

New HUD Notice Announces Funding for Tenant Protection Vouchers and Project-Based Voucher Assistance for Certain Subsidized/Affordable Projects

By Andrew L. Gilmore, Adam Norlander and Kurt Stiegel

Earlier this month HUD issued a new Notice (Notice PIH 2019-01/H 2019-02: the “Notice”) setting-aside \$5,000,000 in funding for Tenant Protection Voucher (“TPV”) funding that is available to provide tenant-based Enhanced Vouchers (“EVs”) and/or Project-Based Voucher (“PBV”) assistance to certain “at-risk households” living in HUD-defined “low-vacancy areas.” The \$5 million set-aside is in addition to prior funding that remains available and was previously announced in earlier HUD notices. Under the Notice, property owners have the option to obtain either tenant-based EVs or PBV assistance for eligible projects. The EVs and PBVs are often critical to the protection of low-income households that are impacted by the termination of existing HUD affordability restrictions on the properties where they live. The EVs and PBVs also provide critical rental revenue to property owners and often help facilitate owners’ rehabilitation/redevelopment efforts.

As a general matter, to qualify for assistance under the Notice: (1) the project must be located in one of the “low-vacancy areas” identified in the Notice (and please note, the list of low vacancy areas is relatively long); (2) the project must either have experienced a HUD-designated “triggering event” in the past five (5) years, or a triggering event is expected in the next six months; and (3) the tenants must qualify as “at-risk residents,” as specified in the Notice.

“Triggering” events include (i) the maturity of certain HUD-insured or HUD-held mortgages (such as Section 202, Section 236 or Section 221(d)(3)-(d)(5) BMIR mortgages), and/or (ii) the expiration of a HUD preservation use agreement or similar HUD-imposed affordability restriction. To be deemed an “at risk resident,” the tenant must: (a) have lived at the property at the time of the triggering event, (b) not be assisted under any other Federal, state or local rental assistance program, (c) be eligible for a Housing Choice Voucher, and (d) be paying (or may have to pay) more than 30% of their adjusted monthly income towards rent due to the triggering event.

The Notice indicates that HUD does not plan to issue new notices announcing such TPV funding each year (HUD previously sought to publish new notices each year, but such notices were often delayed). Instead, the Notice will apply to future TPV appropriations, subject to future changes in the law. HUD will publish an updated list of low-vacancy areas on an annual basis. Owners of eligible projects may submit requests for TPV assistance under the Notice on a rolling basis.

The Notice includes a few notable changes to prior HUD notices addressing such TPV funding. For example:

- HUD indicates that the 5-year “triggering event” look-back period to determine eligibility for TPV assistance will now be based on the date of the owner’s submission of a TPV assistance application to HUD (and not on the date of issuance of the TPV assistance notice).
- HUD has added certain provisions regarding changes in tenant eligibility in the case of turnover of units after a request for TPV assistance is made.
- HUD has removed the requirement for owners to execute a separate HAP contract where PBV assistance will be used for additional non-TPV units at a project.
- For properties with Section 202 direct loans, HUD has designated HUD’s Office of Recapitalization as the recipient of TPV assistance applications. Other applications will continue to be handled by the HUD’s Multifamily Regional Centers/Satellite Offices.
- For TPV assistance awarded as PBV assistance, HUD has clarified that the PBV Housing Assistance Payments (“HAP”) contract can only be entered into with respect to units that are occupied by at-risk households at the time of execution of the HAP contract.

To view the Notice in its entirety, please [click here](#). For a list of low-vacancy areas, please [click here](#).

Should you have any questions about the Notice or require any further information, please contact Andrew Gilmore (agilmore@kleinhornig.com - (617) 224-0616), Adam Norlander (anorlander@kleinhornig.com - (202) 495-7205) or Kurt Stiegel (kstiegel@kleinhornig.com - (617) 224-0624) or another Klein Hornig attorney.

