

The Honorable Marcia L. Fudge
Secretary of Housing and Urban Development
U.S. Department of Housing and Urban Development
451 7th Street SW
Washington, DC 20410-0500

April 8, 2022

Dear Secretary Fudge,

The undersigned civil rights organizations write to express our concerns regarding HUD's forthcoming final Enhanced Voucher (EV) rule. Enhanced Vouchers are an important fair housing tool intended to prevent displacement of low-income tenants from opportunity and gentrifying communities, the majority of whom are families with children, persons with disabilities, and/or Black or Latinx households. We are concerned however that HUD's final EV rule will not honor the statutory right of tenants with EVs to remain in their original housing, which means that tenants will often be displaced from opportunity and/or gentrifying communities. The failure to honor an EV tenant's statutory right to remain creates a serious fair housing impediment and is not consistent with HUD's civil rights obligations.¹ We therefore ask that HUD narrowly define "good cause" for terminating EV tenancies to only tenant breaches of the lease.

Congress made EV assistance available to protect tenants from displacement who live in certain assisted properties, including when Project-Based Rental Assistance ("PBRA") owners exit the program.² There are more than 1.4 million PBRA properties in the United States and more than 130,000 households at risk of losing their homes to owner exits by 2025.³ HUD issues EVs to eligible households following the owner's exit. These vouchers are distinct from regular Tenant Protection Vouchers (TPVs). EVs provide the family with a right to remain at their current property as long as the housing remains rental housing.⁴ The EV also provides families with a higher payment standard than the one used to administer the local Housing Choice Voucher (HCV) program.⁵ This is in recognition of the fact that tenants with EVs often live in areas with higher market rents. Indeed, a 2018 HUD report found that properties most at risk of owner opt-out of PBRA contracts are properties in higher opportunity and/or gentrifying communities with increasing rents and higher home values.⁶ Where the surrounding community has gentrified or

¹ 42 USC §§ 3608(e)(5)

² 42 U.S.C. §1437f(t).

³ 2021 Picture of Preservation: A joint report of the Public and Affordable Housing and Research Corporation and the National Low-Income Housing Coalition, (Oct. 2021) https://preservationdatabase.org/wp-content/uploads/2021/10/NHPD_2021Report.pdf

⁴ 42 U.S.C. §1437f(t)(1)(B).

⁵ *Id.*

⁶ Anne Ray *et al.*, Opting In, Opting Out: A Decade Later, *Cityscape* 63, 73, 79 (2018); <https://www.huduser.gov/portal/periodicals/cityscape/vol20num1/ch3.pdf>.

the cost of living has increased, the use of an EV is typically the only way for assisted families to continue to live in their community and access important life necessities (i.e., healthcare, childcare, services, etc.).

In furtherance of HUD's fair housing obligations, HUD's final rule must ensure that owners accept EVs and that tenants can only be evicted or their leases not renewed for a tenant's breach of the lease. Currently, owners are evicting EV tenants on the basis of claimed renovations of the property, which is only allowed under the regular Tenant Protection Voucher program. For its part, HUD made matters worse when it proposed to use the regular voucher definition of "good cause," that permits nonrenewal of the lease without good cause at the end of the lease term and permits an owner to evict or not renew the lease on the basis of claimed renovations. The use of this "good cause" definition will leave the right to remain illusory as it provides an easy exit route for owners seeking to get rid of EV tenants, the very thing Congress intended to minimize.

In order to provide tenants with EVs the best chance to remain in high opportunity and gentrifying communities, it is critical that HUD *narrowly define "good cause" for terminating EV tenancies to only tenant breaches of the lease*. We look forward to working with HUD to ensure that families can effectively use their EVs to remain in their chosen communities and be protected from unnecessary displacement. Thank you for your attention to this matter.

Sincerely,

Thomas Silverstein
Lawyers' Committee for Civil Rights Under Law

Jorge Soto & Debby Goldberg
National Fair Housing Alliance

Philip Tegeler
Poverty & Race Research Action Council

Emily Coffey
Shriver Center on Poverty Law

CC: Peggy Bailey, Senior Advisor on Rental Assistance, Office of the Secretary
Danielle Bastarache, Deputy Assistant Secretary, Office of OPHVP
Dominique Blom, General Deputy Assistant Secretary for Public and Indian Housing
Richard Cho, Senior Advisor for Housing and Services, Office of the Secretary
Michael Dennis, Director, Office of Housing Choice Voucher Programs
Ethan Handelman, Deputy Assistant Secretary, Multifamily Housing
Jenn Jones, Chief of Staff, Office of the Secretary
Demetria McCain, Principal Deputy Assistant Secretary, FHEO
Adrienne Todman, Deputy Secretary

Congresswoman Maxine Waters (D-CA), Chairwoman of the House Committee on Financial Services

Congressman Patrick McHenry (R-NC), Ranking Member of the House Committee on Financial Services

Senator Sherrod Brown (D-OH), Chairman of the Senate Committee on Banking, Housing and Urban Affairs

Senator Patrick J. Toomey (R-PA), Ranking Member of the Senate Committee on Banking, Housing and Urban Affairs