

Official HUD Response to Public Comments Received on Notice PIH 2012-39 (and Identical Notice H 2012-15), “Funding for Tenant-Protection Vouchers for Certain At-Risk Households in Low-Vacancy Areas – Request for Comments”

I. Purpose

This document responds to the significant issues and questions raised by commenters on Notice PIH 2012-39 (and identical Notice H 2012-15).

II. Background

On September 10, 2012, HUD announced the availability on its Web site, of a notice that provided instructions, eligibility, and selection criteria on the funding process for tenant protection vouchers for certain at-risk households in low-vacancy areas¹, as provided for in the Consolidated and Further Continuing Appropriations Act, 2012 (2012 Appropriations Act). HUD sought public comment on the instructions, eligibility, and selection criteria, as provided in the notice. The 2012 Appropriations Act provided that up to \$10 million of the \$75 million appropriated for tenant protection actions may be made available for housing choice voucher rental assistance. This assistance is available for residents in low-vacancy areas and who may have to pay rents greater than 30% of household income as the result of the maturity of a HUD-insured, HUD-held, or section 202 loan that requires the permission of the Secretary prior to loan prepayment; the expiration of a rental assistance contract for which the tenants are not eligible for enhanced voucher or tenant protection assistance under existing law; or the expiration of affordability restrictions accompanying a mortgage or preservation program administered by the Secretary. The 2012 Appropriations Act provided that the tenant protection assistance may be provided as either enhanced vouchers or project-based voucher assistance.

Through the notice, HUD announced that it is initially making up to \$6 million in voucher assistance available, rather than the full \$10 million, due to concerns that the needs under the other eligible categories of tenant protection actions may otherwise exceed the funds appropriated for tenant protection actions. However, if the needs under the other eligible categories of tenant protection actions do not exceed the funds appropriated for tenant protection actions, HUD may increase the amount available to \$10 million.

The notice described the funding process for this rental assistance, including instructions on how to apply and the deadline for applications. HUD has developed a final notice (which can be found at: http://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/publications/notices) following receipt and consideration of public comments.

¹ PIH Notice 12-39:

http://portal.hud.gov/hudportal/HUD?src=/program_offices/administration/hudclips/notices/pih

III. Commenters

The public comment period on the notice closed on October 10, 2012, and HUD received 4 public comments. Comments were submitted by an aging services organization, a national preservation working group, a national union representing tenants in privately-owned, HUD multifamily housing developments; and a statewide nonprofit organization. A complete compendium of all comments can be found at:

<http://www.regulations.gov/#!docketDetail;D=HUD-2012-0095>.

IV. Response to Comments

A. Rent Burden Eligibility

Commenters expressed appreciation of HUD's effort to develop a method to distribute tenant protection vouchers to tenants with greatest needs (using a 40% threshold for rent burden to identify at-risk families), instead of the previously proposed lottery approach. However, commenters were concerned that the funds may be undersubscribed, and asked that HUD include a method to provide assistance to families with lower rent burdens if funds remain available to do so.

HUD response: The final notice includes a method to provide assistance to families with lower rent burdens (between 30% and 40%) if funds remain available to do so.

B. "Applicable Monthly Rent" Definitions

Commenters asked that owners be permitted to provide alternate methods to document the "applicable monthly rent" for special situations, such as projects undergoing renovation, projects where the rent on the fixed date does not reflect market rents, or where there were no recent lease-ups.

HUD response: The final notice expands the methods available to determine "applicable monthly rent."

C. Assist Residents Where Owners Do Not Apply

Commenters expressed concern that some owners at eligible properties may not apply for assistance under this notice. These commenters asked that HUD create a system to ensure that eligible tenants receive assistance (such as allowing individual tenant applications) where the owner does not apply. One commenter also suggested that once the final notice is published, HUD should encourage eligible owners to apply.

HUD response: The notice does not adopt the comment regarding an alternative application process if an individual owner will not participate. With the limited funding available and the expectation that through the provision of project-based or enhanced voucher assistance the set-aside will be used to assist families to continue to reside at their current properties, requiring the owner's active participation is a prudent and

reasonable approach to take with regard to the application process. HUD will publicize the publication of the final notice to the HUD Multifamily field offices and industry organizations, so that they may conduct outreach to owners and encourage eligible owners to apply.

D. Provide Optional Assistance as regular Tenant Protection Vouchers (TPVs)

One commenter asked that HUD allow owners and tenants to apply for regular TPVs (in addition to enhanced vouchers or project-based voucher (PBV) assistance), in order to allow families' rent to be calculated at 30% of their income (rather than the higher percentage used for enhanced voucher assistance if the family was paying more than 30% of their income on rent prior to the expiration of the affordability restrictions), and to allow residents where owners do not apply for assistance (and are unwilling to execute a voucher housing assistance payment) to receive a regular TPV to relocate.

HUD response: The statutory language authorizing this assistance explicitly provides that the assistance may only be provided as either enhanced voucher or project-based voucher assistance.

E. Notice to Tenants

Commenters asked that HUD require owners to notify tenants (and HUD, local governments, and any HUD-funded Tenant Resource Network grantee in the area) at least 12 -18 months in advance of expiring affordability restrictions.

HUD response: The notice makes funds available to households at properties where the mortgage maturity or use agreement expiration date is in Federal Fiscal Year (FY) 2012 (i.e., October 1, 2011 – September 30, 2012) or prior to FY 2012; or where the date of the rental assistance contract expiration is before FY 2012 for RAP contracts and before FY 2000 for Rent Supplement contracts. These dates are all in the past; therefore, the request that HUD require owners to notify tenants at least 12-18 months in advance of expiring affordability restrictions is not applicable to this notice. Outside of this notice, HUD is aware of and concerned about this issue and will look into appropriate methods to ensure that residents are given sufficient notification of expiring affordability restrictions at their property. As such, HUD takes these comments under advisement.

F. Enhanced Voucher Requirements

One commenter asked whether the enhanced voucher requirement that “the family must continue to contribute towards rent at least the amount the family was paying for rent on the date of the maturity of the mortgage, etc.” perpetuates the family’s rent burdening. Similarly, the commenter asked if the example (on page 21 of Notice PIH 2012-39) of a family’s rent calculation reverting (after a significant decline in family income) to the percentage of income paid by the family for rent on the effective date of the triggering event is in conflict with the terms of the notice, since the family in the example was

paying 35% of income on rent at that time, yet the notice restricted assistance to families rent-burdened at the 40% threshold.

HUD response: These characteristics of enhanced vouchers are statutory requirements, found at section 8(t) of the United States Housing Act of 1937. Please note that the amount the family was paying for rent on the date of the triggering event refers to the amount the family was paying **on** that date, not the potentially higher amount the family may have to pay **after** that date due to any increased rent the owner may charge as a result of the expiring affordability restrictions. The rent-burden thresholds used in the notice to determine eligibility for this assistance are an assessment of rent burden the family may experience **after** the expiration of the affordability restrictions.

G. Finalize the Notice Promptly

One commenter asked HUD to promptly finalize the notice so assistance can reach families soon.

HUD response: HUD has worked to address public comments and incorporate them into the final notice as quickly as possible.