

Federally-Assisted Housing 101: Section 8, Public Housing and More; Basics Housing Volunteers Need to Know.

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“Only 1 in 4”

- ▶ https://youtu.be/Bd1HszxR_6I
- ▶ ...creeping up on 1 in 5.

Why we care:

- ▶ Metro SMSA Median Income \$94,3000
- ▶ Low-Income/Very Low-Income/Extremely Low-Income – 80%/50%/30%
- ▶ ELI=higher of Fed. Pov. Level or 30% AMI=\$28,300
- ▶ MFIP: 1 adult, one child = \$437/\$5,244
- ▶ GA: \$203/\$2,436

Why we care:

- ▶ “Rule”: 30% income for housing
- ▶ MFIP $\$437/\$5,244 - 30\% = \$132/\text{mo}$
- ▶ GA $\$203/\$2,436 - 30\% = \$61/\text{mo}$

- ▶ HUD FMR=1 BR \$915

- ▶ Hsg Wage (MN min \$9.65) 61 hrs/wk for 1 BR
- ▶ MN SSI \$814—1BR FMR=112%

What about the 3 (soon to be 4) eligible left waiting?

- ▶ Section HC Voucher
 - ▶ 3 to 5 yrs
- ▶ Project-Based
 - ▶ 2 to 3 yrs
- ▶ Public Housing
 - ▶ Family
 - ▶ 3 to 5 yrs
 - ▶ Sr. segregated
 - ▶ 6 to 12 mo
 - ▶ Disabled
 - ▶ 2 to 5 yrs

THE GOLDEN TICKET

- ▶ Fight to find it/apply for it.
- ▶ Fight to get application approved and survive wait list.
- ▶ Fight to make it humane once you've got it –providers + neighbors + jurisdictions all impose expectations on Tenant's conduct of daily life.
- ▶ Fight to keep it when Notice to Vacate/Termination of tenancy/Eviction – loss can be lifetime loss.

How do I know its federally-assisted?

- ▶ Are you in subsidized housing?
- ▶ How much is your rent? Consider market and look at income.
- ▶ If you move, will your subsidy go with you?
- ▶ To whom do you pay your rent?
- ▶ Do you have to report income info? Where?
- ▶ Where did you apply for this housing?
- ▶ Lease?
- ▶ Sometimes the complaint.

How do I know its federally-assisted?

- ▶ Housing Link Stream
 - ▶ www.housinglink.org/Streams/
- ▶ HUD LIHTC List
 - ▶ www.lihtc.huduser.gov
 - ▶ <http://www.preservationdatabase.org/>
- ▶ HUD MN Office website
 - ▶ “Search for a subsidized apartment”

Sources of Rights & Obligations

- ▶ Statute: 42 USC 1437 (LIHTC:IRS Sec 42)
- ▶ Regulations: 24 CFR
- ▶ HUD PIH/FHEO Guidance: HUDClips

https://www.hud.gov/program_offices/administration/hudclips

- ▶ PHA Plan – PH and Vouchers
- ▶ ACOP/SOP - PH
- ▶ Admin Plan - Vouchers
- ▶ LIHTC Land Use Restriction Agreements - LIHTC
- ▶ HAP Contract/ HAP K Tenancy Addendum - Voucher
- ▶ Lease
- ▶ Building/Project/ House Rules
- ▶ **PLUS** Minn. Stat. § 504B

Public Housing

- ▶ Is this Public Housing? Factors to consider:
 - ▶ Property owned by PHA
 - ▶ Property managed by PHA
 - ▶ Language of the lease
 - ▶ Availability of “grievance hearing”/“grievance procedure”
 - ▶ Signage at the property
 - ▶ Tenant income recertified and verified annually by PHA
 - ▶ Ask PHA, HUD, or MMLA

PH Eligibility

- ▶ Income is 80% of area median income (AMI) 40% of all new admissions must be ELI.
- ▶ One household member is a U.S. citizen or with eligible non-citizen status.
- ▶ May have preferences, i.e. homeless, vet, residents of the jurisdiction, household with working adults, survivors of DV/SA.

PH Screening

- ▶ PHAs must screen and reject applicants for certain criminal activity.
- ▶ PHA may reject those who abuse alcohol and for other criminal activity.
- ▶ PHAs may check prior rent-paying and eviction history.
- ▶ PHA must consider mitigating circumstances, and
- ▶ PHA must notify applicant of reason for rejection.
- ▶ PHA must provide informal hearing to dispute application denial.

PH Rent

- ▶ Tenant must report income changes – lease and ACOP set timeline.
- ▶ PH must use EIV (Enterprise Income Verification) so all income will be seen.
- ▶ Deductions from gross income limited-regs.
- ▶ Minimum rent \$50 (\$75 MPHA MTW).
- ▶ Repayment agreement discretion.

PH Evictions

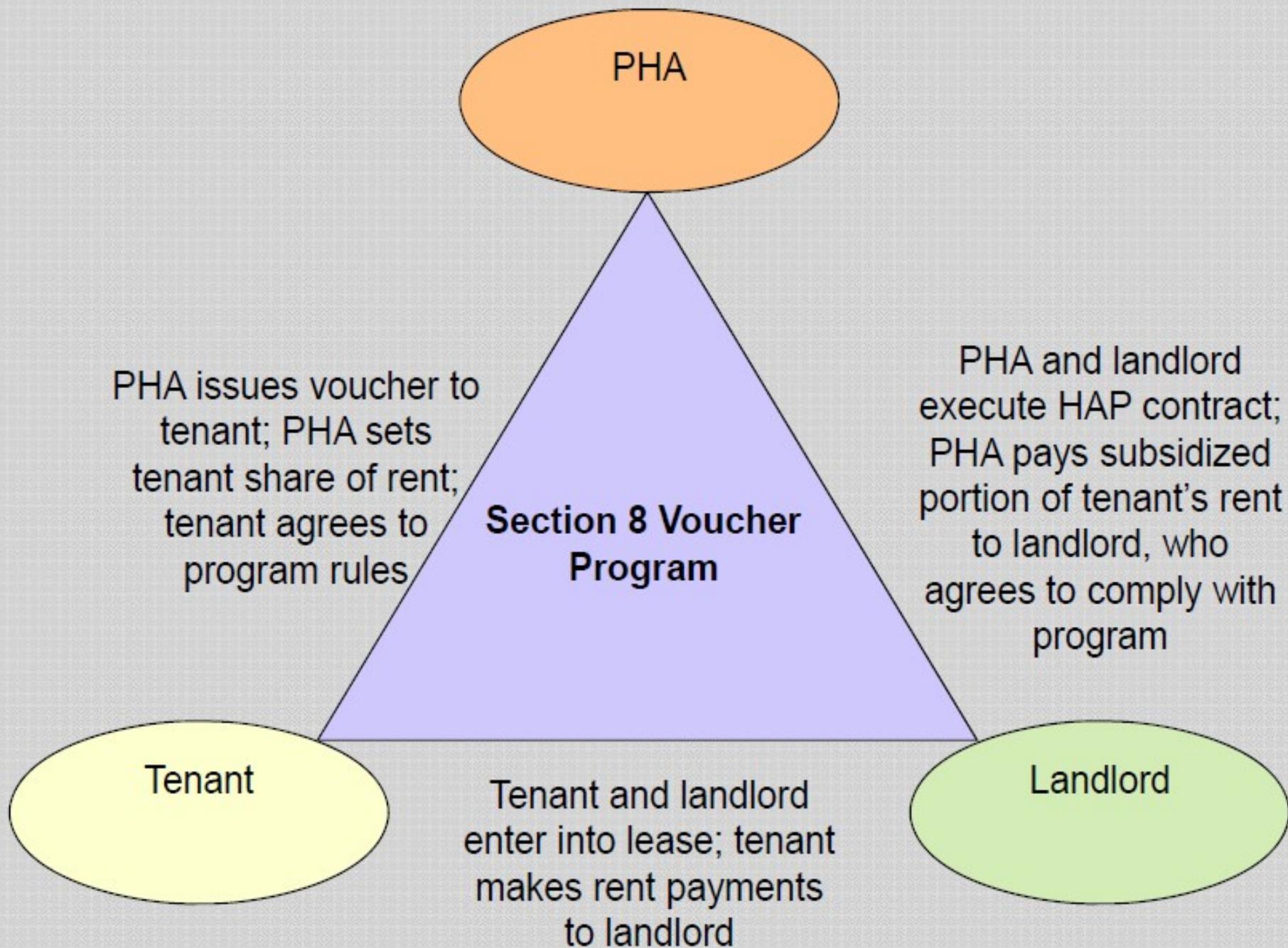
- ▶ Only for serious or repeated lease violation or other good cause.
- ▶ Written Notice of Termination with reasons (14 day rent, 30 day, or by-pass grievance).
- ▶ Grievance process (informal and admin hrng) before court eviction unless bypass for illegal drug activity, criminal activity that threatens health and safety and quiet enjoyment of other residents, and felony conviction.
- ▶ Admin grievance hearing: review and copy documents pre-hearing, may be represented, confront and cross-exam, written decision based on facts presented, before impartial hearing officer (panel); appeal (Bd or Ct of App pet of cert).
- ▶ Grievance process is available for T-initiation.

Section 8 Housing Choice Vouchers

- ▶ Is this a Section 8 Voucher tenancy?
- ▶ Tenant was given a voucher by a PHA.
- ▶ Tenant had to find unit and a willing landlord in private market.
- ▶ Tenant annually recertifies her income with the PHA.
- ▶ Landlord usually a private landlord without any other federal assistance (LIHTC Exception).
- ▶ Tenant's lease includes Section 8 tenancy addendum.
- ▶ Client tells you she has previously moved and was able to keep her Section 8 assistance/subsidy.
- ▶ Other Tenants in property may not be subsidized (LIHTC exception).

Section 8 Housing Choice Vouchers

- ▶ HUD provides funds to public housing agency (PHA).
- ▶ Tenant gets Voucher from PHA –60 to 120 days to use-see Admin Plan, extension limits apply.
- ▶ Tenant finds a private landlord willing to participate.
- ▶ Tenant and LL sign and submit Landlord's lease (1 yr) to PHA to review rent level.
- ▶ Property passes HQS Inspection.
- ▶ PHA and Landlord sign Housing Assistance Payments (HAP) K that includes Sec. 8 Lease Addendum.
- ▶ PHA pays HAP – usually electronic transfer to Landlord.
- ▶ Tenant agrees to pay TTP-- her share of the rent – 30% of her AGI.
- ▶ Landlord agrees not to demand or collect more than HAP K rent – violation of False Claims Act.



PHA

PHA issues voucher to tenant; PHA sets tenant share of rent; tenant agrees to program rules

Section 8 Voucher Program

PHA and landlord execute HAP contract; PHA pays subsidized portion of tenant's rent to landlord, who agrees to comply with program

Tenant

Tenant and landlord enter into lease; tenant makes rent payments to landlord

Landlord

Section 8 HCV Admissions

- ▶ Step 1: PHA determines who will receive a voucher.
 - ▶ Most applicants “very low-income” (VLI)—income cannot exceed 50% of area median income (AMI);
 - ▶ PHAs must target 75% of vouchers to ELI or less
 - ▶ PHAs must deny applicants with certain criminal history and/or
 - ▶ Must be Citizen or eligible noncitizen status.
 - ▶ PHA may establish additional screening factors in Admin Plan
 - ▶ PHA must notify applicants of reasons for denial and rt to review
 - ▶ PHA must give an informal review
- ▶ Step 2: Private landlord may screen applicant.
 - ▶ Often includes review of tenancy history, credit record, and criminal history

Section 8 HCV Rent

- ▶ Voucher tenant's share of the rent is set by the PHA.
 - ▶ Tenant's rent is determined by these factors:
 - ▶ Tenant's income;
 - ▶ Maximum subsidy the PHA will pay (Vchr Pmt Std= 90%-110% of FMR); and
 - ▶ The rent the landlord is charging for the unit.
- ▶ Tenant's share of rent is typically 30% of adjusted income.
- ▶ Minimum rent of up to \$50.
- ▶ Tenant entitled to admin hearing to dispute rent calculation.
- ▶ PHA recertifies tenant's income annually (EIV used)-income change reporting reqmts.
- ▶ Tenant can ask PHA for recertification if income changes.

Section 8 HCV Porting

- ▶ After 1st year in jurisdiction, Tenant can take HC Voucher anywhere in the US where another PHA operates Voucher program
- ▶ A tenant can move anywhere in the jurisdiction of the PHA but PHA may limit # of moves/year in Admin Plan (VAWA exception/RA exception)
- ▶ Portability: Tenant requests to move from the jurisdiction of the PHA that issued her Voucher to jurisdiction of another PHA—complex regs and timing

Sec 8 HCV Evictions/Voucher Terminations

- ▶ **Evictions:** Landlord must use judicial procedure to evict
- ▶ During initial lease term, Landlord may only evict for grounds in lease (incl Sec 8 Lease addendum which controls)
- ▶ At the end of the initial lease term, landlord may terminate the tenancy without cause (**subject to Minn Stat § 504B**)
 - ▶ Nonrenewal of lease at end of initial lease term is not basis for Voucher termination
- ▶ If Tenant is evicted for a serious lease violation, it's also grounds for terminating the voucher

Sec 8 HCV Evictions/Voucher Terminations

- ▶ Termination of Voucher Assistance:
 - ▶ PHA uses administrative procedure called an informal hearing – regs. Detail due process elements and Admin Plan includes procedure.
 - ▶ 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.

Non-HC Vouchers

- ▶ Family Unification (FUP) Vouchers for families with children exiting foster care.
- ▶ VASH (Veteran Affairs Supportive Housing) Vouchers for homeless veterans.
- ▶ Bridges Vouchers funded by MN HFA for Tenants with serious and persistent mental illness (SPMI) while waitlisted for HCV.
- ▶ There may be other “set-aside” vouchers in your jurisdiction depending on PHA with federal, state or local funding.

Project-Based Subsidy

- ▶ Owners, usually private for-profit and nonprofit entities, enter into housing assistance payments (HAP) contracts with HUD.
- ▶ Contract administrator can be a third-party that oversees the HAP contract.
 - ▶ http://portal.hud.gov/hudportal/HUD?src=/program_offices/housing/mfh/rfp/sec8rfp (has a link to contract administrator listing)
- ▶ Tenant enters into lease with owner and pays affordable rent, typically 30% of adjusted income. Utility allowances for tenant-paid utilities apply.
- ▶ HUD pays the owner a rental subsidy to cover the difference between the total contract rent and the T's share.
- ▶ The rental subsidy is attached to a specific building, and the Tenant **cannot** move with the subsidy.

Regs + 4350.3 + Model Lease + TSP

- ▶ Federal statute, HUD regulations for various PB programs, and HUD Handbook 4350.3 (HUDClips.gov).
- ▶ HUD Notices (HUDClips.gov -- Multi-family Housing).
- ▶ Owners must use HUD's model lease.
- ▶ Owners develop their own tenant selection plan (TSP) and house rules.
- ▶ TSP must include certain provisions (e.g., eligibility requirements, income limits, waitlist selection procedures, etc.).
- ▶ House rules must be reasonably related to safety of building and Tenants.

PB Eligibility

- ▶ Generally, applicants must be (VLI-50% AMI) or lower.
- ▶ Owners must target some units to ELI.
- ▶ HUD website lists AMI and income limits for jurisdictions nationwide.
 - ▶ <http://www.huduser.org/portal/datasets>

PB Admissions

- ▶ Owner maintains the waitlist of applicants.
- ▶ Owner is responsible for selecting tenants from waitlist.
- ▶ Owner must develop **tenant selection procedures (TSP)** , and screen for certain criminal activity and immigration status (citizen or eligible noncitizen).
- ▶ Owner may create certain admissions preferences in TSP.
- ▶ Owners must notify applicants of reasons for denial and offer applicants an opportunity to meet with the owner if denied.

PB Rent

- ▶ Tenant's share of rent is typically 30% of AGI.
- ▶ Minimum rent of \$50.
- ▶ Owner recertifies tenant's income annually to ensure rent is correct (EIV used).
- ▶ Tenant can request an interim recertification from the owner if income decreases or family size increases.
- ▶ Tenant must report income and HH composition changes as lease requires.
- ▶ Repayment process detailed in HUD HandBook 4350.3.

PB Evictions

- ▶ Owner may not terminate a tenancy except for “good cause,” including:
 - ▶ Material noncompliance with lease
 - ▶ Material failure to carry out obligations under state landlord – tenant law
 - ▶ Certain criminal activity
 - ▶ Alcohol abuse

Other good cause

- ▶ Owner must give notice of
 - ▶ the reason for the proposed denial/termination and
 - ▶ must notify the tenant that she has an opportunity to discuss the denial/termination with the owner. (10 days to request)
- ▶ “Other good cause” terminations require prior written notice that the conduct could result in future termination.

LIHTC

- ▶ It is tax policy, not a “housing program.”
- ▶ LIHTC is the largest program funding new multifamily housing and is growing.
- ▶ Income eligibility generally higher than HUD programs.
- ▶ Rents NOT directly tied to tenant's income.
- ▶ Lease with specific provisions may not be required.
- ▶ No grievance procedure.
- ▶ Good cause for eviction?
- ▶ Not considered federally assisted.
- ▶ If another housing program is used with LIHTC, the more restrictive rules apply regardless of the source.

LIHTC Very LITE

How Program Works: Subsidy Mechanism:

- ▶ Subsidy through tax system, not annual federal appropriations.
- ▶ Fixed amount of tax credits allocated to state Housing Finance Agency.
- ▶ Investors buy income tax credits in qualified properties that received state allocation, creating cash equity for owner.
- ▶ In exchange for agreement to rent specific number of units to qualified tenants at restricted rents, usually below-market.
- ▶ Two tax credits available: 9% of depreciable basis, competitively allocated, and 4% of basis, comes with state bond financing, also capped and allocated by state HFA (competition varies).

LIHTC Ownership and Use Restrictions

- ▶ **Ownership:** usually limited partnerships; often sold after initial 15-yr. compliance period to general partner or others.
- ▶ **Minimum Use Restrictions (per IRC ' 42):**
 - ▶ **Occupancy and admissions:** owner choice of two: >20% of Units occupied by tenants @ <50% AMI, or >40% of units occupied by tenants @ <60% AMI.
- ▶ **Rents:** those units must have “affordable” flat rents set at 30% of income of tenants at top of applicable AMI category, with assumed family size of 1.5 persons/bedroom.
- ▶ **Term:** For properties developed between 1986 and 1989, restrictions last only 15 years; post-1989 developments have at least 30 years, and up to 55 years in some states.
- ▶ **Non-Discrimination:** LIHTC owners may not refuse to rent to Voucher holders because of their status.

LIHTC Admissions

- ▶ Initial occupancy of rent-restricted units must be by tenants in specific income categories.
- ▶ No discrimination against § 8 voucher holders.
- ▶ No immigration restrictions, unless project has another funding source with such restrictions.
- ▶ Only other protections come from:
 - ▶ Fair housing laws
 - ▶ VAWA 2013 imposes obligations on LIHTC properties
 - ▶ Any state-imposed requirements per QAP & Regulatory Agreement
 - ▶ Possibly due process protections (governmental action & property interest issues)

LIHTC Rent

- ▶ **Income-based rents?** NO, LIHTC gross rents are flat rents based on AMI, not individual tenant income.
 - ▶ Rent not adjusted if income drops.
- ▶ For restricted units, flat rents set @ either 30% of 50% of AMI, or 30% of 60% of AMI, w/an assumed family size of 1.5 persons/BR (one person for 0-BR unit).
- ▶ Rents can increase with changes in AMI, not decrease.
- ▶ Most ELI tenants have rental subsidies (such as Section 8 Vouchers), with contributions determined under rent subsidy rules.

Rent + Renewal + UA

- ▶ **Recertification:** *Income:* Annually except not required if 100% LIHTC property with restricted rents;
 - ▶ *Student Status:* Annually
- ▶ In 9% credit units, **tenant right to continued occupancy unaffected** by increases in income until 140% of income limit (i.e., 140% of 50% AMI, or 140% of 60% AMI).
- ▶ **Utility Allowance:** LIHTC rents are gross rents, for tenant-paid utilities, tenant must receive utility allowance, usually based on local PHA's utility allowance for comparable Section 8 Voucher units.
- ▶ **Mandatory and other charges:** include in rent.

LIHTC Evictions

Good cause required at end of lease term?

- ▶ Yes, Rev. Rul. 2004-82 and Rev. Proc. 2005-37 State court cases under statute or due process (governmental action?).
- ▶ Terms of state's Regulatory Agreement or required lease addenda? Owner Certificate of Compliance.

Notice:

- ▶ No federal statutory or regulatory requirements re length of notice and/or content.
- ▶ Due process or state rules (if cause required)?
- ▶ Pre-judicial administrative review?: None