HUD’s Tenant Protection Fund offers the flexibility FSHO requires without disadvantaging households on the waiting list

Overview

The Fostering Stable Housing Opportunities Act of 2018 (FSHO) addresses an obvious synchronization flaw with HUD’s distribution of housing assistance to ease the transition to adulthood for youth leaving care. It is important to note that providing housing assistance to this group of young people is something that Congress has directed the Department to do since 1990.

However, due to the fact that HUD has elected to distribute FUP vouchers in a competitive notice, rather than on an “as needed basis” which is allowable under the Tenant Protection Fund, the fate of a foster child aging out in need of a voucher to ease their transition to independence is tied to whether or not they live within the jurisdiction of a PHA that has successfully applied for FUP and whether or not the availability of a voucher is synchronized with their emancipation.

It is also the case that the manpower required to respond to competitive Notices of Funding Availability for what could possibly be one voucher is not a prudent use of government resources. The competitive notice process also leads to a scenario wherein PHAs may hold an excess of unused vouchers. Of course, some advocates suggest that a complex re-allocation scheme would solve this problem - which will require more government dollars for a team of on-the-ground TA consultants to decode.

We offer that Congress can solve the synchronization problem and avoid a cumbersome reallocation process by simply directing HUD to use the Tenant Protection Fund as designed.

The TPV Solution

History

The Cranston-Gonzales Affordable Housing Act was signed into law in 1990 by President George H. W. Bush and it included multiple preferences to youth leaving foster care including Section 8 (both voucher and certificate funds), private subsidized units, and public housing. This seismic shift in affordable housing law also established FUP, FSS (then called “Operation Bootstrap”) and the Tenant Protection Fund. FUP is one of the four eligible purposes of the Tenant Protection Fund. Congress reminds HUD in each appropriations act that FUP is an eligible use of Tenant Protection Funds, yet regardless of the Secretary, this advice is promptly ignored. This has been the case since President George W. Bush took office, which is of course ironic, given that President George H. W. Bush signed FUP into law.

HUD awarded an average of 3,560 vouchers to public housing authorities each year between 1992 and 2001 from the Tenant Protection Fund. In fact, even during years
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when regular Section 8 vouchers were not awarded, HUD kept its commitment to provide vouchers for FUP from the Tenant Protection Fund.

However, a disturbing pattern emerged beginning in FY 2002 and FY 2003. During those fiscal years, HUD opted not to fund FUP, even though the Tenant Protection Fund had carry over funds in those years of $18 and $33 million respectively. In addition, in 2004 HUD suggested, in the document provided to the Hill entitled ‘HCF BA Needs for FY2005,’ that $170 million was available in the Tenant Protection Fund for rescission.

When made aware of this pattern, Sens. Murray and Bond decided to quickly allocate $20 million for FUP in FY2008, rather than direct HUD to spend funding from the Tenant Protection Fund. Congressional appropriators included $15 million in FY2010 and FY2011. This most recent allocation of $30 million includes a combination of FY2017 ($10 million) and FY2018 ($20 million) appropriations.

PHAs nationwide recently convened partners, including their public child welfare agencies to put together complex applications for 2018 FUP Notice of Funding Availability. Despite their diligence and commitment to serving youth, the synchronization issue brought to the attention of Congress by young people leaving care, will remain. The better use of PHA manpower and public resources is to offer vouchers on an as needed basis through the Tenant Protection Fund.

Tenant Protection Vouchers on an as-needed basis

As it turns out, the HUD Secretary has the discretion to deliver Tenant Protection Vouchers on an as-needed basis. This is the case for the Rental Assistance Demonstration Program (RAD), for example. However HUD elects to deliver other special purpose vouchers, including FUP (despite the fact that it is an eligible use of the Tenant Protection Fund) through a haphazard and unpredictable array of costly competitive notices.

HUD administers RAD and other demolition, displacement vouchers in such manner that PHAs simply determine how many units they will need to help households in their community re-locate to or remain in affordable housing. Once this figure is calculated, PHAs request funding from HUD and HUD distributes the funding. A cursory overview of the RAD notice linked here shows that in 2016, shows the programs and the considerable range of resources distributed through this expedient, and efficient “as needed, non-competitive” basis.

The FY 2016 awardees announced in this notice were provided HCVP tenant protection voucher (TPV) funds on an as-needed, non-competitive basis, i.e., not consistent with the provisions of a Notice of Funding Availability (NOFA). TPV awards made to PHAs for program actions that displace families living in public housing were made on a first-come, first-served basis in accordance with PIH Notice 2007-10, “Voucher Funding in Connection with the Demolition or Disposition of Occupied Public Housing Units,” and PIH Notice 2016-04, “Implementation of the Federal Fiscal Year (FFY) 2016 Funding Provisions for the Housing Choice Voucher Program.” Awards for the Rental Assistance Demonstration (RAD) were provided for Rental Supplement and
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Rental Assistance Payment Projects (RAD—Second Component) consistent with PIH Notice 2012-32 (HA), REV-2, “Rental Assistance Demonstration—Final Implementation, Revision 2.” Announcements of awards provided under the NOFA process for Mainstream, Designated Housing, Family Unification (FUP), and Veterans Assistance Supportive Housing (VASH) programs will be published in a separate Federal Register notice.

Finally, these vouchers are distributed on a “first-come, first-served” basis. This process is perfectly matched with FSHO because, as has been noted, this phenomenon of “government created homelessness” among youth is entirely predictable and requires the kind of synchronization that would be made available by “on demand” vouchers. PCWAs could provide PHAs with reliable estimates years in advance of a child’s emancipation – hence, the early application provision within FSHO.

Suggested language for the Appropriators

Year after year, the Tenant Protection Fund continues to have ample and inexplicable carry over (see attached). This carry over amount exceeded $130 million from FY17 to FY18. Given this troubling history, it might be worthwhile, for appropriators to direct the HUD secretary to spend not less than $20 million of the funds in HUD’s Tenant Protection Fund for the purpose of meeting the needs of FSHO/FUP youth on an as needed basis.

We suggest the following language be inserted into the FY2019 Appropriations Bill:

"The Committee finds that as many as one in five youth leaving foster care experience homelessness. The committee finds that young people who age out of the foster care system experience homelessness at alarming rates. Communities can provide services and housing for less than $6,000 annually while the cost of residential treatment and incarceration of these youth often exceeds $55,000 annually. Further the Committee further finds that HUD resources must be appropriately timed with young people’s emancipation and available within the community where they reside.

Accordingly, the Committee directs HUD to spend not less than $20 million from the Tenant Protection Fund on new incremental housing vouchers for the purpose of meeting the needs of emancipating foster youth eligible through the Fostering Stable Housing Opportunities Act to be issued during FY 2019 by a non-competitive Notice of Funding Availability.”
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The Evolution of FSHO

The FSHO Process in the Community

*FSHO is conducted without further disadvantaging waiting list households

The Public Child Welfare Agency
Independent Living Coordinator

PHA Waiting List

The PHA administers FUP-FSS to landlord and youth

FOR RENT

PCWA assists with landlord recruitment and positive youth development services through age 23

IL coordinator and young person file FUP paperwork with PHA about 6 months prior to leaving care

PHA requests TPV from HUD

HUD dispenses the funds "on demand"

Once the youth graduates, the funding is restored to HUD.

The PHA administers FUP-FSS to landlord and youth

The Public Housing Authority

The Public Child Welfare Agency

NCHCW 2018
which states: “(2) $110,000,000 shall be for section 8 rental assistance for relocation and replacement of housing units that are demolished or disposed of pursuant to section 18 of the Act, conversion of section 23 projects to assistance under section 8, the family unification program under section 8(x) of the Act, relocation of witnesses in connection with efforts to combat crime in public and assisted housing pursuant to a request from a law enforcement or prosecution agency, enhanced vouchers under any provision of law authorizing such assistance under section 8(t) of the Act, HOPE VI and Choice Neighborhood vouchers, mandatory and voluntary conversions, and tenant protection assistance including replacement and relocation assistance or for project-based assistance to prevent the displacement of unassisted elderly tenants currently residing in section 202 properties financed between 1959 and 1974 that are refinanced pursuant to Public Law 106-569, as amended, or under the authority as provided under this Act: Provided, That when a public housing development is submitted for demolition or disposition under section 18 of the Act, the Secretary may provide section 8 rental assistance when the units pose an imminent health and safety risk to residents: Provided further, That the Secretary may only provide replacement vouchers for units that were occupied within the previous 24 months that cease to be available as assisted housing, subject only to the availability of funds: Provided further, That any tenant protection voucher made available from amounts under this paragraph shall not be reissued by any public housing agency, except the replacement vouchers as defined by the Secretary by notice, when the initial family that received any such voucher no longer receives such voucher, and the authority for any public housing agency to issue any such voucher shall cease to exist;”; see also, Transportation, Housing and Urban Development, and Related Agencies Appropriations Act, 2018 which states: “(2) $75,000,000 shall be for section 8 rental assistance for relocation and replacement of housing units that are demolished or disposed of pursuant to section 18 of the Act, conversion of section 23 projects to assistance under section 8, the family unification program under section 8(x) of the Act, relocation of witnesses in connection with efforts to combat crime in public and assisted housing pursuant to a request from a law enforcement or prosecution agency, enhanced vouchers under any provision of law authorizing such assistance under section 8(t) of the Act, HOPE VI and Choice Neighborhood vouchers, mandatory and voluntary conversions, and tenant protection assistance including replacement and relocation assistance or for project-based assistance to prevent the displacement of unassisted elderly tenants currently residing in section 202 properties financed between 1959 and 1974 that are refinanced pursuant to Public Law 106-569, as amended, or under the authority as provided under this Act: Provided, That when a public housing development is submitted for demolition or disposition under section 18 of the Act, the Secretary may provide section 8 rental assistance when the units pose an imminent health and safety risk to residents: Provided further, That the Secretary may only provide replacement vouchers for units that were occupied within the previous 24 months that cease to be available as assisted housing, subject only to the availability of funds: Provided further, That of the amounts made available under this paragraph, $5,000,000 may be available to provide tenant protection assistance, not otherwise provided under this paragraph, to residents residing in low vacancy areas and who may have to pay rents greater than 30 percent of household income, as the result of: (A) the maturity of a HUD-insured, HUD-held or section 202 loan that requires the permission of the Secretary prior to loan prepayment; (B) 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 (C) the expiration of affordability restrictions accompanying a mortgage or preservation program administered by the Secretary: Provided further, That such tenant protection assistance made available under the proviso may be provided under the authority of section 8(t) or section 8(o)(13) of the United States Housing Act of 1937 (42 U.S.C. 1437f(t)): Provided further, That any tenant protection voucher made available from amounts under this paragraph shall not be reissued by any public housing agency, except the replacement vouchers as defined by the Secretary by notice, when the initial family that received any such voucher no longer receives such voucher, and the authority for any public housing agency to issue any such voucher shall cease to exist: Provided further, That the Secretary may provide section 8 rental assistance from amounts made available under this paragraph for units assisted under a project-based subsidy contract funded under the “Project-Based Rental Assistance” heading under this title where the owner has received a Notice of Default and the units pose an imminent health and safety risk to residents: Provided further, That to the extent that the Secretary determines that such units are not feasible for continued rental assistance payments or transfer of the subsidy contract associated with such units to another project or projects and owner or owners, any remaining amounts associated with such units under such contract shall be recaptured and used to reimburse amounts used under this paragraph for rental assistance under the preceding proviso;”; See also, FY 2019 Transportation, and Housing and Urban Development, and Related Agencies Appropriations Bill: which states: (2) $85,000,000 shall be for section 8 rental assistance for relocation and replacement of housing units that are demolished or disposed of pursuant to section 18 of the Act, conversion of section
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23 projects to assistance under section 8, the family unification program under section 8(x) of the Act, relocation of witnesses in connection with efforts to combat crime in public and assisted housing pursuant to a request from a law enforcement or prosecution agency, enhanced vouchers under any provision of law authorizing such assistance under section 8(t)…”

iii According to the FY19 Congressional Justifications $131.8 billion in carryover funds in the Rental Assistance, nearly all of which is from HUD’s Tenant Protection Fund.