

August 29, 2024

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

**RE: Docket No. FR-6466-N-01
Request for Information; Direct Rental Assistance**

To Whom it May Concern:

The undersigned national associations represent for-profit and non-profit owners, operators, developers, lenders, property managers and housing cooperatives involved in the provision of rental housing, both affordable and conventional. We have long supported the Housing Choice Voucher (HCV) Program, which provides rental subsidies to approximately two million very low-income households who obtain housing in the private rental market and provides opportunities for our members to expand quality, affordable housing options for their residents.

However, we face serious obstacles in addressing rising housing costs, maintaining affordable housing stock, and delivering much-needed new supply.

While there are many improvements that could be made to the HCV program that would expand participation by housing providers, the only way to truly ensure the program's success is to greatly increase the supply of housing available at the price point the program can pay. Today, there is simply not enough housing. Yet the HCV program's success is hindered by burdensome program requirements that add unnecessary roadblocks to leasing and tenancy¹; inconsistent program management by more than 3,300 public housing agencies (PHAs) across the U.S. is also a major factor. Challenges include:

- Rents and rent increases that often do not keep pace with market rates;
- Payment delays, inconsistent disbursements, and sometimes arbitrary withholdings; and
- Ongoing inspections-related challenges that result in holding rental units unoccupied.

Unfortunately, in communities across the country, these factors threaten the solvency of rental communities and largely contributed to 55,000 housing providers leaving the

¹ See the difference between a standard leasing process and the housing voucher leasing process at https://www.naahq.org/sites/default/files/2022-05/NAA%20Process%20Chart%204.21_revised.pdf.

program from 2010-2020 ultimately hurting renters who rely on HCV assistance.² Transitioning the HCV program to EBT could be far reaching and could address many of the shortcomings of the current program. EBT would allow HUD to improve the integrity of the program, increase private housing providers' participation, help close funding gaps, and better serve program participants. HCV already is a powerful tool to extend affordability and increase housing opportunities for low-income households as we collectively work to close the housing undersupply gap facing the nation.

To help address these challenges, we submit the following comments in response to the Department of Housing and Urban Development's (HUD or the "Department") Request for Information: Direct Rental Assistance (RFI). We applaud HUD's interest in this subject and urge the Department to consider a pilot program converting the Housing Choice Voucher program (HCV) into an electronic benefit transfer (EBT) system and possibly pairing it with housing navigators.

While important reforms were included in the Housing Opportunity Through Modernization Act (HOTMA) signed into law in 2016, additional reforms are necessary to streamline the program and incentivize greater participation. For this reason, we strongly believe that the HCV program would benefit from the updated enhancements contained in the Choice in Affordable Housing Act. The current procedures have deterred many professional owners and operators from participating and, therefore, has limited families' ability to access high-opportunity communities. We strongly support the Choice in Affordable Housing Act which authorizes and directs additional resources to attract and retain housing providers in the HCV program. We believe that implementing the solutions in the Choice Act will yield the desired results, such as:

- Permitting voucher administrators to incentivize providers in low-poverty areas;
- Helping with security deposits;
- Giving housing providers credit for qualifying federal inspections; and
- Expanding the use of neighborhood-specific data to set rental subsidies with a hold harmless provision to prevent payment decreases.

1. What policies or procedures should be in place to ensure that direct rental assistance payments are used by recipients for rental housing costs?

Test direct rental assistance to HCV recipients via EBT. As EBT systems do with Supplemental Nutrition Assistance Program (SNAP) benefits, these systems can pre-approve vendors that can receive payments, better track, and analyze assistance over

² *A Briefing From HUD on Boosting Landlord Voucher Acceptance*, Department of Housing and Urban Development Office of Policy Development and Research, May 16, 2023. See <https://www.huduser.gov/portal/pdredge/pdr-edge-featd-article-051623.html>.

time. After SNAP transitioned to EBT, the improper payment rate decreased by 51.8 percent, which would represent to the HCV program a \$207.6 million savings per year, including \$148.9 million in overpayments.

Additionally, federal administrative costs as a share of program expenditures decreased by 21.9 percent from 8.2 percent of total expenditures to 6.4 percent. An equivalent efficiency improvement for the HCV program would save \$407.6 million per year. Based on these two outcomes alone, nearly 105,000 housing units could be added to the voucher program.

According to NDP Analytics, if funds from these administrative costs and overpayments were reallocated to assist renters on waiting lists for housing assistance at the time this research was published, over 58,000 more vouchers could be issued with the cost savings from EBT.³

Study the merits of adopting a housing navigator as a standard practice in a direct rental assistance program to support renters.

Much like the industry’s support of “landlord liaisons,” the benefits of housing navigators could boost customer experience and appear equally compelling. Recent survey research has shown that “[n]avigators were able to support families’ sense of agency in their housing search, broaden their geographic choices, and ultimately support families to glean as much benefit from the golden ticket of an HCV opportunity as possible.”⁴

2. What steps should be taken to ensure that direct rental assistance is not treated as income for the purposes of taxes and other public benefit programs?

No steps should be needed to ensure direct rental assistance is treated as income for tax purposes. Neither the IRS nor states tax federal welfare benefits because those benefits qualify under the “general welfare exclusion” applied by the IRS to its definition of income at IRC Sec. 61(a) (26 USC 61). This exclusion derives from various revenue rulings concerning payments made from government programs that promote the general welfare like Section 8 voucher payments. See, for instance, IRS Rev. Rul. 74-205, 1974-1 C.B.20; IRS Rev Rul 98-19, 1998-1 C.B. 840.

3. How would the behaviors or engagement of housing providers, tenants or other stakeholders be expected to respond to direct rental assistance?

We expect housing providers to accept HCV more readily if it were provided through EBT. We attribute unreliable delivery of payments and difficult program rules for discouraging

³ <https://www.naahq.org/convert-section-8-hcv-ebt-system-save-4076-million-year>

⁴ Stefanie DeLuca, Lawrence F. Katz, and Sarah Oppenheimer, “When Someone Cares About you, It’s Priceless,” *The Russell Sage Foundation Journal of the Social Sciences*, Volume 9, Issue 5, 1 September 2023.

housing provider participation in the HCV program. According to a 2023 NAA survey, housing providers who left the HCV program cited burdensome administration, inspection, and approval processes as the most significant reasons for no longer participating in the program. Coupled with elimination of unnecessary and duplicative leasing and tenancy requirements, EBT would make HCV recipients largely indistinguishable from any other tenant. The consequent drop in HCV compliance costs would make voucher recipients much more attractive as residents. Duplicative lease and inspection requirements are also a burn on HCV recipients by delaying access to subsidy and financial relief.

4. How should direct rental assistance subsidies be calculated?

The RFI notes that HUD believes that the subsidy should be provided to low-income households eligible for the HCV program, the amount of the subsidy should be roughly equivalent to the HCV subsidy, and these responsibilities should be administered in partnership with Public Housing Agencies (PHAs) but without any contractual relationship between PHAs and housing providers renting to direct rental assistance recipients. We believe this largely settles the calculation of rental subsidy amount; however, the ultimate success of the program will continue to be dependent on the supply of housing available at the price point that the voucher can support in any given community.

5. How could a direct rental assistance program ensure that recipients have decent, safe, and sanitary housing, without creating a burden on landlords that might deter them from accepting tenants with the direct rental assistance subsidy?

We applaud HUD's Real Estate Assessment Center for developing and implementing their new model, National Standards for the Physical Inspection of Real Estate (NSPIRE), for HUD-assisted housing inspections. This model prioritizes health, safety, and functional defects over appearance more so than its predecessor and acknowledges the importance of preventative maintenance. However, inspection-related challenges continue to influence whether housing providers participate in the HCV program.

Housing providers that participate in direct rental assistance programs should qualify for reciprocity. In other words, their federal inspections should be waived if a rental community has a valid certificate of occupancy and received a passing score on state or local inspections. These programs already ensure that housing meets applicable building code standards and allow for a complaint-based system that holds housing providers accountable for deficiencies.

HUD's own analysis of the private rental market shows less than 6 percent of worst-case housing needs in 2023 are due to inadequate housing quality,⁵ further making the case to eliminate duplicative and burdensome federal inspections requirements.

6. What aspects of existing rental assistance programs, beyond those noted above, should be preserved in a direct rental assistance pilot or demonstration?

In addition to the recommendations above, we believe there are a number of other reforms and concrete proposals that deserve consideration. They include:

Invest in damage or loss mitigation programs that support renter households with security deposits and help housing providers manage some of the financial risk of participating in rental assistance programs. State and local programs across the country can reimburse participating housing providers for renter damages beyond normal wear and tear. Utah's Landlord Incentive Program pays for claims of up to \$5,000, including property damage, attorneys fees and court costs for evictions, and lost and unpaid rent.⁶ The Marin Housing Authority in Marin County, Calif. offers up to \$2,500 for security deposits, vacancy loss coverage to ensure housing providers do not lose rental income while waiting for a new HCV resident and up to \$1,000 for loss mitigation if a unit is damaged beyond normal wear and tear.⁷ These programs are an important tool for any community's housing provider engagement.⁸

Use the Family Self Sufficiency program (FSS) to connect families, PHAs, and housing providers in new ways. The FSS program can act as lever to connect residents, housing providers, and PHAs in ways that benefit all parties. Additional resources are needed to expand the FSS program so more households can benefit.

Incentivize regional policy solutions, such as PHA consortia, to achieve consistent policies and greater potential to reach opportunity area and meet other program goals; For examples, use the consortia to fund and maintain a regional risk pool, use a common set of program rules and requirements especially for families moving across PHA operating areas, provide vacancy and damage payments, and incentive payments.

Conclusion

While we can improve the HCV program with these types of reforms, its ultimate effectiveness to supporting low- and moderate-income households depends on increasing

⁵ <https://www.huduser.gov/portal/publications/Worst-Case-Housing-Needs-2023.html>

⁶ <https://jobs.utah.gov/housing/affordable/section8/documents/section8flyer.pdf>

⁷ <https://www.huduser.gov/portal/periodicals/em/winter19/highlight3.html>

⁸ https://www.usich.gov/sites/default/files/document/Risk_mitigation_funds_community_profiles.pdf

the supply of affordable housing units. We encourage Congress, and the Administration to consider additional incentives to build more housing including the expansion and reform of the Project Based Voucher program, expansion of the Low-Income Housing Tax Credit (LIHTC) and additional federal incentives to localities to reduce regulatory barriers to housing construction.

We commend HUD for considering new and innovative ways to make current programs more efficient and effective and attractive to the private sector. The public-private Section 8 housing choice voucher program could be the nation's most effective affordable housing and community development tool. If we are to address affordable housing issues head on at any level of government, our focus must shift to reforms that allow existing programs to work more effectively to serve renters and housing providers.

Respectfully submitted by:

Council of Affordable & Rural Housing
Institute of Real Estate Management
Manufactured Housing Institute
National Apartment Association
National Leased Housing Association
National Multifamily Housing Council