funding notices, to comply with and certify their compliance with any local source of income discrimination laws.<sup>32</sup> HUD has also permitted grantees under the Fair Housing Initiatives Program to pursue work on source of income discrimination (in jurisdictions with such laws), where such discrimination also has a discriminatory impact.<sup>33</sup> Both of these requirements should be reinstated.

Another important step that HUD and the Treasury Department should take is to provide actual enforcement mechanisms to implement the *existing* federal source of income discrimination protections in the Low Income Housing Tax Credit program and in the HOME program.<sup>34</sup>

In the absence of federal voucher discrimination legislation,<sup>35</sup> it is important that states and local governments continue to pass strong source of income discrimination laws,<sup>36</sup> and to repeal state laws that preempt local SOI ordinances in Indiana and Texas. Congress can also incentivize the passage of state SOI laws (and the repeal of state preemption laws) by tying certain discretionary funding to the presence of source-of-income discrimination laws.

It is also important to recognize and eliminate some of the deterrents to landlord acceptance of vouchers, particularly in very competitive rental markets.<sup>37</sup> These can include delays in inspections and tenancy approvals, poor customer service, and overly aggressive

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31 *Id.*

32 Notice of HUD's Fiscal Year (FY) 2012 Notice of Funding Availability (NOFA) Policy Requirements and General Section to HUD's FY2012 NOFAs for Discretionary Programs, *available at* <http://archives.hud.gov/funding/2012/gensec.pdf>

33 Notice of Funding Availability of HUD's Fiscal Year 2012 Fair Housing Initiatives Program, *available at* <http://archives.hud.gov/funding/2012/fhipnofa.pdf>

34 See 26 U.S.C. § 42(h)(iv), which, under the Low-Income Housing Tax Credit Program (LIHTC), "prohibits the refusal to lease to a holder of a voucher or certificate of eligibility under section 8 of the United States Housing Act of 1937 because of the status of the prospective tenant as such a holder..."; also see 24 CFR 92.252(d), which provides that "[t]he owner cannot refuse to lease HOME-assisted units to a certificate or voucher holder under 24 CFR part 982."

35 The most recent bill seeking federal voucher discrimination protections is the Fair Housing Improvement Act of 2019, S. 1986, 116th Cong. (2019), *available at* <https://www.congress.gov/116/bills/s1986/BILLS-116s1986is.pdf>

36 See "Crafting a Strong and Effective Source of Income Discrimination Law (PRRAC 2020)," *available at* <https://prrac.org/pdf/crafting-a-strong-and-effective-source-of-income-discrimination-law.pdf>

37 See Jennifer E. Cossyleon, Philip ME Garboden, & Stefanie DeLuca, *Recruiting Opportunity Landlords: Lessons from Landlords in Maryland* (PRRAC, June 2020).

implementation of rent reasonableness determinations in high opportunity areas. HUD has undertaken a multi-year exploration of landlord voucher acceptance, and has identified a number of steps PHAs can take to improve landlord participation.<sup>38</sup> HUD should consider which of these findings and recommendations could be mandated or more strongly incentivized through an updated SEMAP or Administrative Fee system.

### **Expand voucher search times to relieve pressure on families searching for housing**

Limits on search time for voucher holders make it harder for families looking in harder-to-rent areas. While HUD has improved its rules to eliminate any *federally* imposed time limit,<sup>39</sup> many agencies still impose strict limits. HUD should require longer search times for all PHAs, with additional mandatory extensions for families searching for housing in low poverty or high opportunity communities.

### **Assist families with security deposits, application and broker fees, and other barriers to entry in higher-cost neighborhoods**

Although the voucher statute is silent on the question, HUD has taken the position that Housing Assistance Payment Contract funds may not be used to cover the cost of security deposits, broker fees, and other financial barriers to accessing rental housing in higher opportunity areas. These restrictions should be eliminated in order to expand family choices in harder-to-rent areas. Congress should also appropriate additional funds to cover these ancillary costs of moving to high opportunity communities, and to incentivize landlord participation in those communities, including creation of a loss mitigation fund to augment or replace security deposit funds.<sup>40</sup> HUD should also take steps to address the delays often associated with the HCV Housing Quality Standards inspection, which are often cited by property owners as a barrier to participation.<sup>41</sup>

### **Reforming Section 8 Administrative fees to create positive incentives for PHAs**

The current “administrative fee” system that supports PHA voucher administration provides strong disincentives to PHAs to help families make opportunity moves. It takes more time to

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38 See HUD’s resources on landlord participation at their “HCV Landlord Resources” pages, [https://www.hud.gov/program\\_offices/public\\_indian\\_housing/programs/hcv/landlord](https://www.hud.gov/program_offices/public_indian_housing/programs/hcv/landlord), and [https://www.hud.gov/program\\_offices/public\\_indian\\_housing/programs/hcv/landlord/research](https://www.hud.gov/program_offices/public_indian_housing/programs/hcv/landlord/research).

39 24 C.F.R. § 982.303 (a).

40 D. Thrope, *supra* at 152-53.

41 See *Recruiting Opportunity Landlords: Lessons from Landlords in Maryland* (PRRAC 2020),” available at <https://prrac.org/pdf/opportunity-landlord-report-june-2020.pdf>. Some options include pre-inspections for interested landlords, delaying inspections until after occupancy of the unit pursuant to the recent federal legislation, or permitting local code enforcement inspections as a proxy for the HQS inspections. See D. Thrope, *supra*.

help a family move to an area where landlords are less likely to be familiar with the program, and there is no additional administrative fee for this extra effort.

The disincentive is exacerbated by the HUD portability system. If the PHA is successful in helping a family move outside its area of operation, the PHA loses at least 4/5 of the administrative fee when the family moves (or may lose renewal funding for a portion of the value of the voucher if the receiving community “absorbs” the voucher and there is a delay in reissuing it).

The presence of multiple payment standards in a region further complicates the administrative fee problem. Since administrative fees are awarded on a per voucher basis, if there is a net migration of families to neighborhoods with higher payment standards, resulting in a marginal decrease in the total number of vouchers in use, a PHA received a correspondingly reduced payment from HUD.

These issues were briefly touched on in HUD’s multi-year Administrative Fee Study that concluded in 2015.<sup>42</sup> The study recommended a modest administrative fee increase for PHAs with a significant number of vouchers in higher cost neighborhoods, but also suggested that HUD look into the issue of incentivizing housing mobility (or other positive PHA performance) as a separate policy. HUD should implement both of these recommendations as soon as possible; agencies should not be penalized for helping families access higher opportunity communities.<sup>43</sup>

### **Eliminating restrictions and barriers to interjurisdictional use of vouchers across PHA areas of operation (including “portability” procedures)**

In the late 1980s, Congress amended the voucher program to allow voucher holders to move across PHA jurisdictional lines to rent apartments. The so-called “portability” rules that HUD developed in the early 1990s to respond to this statutory change in the voucher program have never worked smoothly, and continue to create obstacles for voucher families who want to move, and disincentives for PHA staff to help families move.<sup>44</sup>

In 2015 HUD adopted a new portability rule,<sup>45</sup> intended to address some of the problems that arise when families with vouchers cross jurisdictional lines. However, this new rule was extremely limited

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42 [https://www.huduser.gov/publications/pdf/AdminFeeStudy\\_2015.pdf](https://www.huduser.gov/publications/pdf/AdminFeeStudy_2015.pdf). The study was followed by a proposed rule, “Housing Choice Voucher Program—New Administrative Fee Formula; Proposed Rule,” 81 Fed. Reg. 44099 (July 6, 2016).

43 The Center on Budget and Policy Priorities has noted that HUD already has the discretion to augment administrative fees with supplemental disbursements to promote mobility. See *Federal Policy Changes Can Help More Families with Housing Vouchers Live in Higher-Opportunity Areas* (Center on Budget & Policy Priorities, September 2018) at 11.

44 The complexity of the HCV portability system is illustrated by the most recent (50-page) HUD implementation guide, HUD Notice PIH 2016-09, <https://www.hud.gov/sites/documents/PIH2016-09.PDF>.

45 “Housing Choice Voucher Program: Streamlining the Portability Process,” 80 Fed. Reg. 50564 (August 20, 2015).

in scope, and its most important proposed features were removed from the final rule in response to public housing authority opposition.

**Portability billing:** The most important feature of the proposed portability rule would have required receiving PHAs to simply “absorb” the moving family into their own program if the PHA is not already at a high rate of utilization of its current budgeted vouchers. This approach would have been comparatively seamless from the voucher family’s point of view, would have reduced delay and eliminated cross-PHA billing, and would have returned the family’s original voucher back to the sending PHA to benefit another family in the sending PHA’s area of operation. Some of the objections cited to this provision in the final rule preamble are concerning from a fair housing perspective.<sup>46</sup> We recommend that mandatory absorption of ported vouchers be the default option for all PHAs, absent extraordinary circumstances (such as PHAs that are in “shortfall” status).

**Inconsistent screening rules:** When a family is admitted to the voucher program, they are subject to tenant suitability “screening” that is to be conducted in accordance with the administrative plan by the admitting PHA.<sup>47</sup> PHAs should not be authorized to “rescreen” tenants when they exercise their portability rights, thus adding another barrier to entry for families seeking expanded housing choices. Rescreening appears to be illegal on its face,<sup>48</sup> but the HUD portability rule permits it. This provision should be repealed.

**MTW and voucher portability:** Surprisingly, through the “Moving to Work” regulatory flexibility program, HUD permits some large PHAs to prohibit (or severely limit) their families from leaving the PHA’s jurisdiction,<sup>49</sup> in direct contravention of the 1987-1991 Congressional amendments to the HCV statute, guaranteeing all families the right to move with their voucher. This loophole in the MTW program should be eliminated immediately.

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46 Id at 50568.

47 24 C.F.R. §982.307 (2012); see also 24 C.F.R. §982.553 (stating that PHAs are required to institute standards that prohibit the admission of sex offenders and people evicted from federally assisted housing for drug-related activities. The PHA can prohibit admission to a person that has been or currently is involved in “drug-related criminal activity; violent criminal activity; other criminal activity which may threaten the health, safety, or right to peaceful enjoyment of the premises by other residents or persons residing in the immediate vicinity; or other criminal activity which may threaten the health or safety of the owner, property management staff, or persons performing a contract administration function or responsibility on behalf of the PHA”

48 See PRRAC’s comments on the proposed portability rule at [http://prrac.org/pdf/portability\\_fairhousing\\_comments\\_5-29-12.pdf](http://prrac.org/pdf/portability_fairhousing_comments_5-29-12.pdf); see also Center on Budget and Policy Priorities comments at <http://www.regulations.gov/#!documentDetail;D=HUD-2012-0027-0037>.

49 See Will Fischer, Center on Budget and Policy Priorities, “Expansion of HUD’s ‘Moving-To-Work’ Demonstration is Not Justified: Other Approaches Would Promote Demonstration’s Goals More Effectively” (Sept. 27, 2011), available at <http://www.cbpp.org/Files/9-27-11/hous.pdf>.

## **An improved PHA accountability system**

The current PHA Section 8 Management Assessment Program (called SEMAP)<sup>50</sup> prioritizes high utilization of allocated vouchers and maximum use of voucher budget authority, which is sometimes misinterpreted by PHAs as a reason to house families as quickly as possible, without regard to location issues. In contrast, SEMAP gives PHAs little credit or incentive for helping families move to less racially isolated, higher opportunity areas. The deconcentration “bonus” in SEMAP is only worth a few points, does not actually measure PHA progress, and is not even used by many PHAs. If families move across PHA borders to a lower poverty community, they are not counted at all. And because it is only a bonus factor, PHAs are not necessarily evaluated poorly by HUD if they have highly segregated and concentrated programs. Advocates have urged HUD to amend the SEMAP rule to provide much stronger incentives for PHAs to promote deconcentration (including across jurisdictional lines), and to reduce the emphasis on utilization rates, where delays in renting up are the result of efforts to assist households with mobility moves.<sup>51</sup> A new SEMAP rule was scheduled for 2013-14, but the proposed rule was never released.<sup>52</sup>

## **Rebalance local preferences for admission to the voucher program to prioritize low income families with children**

Expanded local preferences for homeless individuals, veterans, elderly and disabled applicants may have the effect of diminishing the ability of families with children to access the voucher program – and in many PHAs, eligible families with children are not proportionately represented in the voucher program. HUD’s administrative fee system may exacerbate this problem, as PHAs are better compensated for a larger number of 0-1 bedroom vouchers than for a smaller number of multi-bedroom vouchers serving more people. In light of the harsh impacts of housing insecurity on young children, HUD should assess the proportion of eligible families with children in each housing market area in the country, and require PHAs to adopt local preferences for families with children to reach, at a minimum, parity with their representation among eligible households in the region.

## **Improving efficiencies where multiple PHAs serve the same regional housing market**

The problems caused by the current portability system obviously flow from the presence of multiple PHAs covering the same metropolitan area, often with jurisdictions restricted to their municipal boundaries. Congress and HUD should expand financial incentives for smaller suburban PHAs to consolidate and merge with their adjacent, larger city partners. Alternatively, HUD should increase the incentives for PHAs to enter into joint “consortia” for purposes of

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50 24 C.F.R. Part 985

51 For a more detailed analysis and recommendations on reforms to the SEMAP rule, see *Federal Policy Changes Can Help More Families with Housing Vouchers Live in Higher-Opportunity Areas* (Center on Budget & Policy Priorities, September 2018); see also PRRAC’s April 8, 2011 comments at <http://prrac.org/pdf/SEMAP-4-8-11.pdf>.

52 OFFICE OF INFORMATION AND REGULATORY AFFAIRS, AGENCY RULE LIST – 2012, available at <http://www.reginfo.gov>.

managing a regional voucher program. Similarly, HUD's current PHA "consortia rule"<sup>53</sup> provides few incentives for PHAs to work cooperatively to pool resources across jurisdictional lines to facilitate family moves within the same housing market. At the same time, state law restrictions on PHA jurisdiction can significantly undermine PHA efforts to collaborate. HUD should update and improve its withdrawn regulatory proposals to reform the PHA consortia process, and Congress should also consider preempting state laws that limit PHA jurisdiction.<sup>54</sup>

### **Reforming landlord listings and other tenant information systems that have the effect of steering families into poor, segregated neighborhoods**

As Stefanie DeLuca and her colleagues have eloquently described, apartment lists given out by PHAs can be a direct contributor to residential segregation.<sup>55</sup> The same is true of some online apartment resources.<sup>56</sup> The 2015 HUD portability rule acknowledges the impact of apartment listings that are skewed toward segregated neighborhoods, and requires that lists of available units given out to Section 8 families include apartments in lower poverty, higher opportunity areas.<sup>57</sup> HUD's guidance on the rule lays out specific steps for PHAs to follow.<sup>58</sup> HUD's 2015 Portability Rule, embellished on in the guidance, also requires PHAs to explain to HCV families the benefits of moving to a low poverty community.<sup>59</sup> HUD subsequently encouraged PHAs to advise voucher families about the quality of schools in neighborhoods and communities they are considering, linking families to a national web-based system for ranking schools.<sup>60</sup> These

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53 24 C.F.R. § 943. See generally, *Federal Policy Changes Can Help More Families with Housing Vouchers Live in Higher-Opportunity Areas* (Center on Budget & Policy Priorities, September 2018) at 14-15.

54 D. Thrope, *supra*.

55 Stefanie DeLuca, Philip M.E. Garboden & Peter Rosenblatt, "Why Don't Vouchers Do a Better Job of Deconcentrating Poverty? Insights from Fieldwork with Poor Families," 21 *Poverty & Race* 5, 1(2012).

56 Ebony Gayles & Silva Mathema, *Constraining Choice: The Role of Online Apartment Listing Services in the Housing Choice Voucher Program* (PRRAC, July 2015).

57 "Housing Choice Voucher Program: Streamlining the Portability Process," 80 Fed. Reg. 50564 (August 20, 2015).

58 "PHAs whose jurisdiction includes areas of poverty or minority concentration must ensure that the list covers areas outside of poverty or minority concentration. To meet this requirement, PHAs must do the following:(1)Conduct outreach to landlords within the PHA's jurisdiction with properties outside areas of minority or poverty concentration, so as to develop relationships with such landlords, market the advantages of participating in the HCV program (e.g., the PHA guarantees a portion of the rent), and increase their interest in participating in the program; (2)Include resources that will assist voucher holders in finding units outside areas of minority or poverty concentration, as part of the list.... Consistent with their obligations to affirmatively further fair housing, PHAs are expected to ensure that the list also covers areas outside of R/ECAPs, integrated areas, and areas providing access to opportunity." HUD Notice PIH 2016-09, "Housing Choice Voucher (HCV) Family Moves with Continued Assistance, Family Briefing, and Voucher Term's Suspension," <https://www.hud.gov/sites/documents/PIH2016-09.PDF>.

59 *Id.* HUD's rules for the "Section 8 Administrative Plan" portion of the PHA plan similarly require that during PHAs' briefings of the tenants they inform families living in a high-poverty census tract of the benefits of moving to an area with less poverty. 24 C.F.R. § 982.301(a)(3)

60 For a copy of HUD's initial announcement, see [http://prrac.org/full\\_text.php?item\\_id=13236&newsletter\\_id=0&header=Current%20Projects](http://prrac.org/full_text.php?item_id=13236&newsletter_id=0&header=Current%20Projects).

changes are valuable, but are not being followed by many PHAs – we would recommend that HUD more forcefully implement the 2015 rule by demanding a specific proportion of PHA apartment listings to be located in low poverty areas.

### **Improve tenant selection and waitlist management to reach the neediest families and prevent discrimination**

HUD permits, and does not adequately police, voucher application and waitlist procedures that have a foreseeable discriminatory effect in many jurisdictions, including first-come first-served waitlist policies, short application windows, in-person applications, etc.<sup>61</sup> Even local residency preferences are permitted, as long as the PHA's tenant selection policies assert that the preference may not have a discriminatory purpose or effect.<sup>62</sup> Yet in practice, residency preferences frequently perpetuate segregation and result in discrimination that may not be identified at the PHA's initiative. HUD's current guidance on tenant selection and waitlist management recognizes the potential impacts of application and waitlist procedures, but instead of mandating improvements, gives PHAs a menu of best practices to choose from.<sup>63</sup>

### *A new era for housing mobility?*

Over the past 25 years, advocates and practitioners have refined the practice of housing mobility, building on the lessons of the original *Gautreaux* program in Chicago, and extended in mobility programs created by landmark public housing desegregation cases in Dallas and Baltimore. We have lifted up the best practices from these programs in a series of reports,<sup>64</sup> and in 2016, the Mobility Works collaborative was launched, utilizing the experience of the successful housing mobility programs in Chicago, Dallas and Baltimore to bring best practices to PHAs interested in developing or expanding mobility programs.<sup>65</sup>

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61 See generally *Accessing Opportunity: Affirmative Marketing and Tenant Selection in the LIHTC and Other Housing Programs* (PRRAC, 2012), available at <https://prrac.org/pdf/affirmativemarketing.pdf>.

62 24 C.F.R. § 982.207 (providing that “[a]lthough a PHA is not prohibited from adopting a residency preference, the PHA may only adopt or implement residency preferences in accordance with non-discrimination and equal opportunity requirements listed at § 5.105(a) of this title...Any PHA residency preferences must be included in the statement of PHA policies that govern eligibility, selection and admission to the program, which is included in the PHA annual plan (or supporting documents) pursuant to part 903 of this title. Such policies must specify that use of a residency preference will not have the purpose or effect of delaying or otherwise denying admission to the program based on the race, color, ethnic origin, gender, religion, disability, or age of any member of an applicant family”)

63 Notice PIH 2012-34, “Waiting List Administration” (Aug. 13, 2012), available at <http://1.usa.gov/NUkh08>.

64 See, e.g., *New Homes, New Neighborhoods, New Schools: A Progress Report on the Baltimore Housing Mobility Program* (PRRAC & the Baltimore Regional Housing Campaign, October 2009); *Expanding Choice: Practical Strategies for Building a Successful Housing Mobility Program* (Urban Institute & PRRAC, May 2013); *Leveraging the Power of Place: Using Pay for Success to Support Housing Mobility* (Low Income Investment Fund, PRRAC, Urban Institute & Johns Hopkins School of Medicine, July 2015); Jennifer E. Cossyleon, Philip ME Garboden, & Stefanie DeLuca, *Recruiting Opportunity Landlords: Lessons from Landlords in Maryland* (PRRAC, June 2020).

65 [www.housingmobility.org](http://www.housingmobility.org)

The “Creating Moves to Opportunity” (CMTO) project in Seattle, begun in 2017, set out to test, through a randomized controlled trial, whether a comprehensive housing mobility program based on these existing models was actually successful in helping families move to high opportunity areas.<sup>66</sup> The results were as expected, but still powerful – families who received comprehensive mobility services (combined with higher payment standards and a robust source of income discrimination law) were significantly more likely to move to a high opportunity area than families in the control group.<sup>67</sup> The results from the Seattle study, combined with earlier research by Raj Chetty et al,<sup>68</sup> have led to a remarkable consensus on the value of housing mobility as part of a larger federal housing strategy.

The first step in this expansion of support for housing mobility was the HUD Housing Mobility Demonstration, a bipartisan \$50 million appropriation to test comprehensive and selected mobility services in 5-10 metropolitan areas.<sup>69</sup> The implementation of the Demonstration, beginning in 2021, and the programmatic innovations that will be necessary for it to succeed, are likely to have an ongoing impact on PHA practice and HUD oversight of the voucher program.

Beyond the Housing Mobility Demonstration, how can housing mobility be incorporated in routine PHA administration of the voucher program? The Family Stability and Opportunity Vouchers Act of 2019 bill<sup>70</sup> is one promising approach – to accompany new voucher funding with funds for housing mobility counselling. But in the absence of new funding, perhaps the best approach is to permit or require PHAs to set aside a portion of their Housing Assistance Payment Contract funds to support housing mobility. Several MTW agencies have used their funding flexibility to support housing mobility with general program funds in this way,<sup>71</sup> and there is no reason that HUD (and Congress, if necessary) cannot extend this limited funding flexibility to other PHAs, particularly in PHAs with extreme levels of voucher concentration in high poverty neighborhoods.

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66 See [https://opportunityinsights.org/wp-content/uploads/2019/08/cmto\\_programoverview.pdf](https://opportunityinsights.org/wp-content/uploads/2019/08/cmto_programoverview.pdf)

67 Peter Bergman, Raj Chetty, Stefanie DeLuca, Nathaniel Hendren, Lawrence Katz, Christopher Palmer, *Creating Moves to Opportunity: Experimental Evidence on Barriers to Neighborhood Choice* (NBER Working Paper NO. 26164, August 2019), available at <https://opportunityinsights.org/paper/cmto/>.

68 Raj Chetty, Nathaniel Hendren, Lawrence Katz, “The Effects of Exposure to Better Neighborhoods on Children: New Evidence from the Moving to Opportunity Experiment,” *American Economic Review* 106(4): 855-902 (May 2015), available at <https://opportunityinsights.org/paper/newmto/>.

69 “Section 8 Housing Choice Vouchers: Implementation of the Housing Choice Voucher Mobility Demonstration,” 85 Fed. Reg. 42890 (July 15, 2020)

70 <https://www.congress.gov/116/bills/s3083/BILLS-116s3083is.pdf>

71 For a list of current housing mobility programs, including several programs operated by MTW agencies, see *Housing Mobility Programs in the U.S. 2020* (PRRAC and Mobility Works, July 2020) <https://prrac.org/pdf/housing-mobility-programs-in-the-us-2020.pdf>.

## *Conclusion*

In 2020, America is facing a housing and economic crisis of historic proportions. It is a crisis that has the potential to dramatically expand the social housing sector and expand our sense of what is politically feasible. For the first time in decades, substantial investments in new public housing and other forms of social housing may be possible, along with redefinitions of the relationship between landlords and tenants. Expansion of the Housing Choice Voucher program (our largest assisted low-income housing program) will almost certainly be part of the response. But as we have noted before,<sup>72</sup> simply expanding housing programs without considering their impact on racial and economic segregation runs the risk of deepening the divisions in our country. A re-envisioning of our national housing policy must include intentional measures to expand geographic choice and foster diverse communities – and the Housing Choice Voucher program should be at the center of that effort.

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72 See *A Vision for Federal Housing Policy in 2021 and Beyond* (July, 2020), available at <https://prrac.org/pdf/vision-for-federal-housing-policy-2021-beyond.pdf>.

**PRRAC**

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