

Introduction to HUD-Subsidized Housing Programs

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Housekeeping

- All on mute. Use Questions function for substantive questions and for technical concerns.
- Problems getting on the webinar? Send an e-mail to NCLER@acl.hhs.gov.
- Written materials and a recording will be available at NCLER.acl.gov. See also the chat box for this web address.

About NCLER

The National Center on Law and Elder Rights (NCLER) provides the legal services and aging and disability communities with the tools and resources they need to serve older adults with the greatest economic and social needs. A centralized, one-stop shop for legal assistance, NCLER provides Legal Training, Case Consultations, and Technical Assistance on Legal Systems Development. Justice in Aging administers the NCLER through a contract with the Administration for Community Living's Administration on Aging.

About NHLP

National Housing Law Project (NHLP) is a legal advocacy center focused on increasing, preserving, and improving affordable housing; expanding and enforcing rights of low-income residents and homeowners; and increasing housing opportunities for underserved communities. Our organization provides technical assistance and policy support on a range of housing issues to legal services and other advocates nationwide.

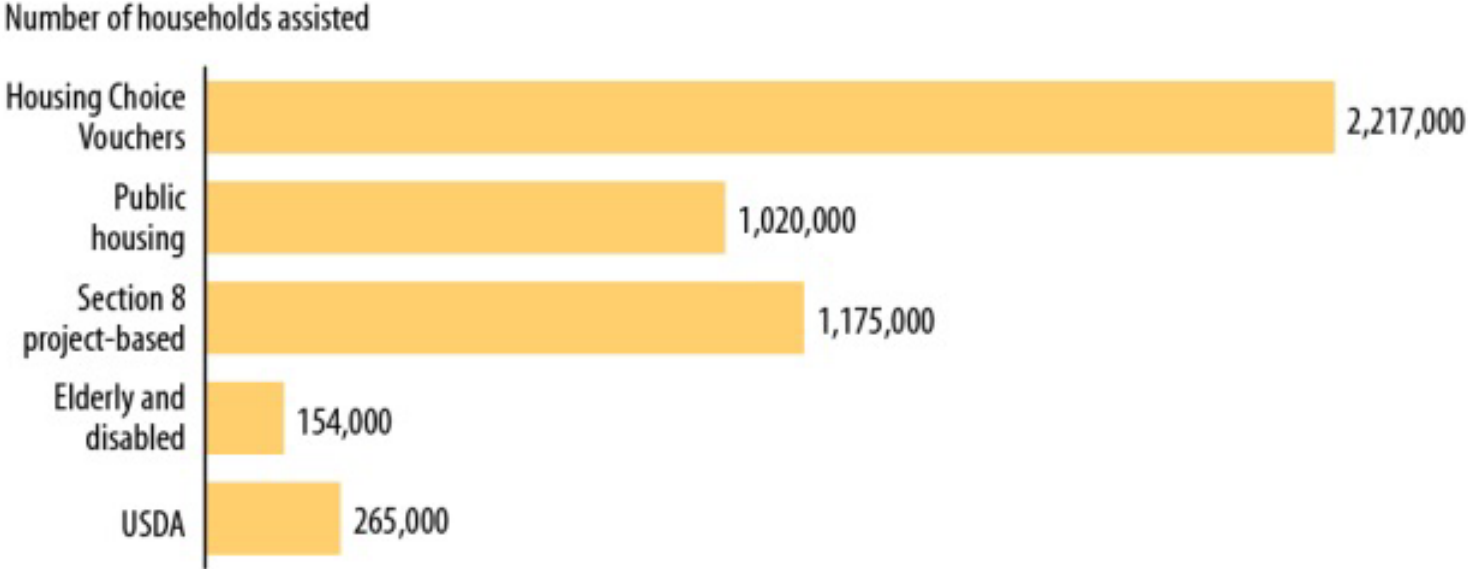
Key Lessons

Overview of the key features and program-specific requirements for the following 3 HUD-subsidized housing programs:

1. Public Housing program
2. Housing Choice Voucher program
3. Section 8 multifamily Project-Based Rental Assistance (PBRA) program

Federal Rental Assistance Used

What Major Types of Federal Rental Assistance Do United States Families Use?



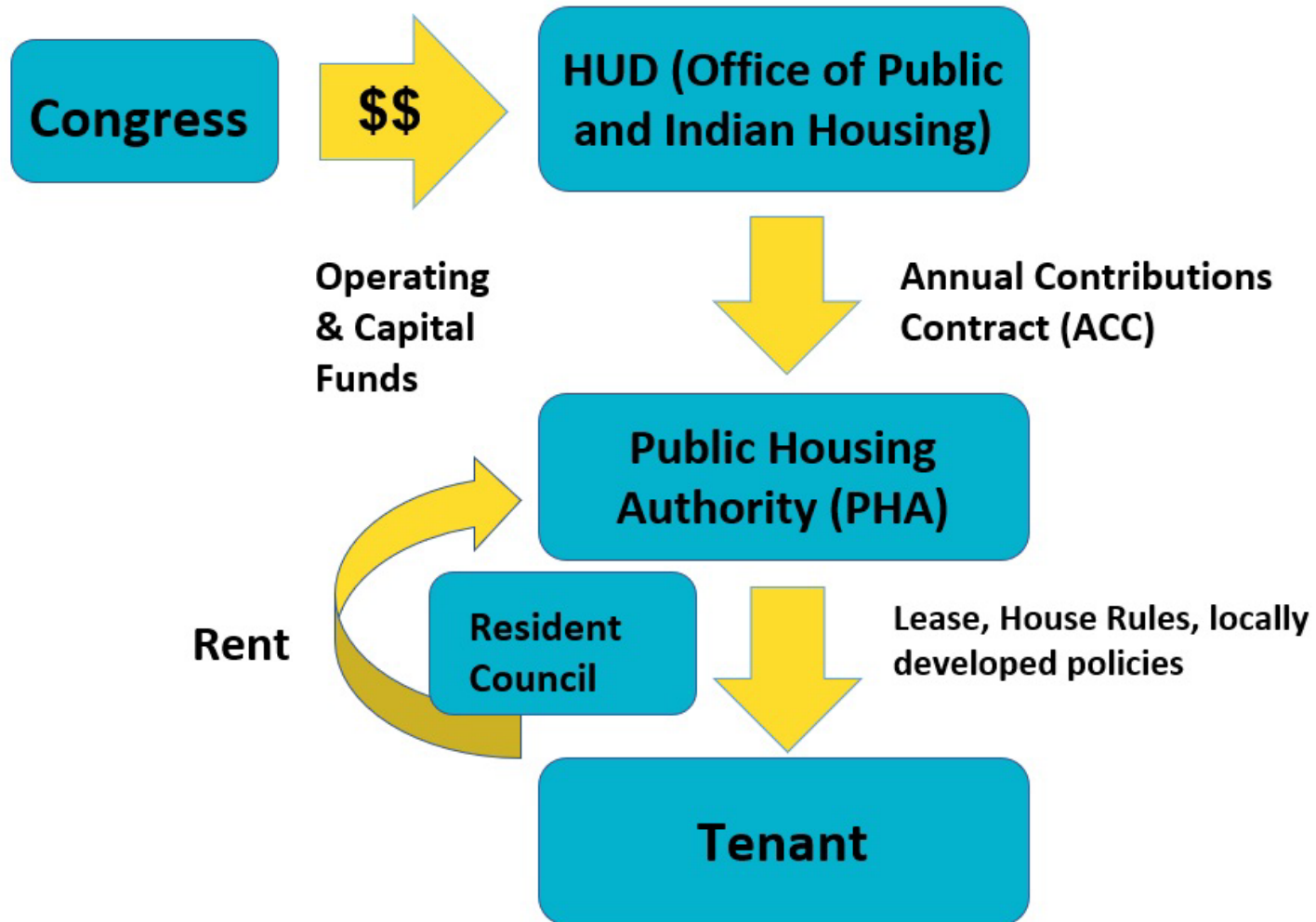
*Center on Budget and Policy Priorities, United States Fact Sheet: Federal Rental Assistance, found at <https://www.cbpp.org/sites/default/files/atoms/files/4-13-11hou-US.pdf>

Public Housing

Public Housing: Key Features

- **Deep HUD subsidy** intended to serve even “extremely low income” households (<30% AMI or federal poverty level)
- **Owned and operated by local Public Housing Authorities (PHAs)** pursuant to PHA Plans (Annual, 5-Year, MTW) & public housing lease requirements
- **Strong federal tenant rights**, including only “good cause” eviction, grievance procedures, right to organize, and to tenant participation & funds

Public Housing Funding & Ownership



Public Housing: Legal Authority

- **Statute**
 - United States Housing Act of 1937, codified at 42 U.S.C.A. § 1437
- **Regulations**
 - 24 C.F.R. Part 5, 24 C.F.R. Part 900, et seq. (Part 960: Admissions and Continued Occupancy, Part 966: Lease & Grievance)
- [Public Housing Occupancy Guidebook](#) (updated)
- **Annual Contribution Contract**
 - HUD Form 53010 (contract between HUD and PHA)
- **Deed of Trust or Deed of Restrictive Covenant**
- **Locally developed plans, policies, and contracts**
 - PHA 5-Year and Annual Plans – 24 CFR 903.7 what must be included
 - *Designated Housing Plan
 - Admissions and Continued Occupancy Policy (ACOP)
 - Tenant lease with grievance procedures
- **Other HUD notices and forms**
 - Available at www.hud.gov

Aging Stock Serving the Most Vulnerable

- **907,866** units remain (down from high of 1.4 M units)
- 2/3 built in 1970s or before
- 1.8 million low-income residents who are:
 - 55 % (1/3) elderly and/or (1/4) disabled households
 - 36% families with children
 - 75% extremely low income
 - 59% families are working
 - 77% Black, Indigenous and People of Color

Despite Negative Racialized Stereotyping of Public Housing...

- Many diverse, thriving communities
- 75% of PH residents satisfied about public housing overall
- Majority in good or decent condition (but 23% failed REAC since >2/3 pre-1970s)
- Nearly 50% are in low-poverty census tracts
- 75% are: row houses, townhomes, walk-up garden style, detached, semi-detached homes and scattered site housing
- Less than 25% are high-rise or mixed developments
- Less than 50% are in big central city locations
- 1 in 5 were constructed in rural areas

Application and Eligibility

- Apply with PHA
- Some buildings are for seniors and/or persons with disabilities or families.
- Must be “low-income” ($\leq 80\%$ AMI) & at least 40% new admissions must be “extremely low-income” households ($\leq 30\%$ AMI).
- New HOTMA asset rules and over-income rules.
- Household size = bedroom size (live in-aide).
- Other requirements (e.g., immigration status, Social Security number)

Admissions, Waitlists, Priority, Preference

- Tenant Screening
 - [HUD guidance](#) for criminal history screening
 - PHAs can do “tenant suitability” screening
 - Notice and informal hearing to contest required
- Waiting Lists
 - site-based and/or central waiting lists.
- Preferences
 - Local preferences: for example, homeless families, youth aging out of foster care, or people with disabilities permitted.

Public Housing Rent Calculation

- Income-based rents: generally 30% of adjusted income
- **Step 1:** Calculate annual income= anticipated total income received by the family (including wages and tips, welfare assistance, child support payments, etc.).
- **Step 2:** Exclude specific kinds of payments (i.e. income of minors, students, live-in aides, medical expenses).
- **Step 3:** 30% of (Step 1- Step 2) divided by 12 = **Tenant's Monthly Rent** (if utility included in gross rent)
- **Step 4:** Subtract **utility allowance** if tenant-paid utilities.
- *Proration for mixed-households.*

Public Housing: Utility Allowance

- Residents who pay their own utilities are entitled to an allowance for consumption of reasonable level of utilities by an energy-conservative household.
- Residents are entitled to a utility reimbursement, or the PHA may pay the reimbursement directly to the utility company, if the allowance exceeds the tenant rent.
- Utility allowance applies only to income-based rent (vs. flat rent or minimum rent).

Public Housing: Minimum Rent & Hardship Exemption

- Each PHA can establish its own minimum rent, ranging from \$0 to \$50 per month
 - PHAs must establish policies to provide a hardship exemption to prevent tenants from being evicted because they cannot pay minimum rent
- If the minimum rent exceeds 30% of tenant's adjusted income, the tenant's rent is set at minimum rent (unless hardship provision applies)

Public Housing: Flat Rent

- Public housing tenants also have option to pay a “flat rent” based on rental value of unit, not tenant’s income
 - Flat rent = rent for which the PHA could promptly lease the unit
 - PHAs must use reasonable method to determine flat rent, which must be documented, and consider factors such as:
 - Location
 - Quality
 - Size
 - Unit type and age, and
 - Amenities provided

Public Housing: Recertification

- Generally annual recertification required
- 3 year recertification policy permissible for fixed income households with COLA in interim (can use income determination of other federal public assistance)
- ACOP contains the interim recertification requirements
- For **income decrease**, interim recert required (except for loss of certain welfare income)
- For **income increase**, interim recert not required if w/in last 3 months of cert period
- **No interim rent increase** unless received interim reduction during the year
- **Over-income Households:** PHA must adopt a policy of whether such households can remain paying alternative rent or get terminated & leave.

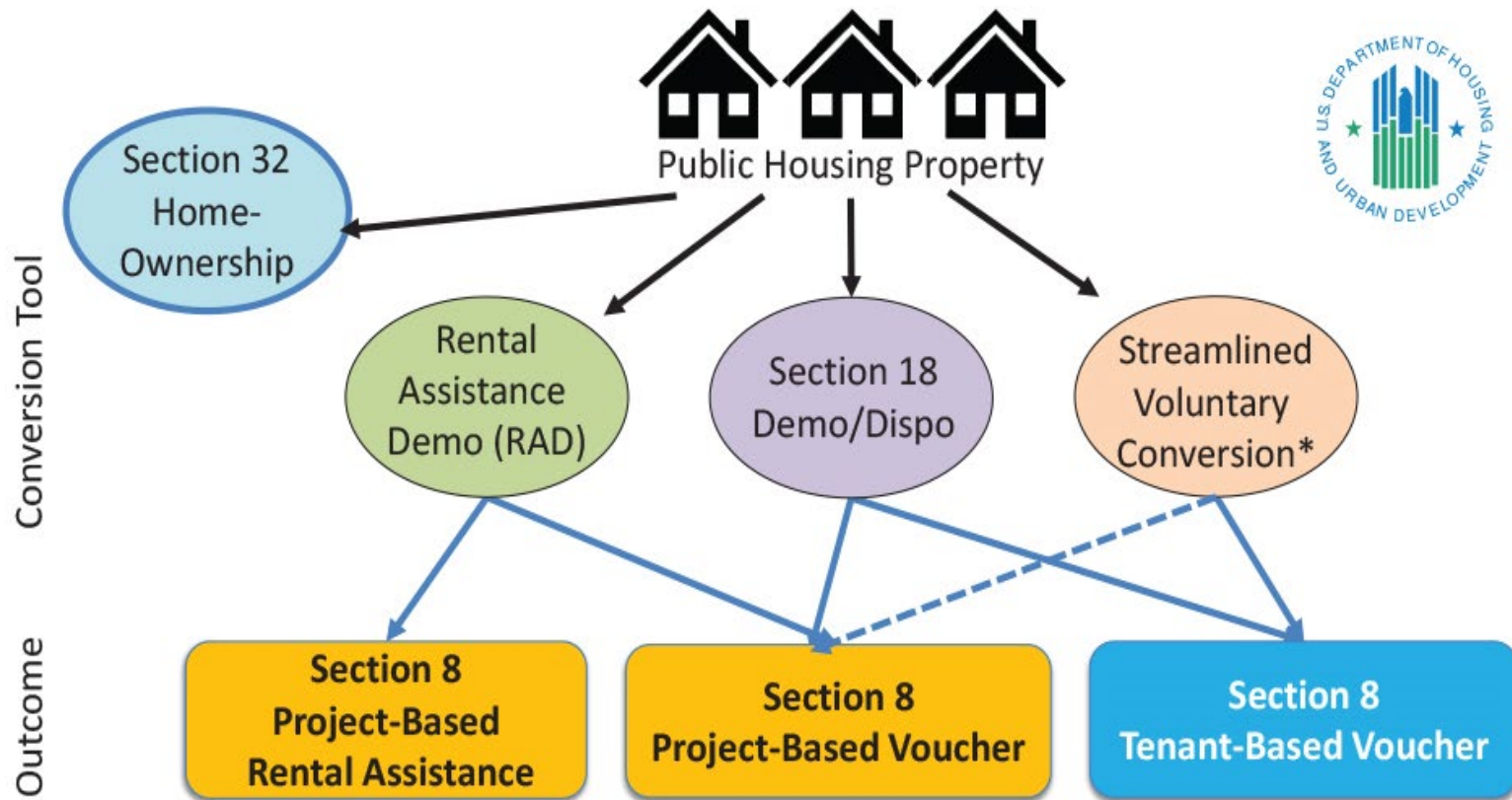
Public Housing: Grievance Procedure

- **Grievance procedure:** to address any dispute a tenant may have regarding PHA action or failure to act in accordance w/tenant lease or PHA regulations, which adversely affect tenant's rights, duties, welfare or status (except eviction action involving some criminal activity)
- **Pre-eviction grievance hearing:** written notice of good cause & opportunity for informal conference with PHA official & formal grievance hearing before impartial hearing officer.
- **Note:** State and local laws may provide greater protection.

Public Housing: Termination

- Notice minimums:
 - 14 days for nonpayment
 - 30 days or lesser state law period for other cause
 - Content: grounds, right to examine PHA docs, right to grievance or why N/A
- Good cause protections (required lease language):
 - No termination “except for **serious or repeated violation of the terms or conditions of the lease** or for **other good cause**” including drug-related criminal activity on/off premise; criminal activity that threatens health, safety, right of other residents/staff.

Public Housing Repositioning Options



* Under Voluntary Conversion tenant protection vouchers must first be offered to residents as tenant-based assistance but may be project-based with tenant consent.

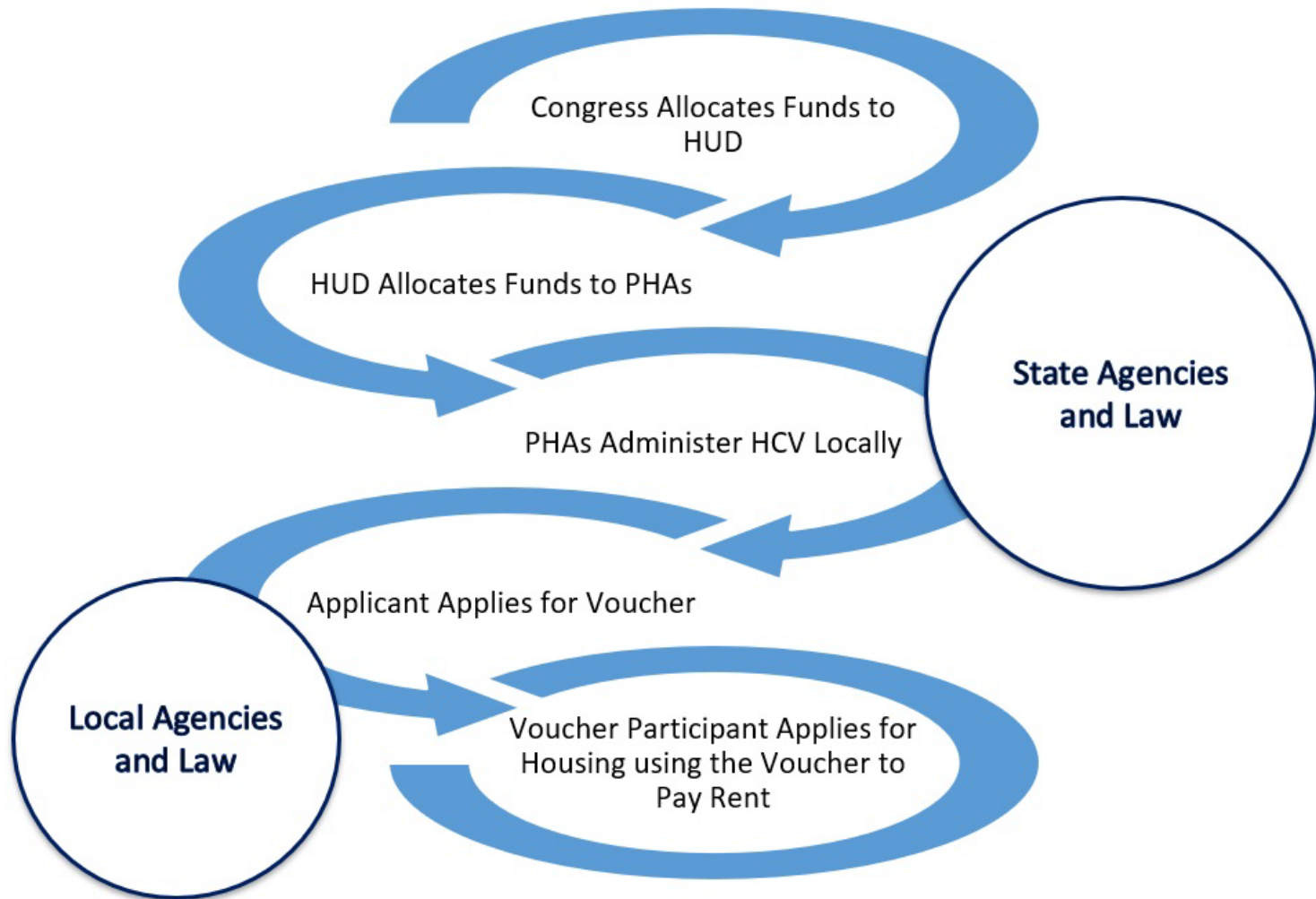
*SVC and some Section 18 options require public housing program close-out.

Section 8 Housing Choice Vouchers

Housing Choice Voucher: Key Features

- **Housing Choice:** Tenant can select their unit on the private market
- **Mobility:** The ability to move with continued assistance
- **Portability:** The ability to use the Voucher in another PHA's jurisdiction

Housing Choice Voucher: Key Actors



Housing Choice Voucher: Legal Authority

- Federal Statute and Regulations
 - Statute: 42 U.S.C.A § 1437f(o) (the main provisions governing the voucher program)
 - Regulations:
 - 24 C.F.R. Part 982 (comprehensive regulations for the Voucher program)
 - 24 C.F.R. Part 5 (certain cross-cutting requirements applicable to other low-income housing programs)
- HUD Guidance
 - [HUD's Housing Choice Voucher Program Guidebook](#) (updated)
 - [HUD PIH Notices](#)
 - HUD Forms
- Local Rules, Policies and Contracts
 - PHA's 5-year Plan and Annual Plan
 - Section 8 Administrative Plan
 - State and Local Landlord-Tenant Law

Housing Choice Voucher: Local Rules, Policies, & Contracts

- PHA's 5-year Plan and Annual Plan
- Section 8 Administrative Plan
 - [Landlord participation incentives](#)
 - [Mobility Counseling](#)
- Landlord-created Lease
- State and Local Landlord-Tenant Law
 - [Source of Income Discrimination Protections](#)
 - [Rent Control](#)

Housing Choice Voucher

- Eligibility
 - Low-Income or Very Low-Income
 - 75% of all new admissions must be Extremely Low Income Applicants
 - Citizenship Restrictions
- Preferences
 - Preferences locally adopted by PHA
 - Included in the PHA Plans and Section 8 Admin Plan
 - PHA may opt to not have preferences

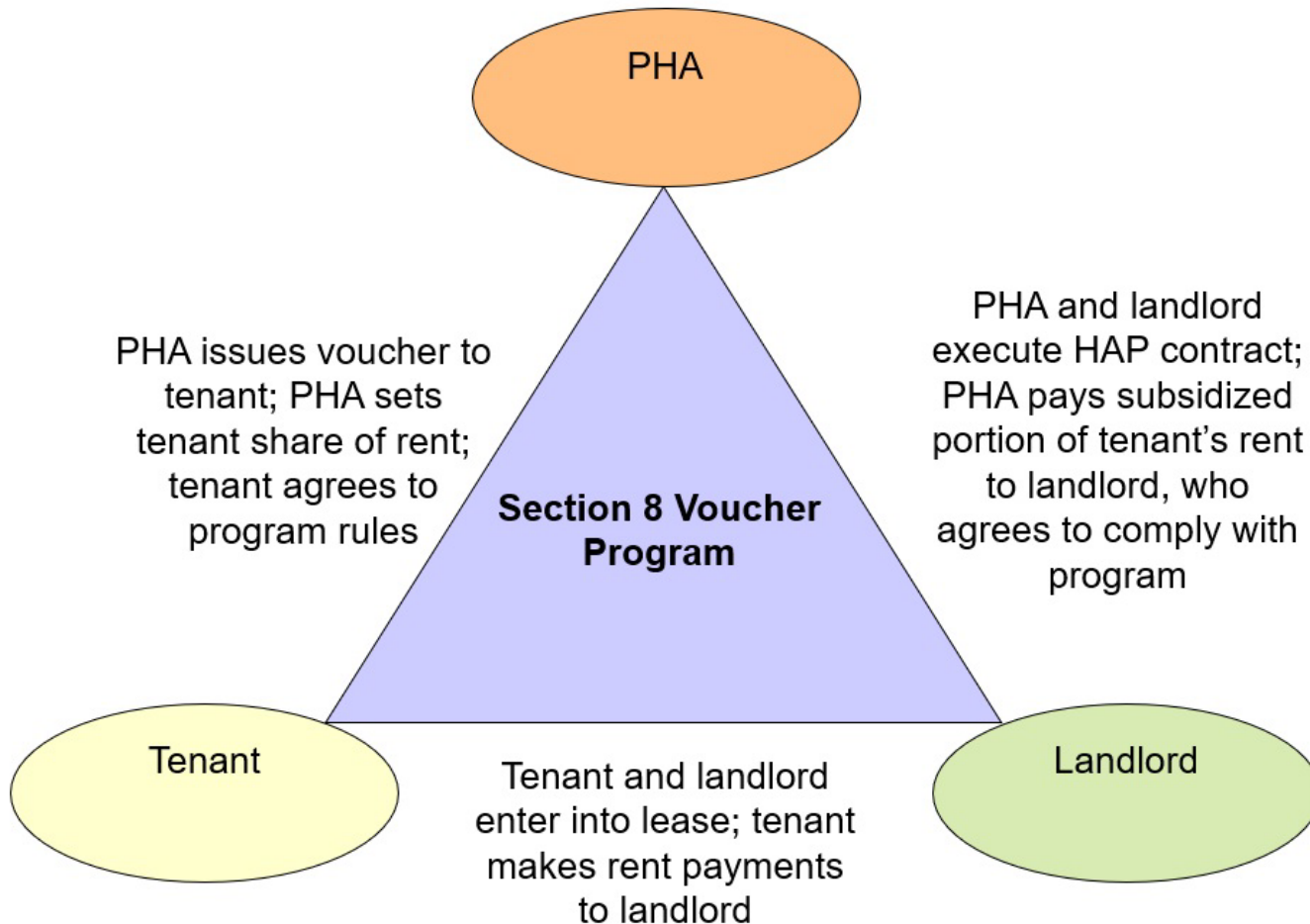
Housing Choice Voucher: Obtaining a Voucher

- Applicant applies for a Voucher with the PHA
- PHA conducts eligibility review and screens for suitability
 - Applicant must be low-income or very low-income
 - Must deny applicants with certain criminal history and/or based upon immigration status
 - PHA may establish additional screening factors & adopt local preferences
- PHA may give the applicant a Voucher, place applicant on the waitlist, or deny the applicant's application
 - If Applicant receives a Voucher, Tenant must find housing on the private market
 - Wait Lists are developed using the PHA's local policy
 - If Applicant is denied a voucher, Tenant can request an informal review

Housing Choice Voucher: Obtaining Housing with a Voucher

- Applicant has received a Voucher and applies for housing with a Landlord
- Landlord screens for tenant suitability
- Landlord can accept or deny the application
- If the Landlord accepts the application, PHA must approve the leasing of the unit
 - Unit Eligibility
 - Housing Quality Standards Inspection
 - Executed Lease includes Tenancy Addendum
 - Rent Reasonableness
 - Unit within Rent Limitations

Section 8 Voucher Relationship



Housing Choice Voucher: Tenant Rent

- Tenant share of rent is a function of
 - (1) tenant income,
 - (2) maximum subsidy (payment standard) and
 - (3) rent charged for the unit.
- Most tenants pay 30% of adjusted income
- Tenant contribution (rent plus allowance for tenant-paid utilities) for new unit or initial unit for new participant cannot exceed 40% of tenant income (40% cap)

Housing Choice Voucher: Total Rent

- Total Rent = Utilities + Total Rent for the Unit
- What Impacts the Tenant's Portion of the Rent?
 - Payment Standard for the Area
 - Tenant's Income
 - Applicable Income Exclusions
 - Total Rent for the Unit
 - Subsidy Standard for the Area
- Limiting the Tenant's Portion of the Rent
 - 30% of Adjusted Income
 - Metric used for most families
 - 10% of Gross Income
 - Welfare Rent
 - Minimum Rent

Housing Choice Voucher: Payment Standard

- HUD sets Fair Market Rents (FMRs) based on regional rent data
- PHA sets the maximum level of the subsidy by bedroom size—the **Payment Standard**. Payment Standard is set:
 - By PHAs at 90-110% of the FMR
 - Generally, if set above 110%, HUD approval required
 - Due to pandemic, HUD waivers make it easier for PHAs to go above 110% of FMR to 120% through 2023
 - May also be increased as a reasonable accommodation
- Some PHAs use Small Area Fair Market Rents (SAFMRs)
 - FMR— reflects rental prices of a larger metropolitan area
 - SAFMR— reflects rental prices of a zip code
- **Practice Tip:** The subsidy standard is one of many factors that will impact the “sufficiency” of the payment standard.

Housing Choice Voucher: Mobility

- A current Voucher tenant may look for a new unit at anytime (with some limitations)
- The PHA may, however, deny issuing a relocation Voucher if there is an issue with the current lease or family obligations
- Most PHAs set a limited search time for families to “lease up”
- Note exceptions for RA, DV, or others
- Additional steps if tenant wants to port to another PHA’s jurisdiction
 - Receiving PHA can rescreen porting families for criminal history

Housing Choice Voucher: Termination & Eviction

- **Voucher Termination** = PHA terminates the tenants voucher
- **Eviction** = Landlord uses judicial procedures to evict voucher tenant from housing
- These are separate processes, but they can be related

Housing Choice Voucher: Eviction

- Eviction and Voucher termination are two separate processes, but are related
 - CARES Act requirement to issue a 30-day notice prior to an eviction is still in effect
- Eviction-- Landlord must use the judicial process to evict voucher tenant from housing
 - During initial lease term, landlord may only evict for grounds set forth in lease
 - At the end of the lease term, landlord may terminate the tenancy w/o cause (subject to local & state eviction control protections)
- If tenant is evicted for a serious lease violation, it's also grounds for terminating the voucher

Housing Choice Voucher: Voucher Termination

- PHA must give notice of the reason for the proposed termination and an opportunity for an informal hearing
- Good cause required-- PHA is limited to terminating assistance only on the grounds listed in HUD's regulations

Housing Choice Voucher: Informal Hearing

- Tenant may request an informal hearing for certain acts of the PHA, including:
 - Rent and income determinations;
 - PHA's refusal to provide assistance under portability procedures; and
 - Proposed termination of the Voucher based on action or inaction by the tenant

Project-Based Rental Assistance

Project-Based Section 8: Historical Context

- Congress enacted Section 8 in 1974
- However, project-based Section 8 is no longer used as a means of producing new affordable units for low-income families
 - Most initial contracts have expired and been renewed for 5-30 year terms (initial contracts usually from 1978-1983).
 - Most owners are now on 20-year contracts.
 - Conversion from public housing to project-based Section 8 possible through Rental Assistance Demonstration

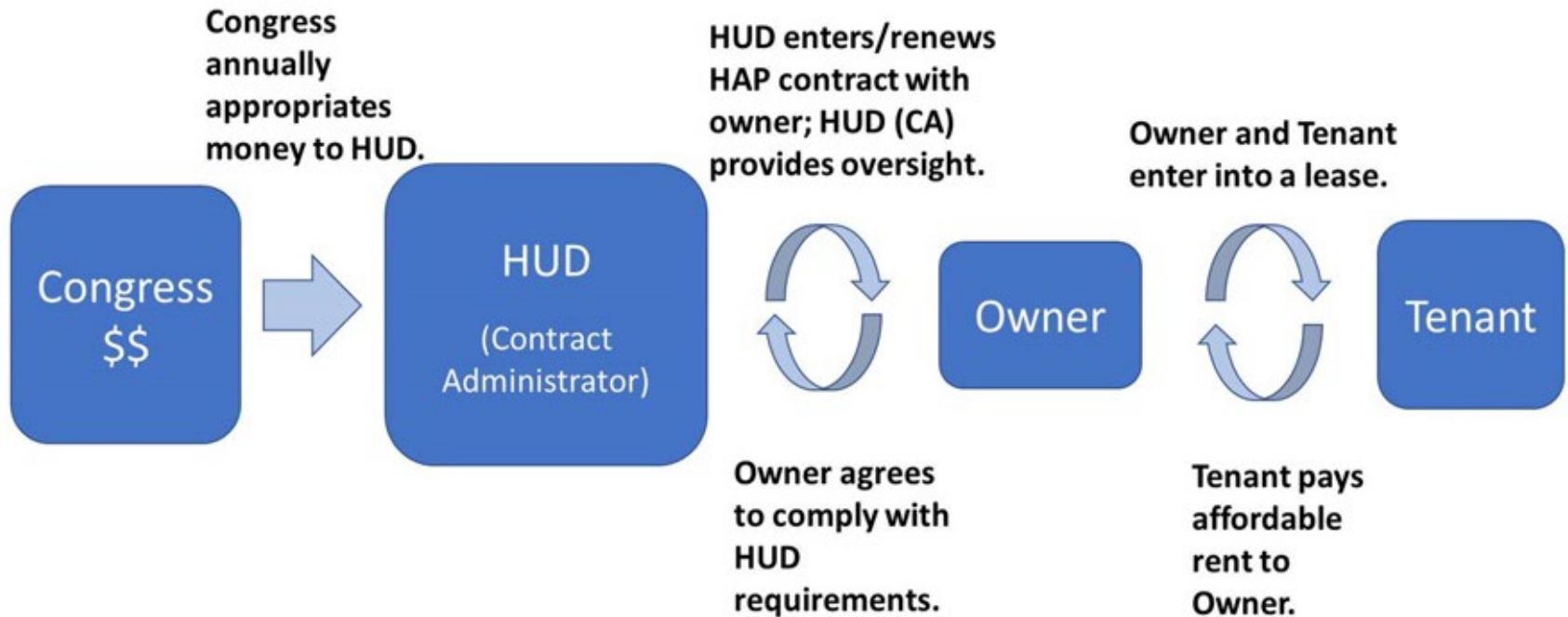
Project-Based Section 8: About the Program (1 of 2)

- Program serves > 2 million individuals & 1.2 million low-income and very-low-income households.
- Two-thirds of project-based Section 8 households are headed by seniors or persons with disabilities.
- Owners and HUD enter into a housing assistance payments (HAP) contract.
- Tenant enters into a lease with the owner and pays an affordable rent, **typically 30 percent of the tenant's adjusted income.**
- Rental subsidy is **attached to the property, not the tenant.**

Project-Based Section 8: About the Program (2 of 2)

- HUD pays the owner a subsidy to cover the difference between the tenant's share (“tenant contribution”) and the total rent for the unit (“contract rent”).
- **Practice Tip: Do not confuse with Project-Based Section 8 with Project-Based Vouchers – different rules apply!**

Project-Based Section 8: Actors



Project-Based Section 8: Legal Authority

- Section 8 of United States Housing Act of 1937 - 42 U.S.C.A. § 1437f
- 42 U.S.C.A. §§ 13661-13664
- HAP Contract
- 24 C.F.R. Parts 880, 881, 883, 884, & 886; 24 C.F.R. Part 247 (evictions)
- HUD Handbook 4350.3
- HUD Model Lease
- Owner tenant selection plans and house rules
- HUD Housing Notices
- Guidance documents (e.g., COVID-19 Q&As)
- Section 8 Renewal Policy Guidebook

Project-Based Section 8: Eligibility

- Generally, applicants must be “**very low-income**” (VLI), which describes households that do not earn more than 50% of area median income (AMI).
- Owners must target some units to “**extremely low-income**” (ELI) households (income does not exceed 30% of AMI, or federal poverty level).

Project-Based Section 8: Admissions

- Tenant Selection Plans must be adopted.
 - 24 C.F.R. § 5.655(b)(2).
- Waiting Lists must be maintained and tenants selected from it.
 - HUD Handbook 4350.3, Chapter 4
- Preferences – certain preferences permitted.
- Screening – immigration, income, criminal.
- Denial – notify of reason for denial in writing & opportunity to meet with owner.

Project-Based Section 8: Rents & Recertifications

- Income-Based rents
 - Tenants typically pay 30% of adjusted income.
- Tenant can be required to pay a minimum rent of \$25.
- Utility allowances for tenant-paid utilities.
- Annual or interim Recertification.

Project-Based Section 8: Termination and Evictions

- “Good cause” required, which includes
 - Material noncompliance with lease
 - Material failure to carry out obligations under state landlord-tenant law
 - Drug abuse, alcohol abuse, and certain criminal activity
 - Threats to health/safety/peaceful enjoyment
 - Other good cause
- See 24 C.F.R. § 247.3 (evictions); HUD Handbook 4350.3, Chapter 8

Project-Based Section 8: Procedural Protections

- Notice requirements
 - Length generally governed by state law
 - Content
 - Good cause and relevant facts
 - Prior written notice for “other good cause”
 - Right to meeting and judicial defense
- Informal meeting with management prior to denial/termination.
- See 24 C.F.R. Part 247 (evictions), HUD Handbook 4350.3 ¶ 4-9 (admission) and Ch. 8 (terminations)

Additional Resources

- [Housing Justice Network](#)- Join!
- [HUD Housing Programs: Tenants' Rights \(Green Book\)](#)
- [NHLP Trainings and Other Publications](#)
- New HOTMA [Over-Income](#) & [Asset Rules](#)
- [New HUD Guidance on Application of Fair Housing Act Standards to the Use of Criminal Records](#)
- [HUD's Public Housing Occupancy Guidebook](#) (updated)
- [HUD's Housing Choice Voucher Program Guidebook](#) (updated)

Some Comparisons: Public Housing, PBV, HCV, and LIHTC

Program Type	Tenant Rent & Utilities	Initial Income Eligibility Cap	Affordability Term	Targeting /Set Aside Minimum	Permissible Local Preferences
PUBLIC HOUSING (ACC-ACOP)	30% of HH adjusted gross income (or flat rent)	80% AMI (“Low Income”)	ACC contract renewal required, subject to Congressional appropriation	40% new admissions for 30% AMI (“Extremely Low Income” = ELI)	residents, disabilities, elderly, veterans, homeless, domestic violence, working (must not exclude disabled, elderly)
SECTION 8 PBV or HCV (HAP-Admin Plan)	30% of HH adjusted gross income	50% AMI (“Very Low Income”)	HAP contract renewal required, subject to Congressional appropriation	75% of voucher waitlist for 30% AMI (ELI)	Same as Public Housing
LIHTC * (LURA – QAP) *Can be combined with rental assistance like Sec 8 vouchers	NOT based on households’ actual income; 30% of unit’s designated AMI (e.g., 50% or 60%) & based on imputed 1.5 person per bedroom occupancy	80% AMI subject to designated unit AMI test (see Targeting / Set Aside Minimum)	LURA total 15 years compliance period* + 15 extended use period = total 30 years max affordability restriction (expires after) –BUT states can require longer as part of their QAP (CA requires 55 years for 9% LIHTC; provides “basis booster” incentive for 4% LIHTC elected for 55 years)	20-50 Test: 20% of units earning <=50% AMI; or 40-60 Test: 40% of units earning <=60% AMI; or Income Averaging: 40% of units restricted at designated 20%-80% AMI + average of designated imputed income not to exceed 60% AMI	State-designed QAP selection criteria must address 1) location, (2) housing needs, (3) public housing waiting lists, (4) individuals with children, (5) special needs populations, (6) whether part of a community revitalization plan, (7) project sponsor characteristics, (8) projects intended for eventual tenant ownership, (9) energy efficiency, and (10) historic nature

Green Book

The screenshot shows a web browser window with the URL <https://library.nclc.org/GB>. The page is hosted by NCLC Digital Library and features the National Housing Law Project (nhlp) logo. The navigation menu includes Home, Bookstore, and My Treatises. A search bar is present with the text "This Treatise".

The main content area is titled "HUD Housing Programs: Tenants' Rights (The Green Book)". It includes a "Jump to Section..." input field and options for "My Annotations/Highlighting", "My Bookmarks", and "Send Comments to the Editors". The "Treatise Overview" section lists "Summary" and "Front Matter". The "Contents" section lists "Chapters".

The "Summary" section is highlighted with a red "Read Online" button. The text reads: "What is the Green Book? HUD Housing Programs: Tenants' Rights (the 'Green Book') is National Housing Law Project's signature publication. The Green Book is the quintessential guide to understanding HUD's housing programs. The Green Book's treasury of information is the product of over 50 years of legal experience specifically focused on HUD housing law, decades of successful high-impact litigation, and a deep understanding of intricate federal housing policy. The manual includes new policies, emergent case law, and regulatory changes that shape the legal framework for cases that impact HUD tenants. The Green Book also contains unpublished court decisions, hard-to-find memos, and legal theories and strategies, providing a comprehensive treatise on evictions, subsidy terminations, affordable housing preservation and much more. The 5th edition includes substantive updates on:

- Housing Opportunity Through Modernization Act (HOTMA), which revised federal statutory

To the right of the text is a book cover for "HUD HOUSING PROGRAMS: TENANTS' RIGHTS FIFTH EDITION" by nhlp NATIONAL HOUSING LAW PROJECT.

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