



Expanding Federal Support for Tenant Organizing in Federally Assisted Housing and the Housing Choice Voucher Program

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The federal government, through the Department of Housing and Urban Development (HUD), provides legal protection and financial support for tenant organizing in several of HUD's housing programs. Unfortunately, the housing choice voucher (HCV) program lacks the same organizing protections, creating uneven tenant protections throughout HUD's housing programs. The right to organize has long been viewed as a key component of successful HUD housing programs. HUD directs Public Housing Authorities (PHAs) and private owners to support tenant organizing by acknowledging tenant organizations, responding to their advocacy efforts, and, in some cases, provide funding. HUD's regulations also protect tenants in HUD assisted multi-family housing against retaliatory evictions for organizing.¹

Voucher participants should have a right to organize, just as HUD has provided in the public housing and project-based rental assistance housing programs. HUD should promulgate tenant organizing regulations for the HCV program that allow for the greatest flexibility and have the lowest barriers to organizing. Additionally, HUD should fund voucher tenant organizing activities, as it has done for public housing tenants, but in a more consistent and meaningful way.

Federal Protections for Tenant Organizing – Public Housing

Public housing tenants have a right to organize under 24 CFR § 964.11.² This regulation establishes that any Public Housing Authority (PHA) that has a Public Housing Annual Contributions Contract (ACC) must recognize tenants' right to organize, elect a resident council representing their interests, and have that resident council recognized by the PHA.³ The regulation encourages PHAs to collaborate with the elected residents to improve the community overall. Under 24 CFR pt. 964, resident councils must be structured according to the statute for the organization to be considered legitimate. Members must be elected, and the council must create and adopt some sort of written procedures (like bylaws or a constitution) for governance.⁴ Resident councils can be comprised of members from one community, meaning multiple resident councils can exist within a PHA. These councils can represent a property or be city-wide.⁵

¹ Dep't of Hous. and Urban Dev., Revision of Tenant Participation Requirements in Accordance with 24 CFR Part 245 at 5-8 (Mar. 31, 2016), <https://www.hud.gov/sites/documents/16-05HSGN.PDF>.

² 24 CFR § 964.11.

³ 24 CFR § 964.11. 24 CFR § 964.3 (a).

⁴ 24 CFR § 964.115.

⁵ National Low Income Housing Coalition, *Advocates Guide 2020: A Primer on Federal Affordable Housing & Community Development Programs*, 2-50.

Federal Protection for Tenant Organizing – HUD Assisted Multi-Family Housing

HUD regulations convey the right to organize to tenants in properties that participate in HUD’s multi-family housing Project-based Rental Assistance (PBRA) programs.⁶ These programs include

Project-based Section 8 Rental Assistance, Section 202, Section 811, and properties with specific HUD-held and HUD-insured mortgages.⁷ 24 CFR § 245.100 gives tenants in qualifying properties the right to “establish and operate a tenant organization.”⁸ These organizations are to be created and led by tenants to address community development concerns, issues regarding the building or its units, and the “terms and conditions of their tenancy.”⁹ Property owners and property managers are to “recognize...and give reasonable consideration to concerns raised by legitimate tenant organizations.”¹⁰

HUD regulation requires owners and managers to make reasonable efforts to accommodate tenants’ requests for accessible meeting spaces within the property for organizing activities or organizational operations. Property owners may charge tenants “reasonable, customary and usual” fees for the use of meeting spaces on the property.¹¹

24 CFR pt. 245 also provides protection for the organizing activities of non-resident organizers working with tenants.¹² Under 24 CFR § 245.100 tenants in HUD assisted multi-family housing cannot be evicted for organizing. The regulation also explicitly delineates several organizing activities property owners and managers must allow tenants to partake in without prior permission.¹³

Federal Protection for Tenant Organizing – Rental Assistance Demonstration (RAD)

Tenants in public housing properties that undergo RAD conversion retain the right to organize regardless of whether their development is converted to Section 8 Project-Based Voucher property or to Section 8 Project-based Rental Assistance property.¹⁴ It should be noted that resident organizing at properties converted to Section 8 Project-based Rental Assistance are subject to the

⁶ 24 CFR § 245.10 states the right to organize is applicable to tenants living in: multi-family housing projects subject to a HUD insured or held mortgage under the National Housing Act; formerly HUD-owned projects; state or local housing finance agency projects; projects receiving project-based assistance under section 8 of the US Housing Act of 1937, but not when PHAs administer the project-based assistance; projects receiving enhanced vouchers under the Low-Income Housing Preservation and Resident Homeownership Act of 1990, the Emergency Low Income Housing Preservation Act of 1987, or the Multifamily Assisted Housing Reform and Affordability Act of 1997; projects receiving assistance under Section 202 Direct Loan or Supportive Housing for the Elderly programs; projects receiving assistance under the Section 811 Supportive Housing for Persons with Disabilities program.

⁷ Jessie Cassella, Understanding Project-Based Rental Assistance (Mar. 22, 2018), <https://www.nhlp.org/wp-content/uploads/2018/03/Saving-HUD-Homes-2-FINAL.pdf>.

⁸ 24 CFR 245.100.

⁹ *Id.*

¹⁰ 24 CFR § 245.105. 24 CFR § 245.110 defines a “legitimate tenant organization” as an organization that has been “established by the tenants of a multifamily housing project covered under § 245.10 for the purpose described in § 245.100, and meets regularly, operates democratically, is representative of all residents in the development, and is completely independent of owners, management, and their representatives.”

¹¹ 24 CFR § 245.120 (c).

¹² 24 CFR § 245.120.

¹³ 24 CFR § 245.115.

¹⁴ <https://www.hud.gov/sites/documents/TENANTORGANIZINGAFTERRAD.PDF>; Dep’t of Hous. and Urban Dev., *Rental Assistance Demonstration – Final Implementation, Revision 4 at 129-34 (Sept. 5, 2019)*.

requirements in 24 CFR pt. 245 rather than those of part 964 – subjecting those tenants to the same right to organize regulations as tenants in HUD-assisted multi-family housing.¹⁵

Funding for Tenant Organizing

Through the ACC with HUD, PHAs are provided with funds to support public housing tenant participation activities. HUD gives PHAs \$25 per unit each year via the Operating Fund Grant.¹⁶ This \$25 allotment is to be used by PHAs to fund tenant participation activities, and at minimum,

\$15 of the \$25 allocation must be used by resident councils for the support of training and organizing efforts.¹⁷ The \$25 allotment has not increased since it was originally authorized and due in part to inflation, is generally too low to cover the cost of tenant participation activities.¹⁸

When there is no resident council, PHAs are encouraged to use their portion of the funding to encourage tenant participation activities, including training and capacity-building for residents to form a resident council.¹⁹ HUD allows PHAs to utilize a portion of that \$15 to fund stipends for resident council officers serving as volunteers in their developments. These stipends are capped at \$200 per month, per officer.²⁰ PHAs are allowed to keep \$10 of the \$25 allotment to allowable expenditures, which includes a broad range of activities regarding tenant participation. These activities include community elections, printing, and meeting space rentals.²¹

Public housing converted under the Rental Assistance Demonstration (RAD), whether converted to PBV or PBRA, retain the \$25 per unit, per year allocation for tenant participation activities. Resident organizations in RAD conversions must still receive at least \$15 per unit, per year for tenant organizing activities.²²

Currently, there is no regulatory requirement for HUD to provide funding to PBRA tenants for organizing activities. Section 514 of the Multifamily Assisted Housing Reform and Affordability Act of 1997 (MAHRAA) authorizes HUD to spend up to \$10 million annually from the Project Based Section 8 account, for tenant organizing, training and capacity-building.²³ However, since 2001, HUD has committed approximately 7% of the available funding.²⁴

https://www.hud.gov/sites/dfiles/Housing/documents/H-2019-09-PIH-2019-23_RAD_Notice%20Rev4_20190905.pdf

¹⁵ National Low Income Housing Coalition, *Advocates Guide 2020: A Primer on Federal Affordable Housing & Community Development Programs*, 2-52.

¹⁶ 24 CFR § 964.150; Notice PIH 2021- 16 (HA).

¹⁷ *Id.*

¹⁸ Josh Cohen, HUD Has Money for Tenant Organizing. Why Isn't the Agency Spending It? Shelterforce (2021), <https://shelterforce.org/2021/03/19/hud-has-money-for-tenant-organizing-why-isnt-the-agency-spending-it/>

¹⁹ 24 CFR § 964.150 (a). See National Low Income Housing Coalition, *Advocates Guide 2020: A Primer on Federal Affordable Housing & Community Development Programs*, 2-50. See also Notice PIH 2021- 16 (HA). Resident participation activities are not limited to organizing, however in this Notice organizing activities are explicitly mentioned by HUD as examples of appropriate ways to spend the allotted funds.

²⁰ 24 CFR § 964.150 (b).

²¹ Notice PIH 2021- 16 (HA).

²² National Low Income Housing Coalition, *Advocates Guide 2020: A Primer on Federal Affordable Housing & Community Development Programs*, 2-52.

²³ 42 USC § 1437f note.

²⁴ The National Alliance of HUD Tenants estimates that HUD has committed only \$13 million out of the \$190 million that could have been used for this purpose.

Tenant Organizing in the Housing Choice Voucher Program

Housing Choice Voucher (HCV) tenants are typically scattered across a PHA's service area, so tenants face additional barriers to their organizing efforts. Also, HUD's regulations do not include the same legal protections for HCV tenants interested in organizing, nor does HUD provide funding for HCV tenants to organize. As with all voucher and public housing tenants, HCV tenants may participate in Resident Advisory Boards or become involved in the PHA Plan process.²⁵ For broader organizing efforts, however, HCV tenants must turn to tenant organizing groups that operate more broadly within the community.

Recommendations (in brief)

The right to organize is vital and empowers tenants in federally assisted housing.²⁶ In order to move in the direction of progress on this issue, HUD should consider:

- Increasing the amount of funding per year, per unit for tenant participation activities across all of its housing programs;
- Creating right to organize protections for HCV tenants;
- Providing funds for organizing activities amongst HCV tenants;
- Funding, separately from the money allocated to fund resident organizing activities, for resident capacity building programs throughout the country in all of its housing programs;
- Creating opportunities for dialogue and centering experiences of tenants when considering how to improve the agency's federal housing programs.

Principles for a Right to Organize for Housing Choice Voucher Tenants

Below is a brief initial outline of principles HUD should consider when developing organizing protections in the HCV program. The National Housing Law Project (NHLP) and Poverty and Race Research Action Council (PRRAC) will continue to engage our partners about the best practices for organizing Voucher participants and will update this proposal regularly. NHLP and PRRAC are committed to continuing the conversation about the importance of HUD-assisted participants having the right to organize and look forward to working with Voucher participants, organizers, and HUD on this issue.

- A Voucher tenant organization should be defined similarly to 24 CFR § 245.110—an organization that meets regularly, operates democratically, is inclusive of the local voucher participants, and is independent from the PHA and owners (POAs).
 - HUD's regulation must include an explicit protection against retaliation of PHA or owner (POA) interference.
 - A rebuttable presumption that an adverse action taken within 6 months of the tenant's participation in organizing activities is an act of retaliation.

²⁵ National Low Income Housing Coalition, *Advocates Guide 2020: A Primer on Federal Affordable Housing & Community Development Programs*, 2-52.

²⁶ The need for federal regulation around the right to organize and funding for organizing activities has been recognized by Congress. Our recommendations align with those delineated in the Tenant Empowerment Act, introduced by Reps. Ayanna Pressley, Rashida Tlaib, and Maxine Waters. See "Tenant Empowerment Act of 2020" <https://files.constantcontact.com/eee0e428701/f80f47a2-d611-4f27-8451-81cb2ac588ee.pdf>

- All protections extended to Voucher tenant organizations should also be extended to any organizing committee(s).
- Individual tenants should be protected from any retaliation due to their participation in the tenant organization and, or participation in organizing activities.
- There should be an enforcement process for tenants and, or tenant organizations to submit allegations of interference or retaliation.
 - HUD must prioritize enforcement of all tenant organizing regulations and respond swiftly to allegations of POA retaliation and interference.
 - HUD has a comprehensive enforcement process for the project-based rental assistance program that could be used as a model. *See* HUD [H 2016-05](#).
 - HUD's regulation must include an explicit protection against retaliation of PHA or owner (POA) interference.
 - A rebuttable presumption that an adverse action taken within 6 months of the tenant's participation in organizing activities is an act of retaliation.
- HUD should fund, separately from the money allocated to fund tenant organizing activities, tenant capacity building programs throughout the country.
 - PHAs should invite tenant serving community organizations to participate in the HCV orientation meetings to provide information about tenant organizing.
- *Possible Role of Voucher Tenant Organizations*
 - Represents voucher participants in making demands to the PHA regarding the operation and policies of the local Voucher program, such as but not limited to, commenting on PHA plans and policies, Voucher utilization, payment standards, problem landlords, list of available units, or housing search assistance;
 - Appoint HCV household member(s) to serve on the PHA board in addition to existing tenant directors;²⁷
 - Appoint representative(s) to serve on the Resident Advisory Boards (RAB);
 - Encourage Voucher participants to join the HCV organization, including during the initial Voucher briefings and reaching out to persons on the waitlist;
 - HUD should mandate PHAs to provide notice to HCV tenants of the right to organize annually and amend the HCV tenancy addendum to include the right to organize.
 - PHAs should also include information about the right to organize to participating and potential participate landlords; the owner's obligation to not retaliate or interfere with the right to organize must be memorialized in HUD's HCV HAP form.
 - Educate tenants on issues and/or operations that affect tenant and their living environment;
 - Engaging in capacity building activities, specifically developing capacity about the Voucher program;
 - Formulate responses to changes in the operation and policies for the Voucher program, and;

²⁷ Where the state law requires an executive to appoint board members, the HCV tenant group should have the right to recommend to the appointing official a candidate to serve in the position.

- Organizing and advocating for federal, state and local housing policies and tenant protections, including but not limited to, source of income discrimination protections.
- *Funding*
 - Voucher tenant organizing should be funded in a meaningful and consistent manner.²⁸ Each year, per unit, HUD should make available funds for independent Housing Choice Voucher tenant organizations organized at the local, regional, or state level. Annually, the amount received per unit should incrementally increase. If HUD decides to continue the practice of splitting the funding between the PHA and the resident groups, the majority of the money should go to the Voucher tenant organization(s).
 - Organizing groups' receipt of funding should not be contingent upon a Memorandum of Understanding or PHAs' approval of the use of the funds.
 - Voucher tenant organizations should not be required to request the funding from the PHA and the funding should be automatically provided to the Voucher tenant organizing group.
 - Voucher tenant organizations should have the discretion to pay their officers and members stipend and to hire paid organizers.
- *Structure of Organization*
 - The regulations should not proscribe a specific organizational structure or mandate the organization have a specific number of officers. Being proscriptive in this manner may disqualify otherwise eligible groups because the group is just getting started, there are limited number of members who can serve as an officer, etc.
 - Voucher tenant organizations should be permitted to form partnerships with other voucher tenant organizations, community organizations, organizers, and housing advocates to organize on issues important to Voucher participants.
 - All persons listed on leases should be able to participate in the tenant organization and organizing activities.
 - Each organization should have the ability to decide who is eligible to vote.

²⁸ If the \$25 per unit per year funding for tenant participation had kept up with inflation, PHAs would receive \$37.44 per unit per year for tenant participation activities. *See* Interim Instructions on Distribution and Use of Operating Subsidy Funds Received for Resident Participation Activities, Notice PIH 2001-03 (Jan. 18, 2001); *Value of 2001 US Dollars Today*, INFLATIONTOOL (Mar. 8, 2021, 1:10 PM), <https://www.inflationtool.com/us-dollar/2001-to-present-value?amount=25>.