

February 24, 2020

Colette Pollard  
Reports Management Officer, QDAM  
US Department of Housing and Urban Development  
451 7th Street SW, Room 4176  
Washington, DC 20410-5000

Re: [Docket No. FR-7015-N-10] “60-Day Notice of Proposed Information Collection: Project Based Vouchers (PBV) Online Form”

To Whom it May Concern:

The Council of Large Public Housing Authorities (“CLPHA”) and Reno & Cavanaugh, PLLC (“Reno & Cavanaugh”) are pleased to submit comments to HUD’s proposed information collection entitled “Project Based Vouchers (PBV) Online Form” (the “Notice”).

The Council of Large Public Housing Authorities (“CLPHA”) is a non-profit organization that works to preserve and improve public and affordable housing through advocacy, research, policy analysis, and public education. We support the nation's largest and most innovative public housing authorities (“PHAs”) by advocating for policies and programs that most effectively serve low-income residents and provide them with long-term economic opportunities. Our members own and manage nearly half of the nation’s public housing program, administer a quarter of the Housing Choice Voucher (“HCV”) program, and operate a wide array of other housing programs. CLPHA members collectively serve over one million low-income households.

Reno & Cavanaugh has represented hundreds of PHAs throughout the country. The firm was founded in 1977, and over the past three decades the firm has developed a national practice that encompasses the entire real estate, affordable housing, and community development industry. Though our practice has expanded significantly over the years to include a broad range of legal and legislative advocacy services, Reno & Cavanaugh’s original goal of providing quality legal services dedicated to improving housing and communities still remains at the center of everything we do.

We recognize that as Project Based Vouchers (PBVs) become a larger share of the HCV portfolio, Congress and others may increase their requests for certain information about the PBV program. However, we do not believe that requiring an additional information collection from PHAs is the answer. PHAs already submit a plethora of information to HUD, numerous times throughout the year, and additional information collections should be required sparingly. As a general matter, we would encourage HUD to streamline and reduce its information collection requirements to that which is essential to obtain and not collected elsewhere, as such pose an unfunded mandate on PHAs. We appreciate HUD’s occasional efforts to limit duplicative and redundant information collections, but are discouraged when notices, such as this, are published in which “HUD recognizes

that some of the information may [already] be submitted to HUD,” but proceeds with a new information collection anyway. Instead of burdening PHAs with an additional reporting requirement that duplicates existing requirements, CLPHA would encourage HUD to work towards a better internal systems alignment so that the various information submitted by PHAs can be accessed throughout HUD and aggregated in a way that would satisfy Congress and others who seek this information to achieve the stated goals of the present information collection.

**HUD already receives sufficient information from PHAs to adequately develop a picture of the Project Based Voucher program.**

HUD’s stated reason for this information collection is that existing PBV submissions are “insufficient to give HUD a universal and currently accurate picture of the Project Based Voucher universe.” However, public housing authorities are already required to submit the following information to HUD through a centralized email address ([pbvsubmission@hud.gov](mailto:pbvsubmission@hud.gov)) prior to issuing a request for proposals, selecting a project based on a previous competition or selecting a project without following a competitive process,:

- Number of units authorized under the ACC for the PHA;
- Number of PBV units entirely excluded from the percentage limitation;
- Number of units qualifying under the ten percent program cap exception category;
- Number of units currently committed to PBV (those that are currently under PBV Housing Assistance Payments (HAP) contract, under an Agreement to Enter into a HAP Contract, and/or covered by a notice of proposal selection); and
- Number of units to which the PHA proposes to attach project-based assistance through the new RFP or selection.<sup>1</sup>

When aggregated across PHAs, this information, which HUD already collects, would provide the snapshot of the PBV universe that HUD seeks from this information collection. It would tell HUD how many units are being project-based, the number of units that fit into certain exception categories, the number of units that are under a PBV HAP Contract or expect to be covered by a HAP contract, and the number of units proposed. Further, PHAs are required to re-submit this information to HUD in advance every time they make a PBV award, which ensures updated information is relayed to HUD. Accordingly, a new information collection is simply not necessary to obtain this information and imposes an unfunded mandate on PHAs and the private PBV project owners they contract with.

HUD further suggests that because of this perceived lack of information, it faces challenges monitoring, tracking and analyzing PBV projects. However, HUD has not offered any policy or regulatory rationale for this information collection and it is unclear whether the information collection is truly designed to provide a systematic means to collect information or whether HUD intends to use this information collection to implement new regulations and other enforcement actions.

---

<sup>1</sup> PIH 2017-21, Attachment C.

In the PBV context, PHAs serve as the contract administrators, not HUD. Accordingly, it is the responsibility of the individual PHAs to monitor, track, and analyze each project under a PBV contract. If HUD seeks confirmation that the PHA is administering their PBV portfolio consistent with HUD requirements, HUD has the ability to audit the PHA. If, in the course of doing so, HUD determines that the PHA is non-compliant with the HAP contract, then HUD may assume a PHA's rights and obligations under the HAP contract pursuant to Part II, Section 14 of the HAP Contract (Form HUD 52530A and Form HUD 52530B).

**HUD's stated need for data to inform risk-mitigation efforts is insufficient to justify the imposition of this new information collection.**

Of note, throughout the proposed information collection, HUD appears primarily concerned with potential risks in two particular types of PBV projects – (1) PBV projects under HUD's Rental Assistance Demonstration (RAD) program, and (2) PHA-owned PBV projects. For the following reasons, we do not consider these concerns sufficient to justify the imposition of a new information collection.

*Response to HUD's Stated RAD-Related PBV Concerns*

In justifying its concerns about RAD, HUD mischaracterizes the RAD program, stating that “initial construction was paid for by HUD, rents are initially set below market level, and they are supposed to remain affordable in perpetuity.”

First, it is simply not a true statement that the “initial construction [of all RAD projects] was paid for by HUD.” Many RAD projects consist of the conversion of mixed-finance public housing, new construction, or substantial rehabilitation, each of which is funded, not by HUD, but primarily through a combination of low-income housing tax credit equity investments and traditional debt (hard and/or soft loans). Many involve minimal or no contributions of PIH funds.

Second, while RAD rents are generally below-market, this is purely a result of the way the program is structured. When Congress passed the Consolidated and Further Continuing Appropriations Act of 2012 and created the RAD program, it did so as a budget-neutral effort, which required that RAD rents be no higher than the rent the project would otherwise receive as public housing through Section 9 of the United States Housing Act of 1937 and the low rents merely reflect the chronic underfunding of the public housing program. Curiously, this appears to be HUD's first stated concern about the risks to long-term project viability posed by below-market rents, and we note that HUD is not imposing these requirements on projects that are public housing or project-based rental assistance under RAD, which face similar challenges.

Third, RAD program design includes an essentially permanent affordability covenant. Every RAD project has a RAD Use Agreement, or use restriction, recorded in first priority against the property – and any other use restriction or lien must be subordinate to the RAD Use Agreement. The RAD Use Agreement remains in effect for as long as there is a RAD HAP contract and automatically continues with each subsequent renewal of the RAD HAP contract, which project owners are

required to accept. As with the non-RAD PBV program, it is PHAs, not HUD, who serve as contract administrator and are tasked with monitoring, tracking, and analyzing the RAD PBV projects within their portfolio. In the case of RAD, through the RAD approval process and the required evidentiary submissions, HUD already receives the information it seeks to collect through this information collection.<sup>2</sup>

### *HUD's Stated PHA-Owned Project Concerns*

HUD also appears to suggest that HUD's own independent entity approval requirements for PHA-owned PBV units are insufficient to prevent against undue influence from a PHA. However, such a concern is inconsistent with the evolution of HUD's policy towards its review of independent entities, which, over time, has shifted to require less information and reduce the administrative burden on PHAs.<sup>3</sup> Although HUD "retain[ed] the right to request more information, HUD expect[ed] that this will be unnecessary in the majority of cases."<sup>4</sup> This policy evolution is simply inconsistent with the proposed information collection's statement that "PHA-owned PBVs pose a risk" sufficient to justify this new information collection. If such were a legitimate, long-standing concern of HUD, then one would expect HUD's regulations and policy efforts to expand the evidentiary submission requirements, not lessen them. For the reasons provided by HUD in 2017, this level of heightened review is "unnecessary in the majority of cases," and such is not a compelling reason to require the level of information collection that HUD now seeks to require from PHAs.

### **The proposed information collection creates unfunded administrative burdens for PHAs and PBV project owners.**

Should HUD proceed with this proposed information collection on the PBV program, we have additional concerns regarding HUD's estimates of the burden imposed on PHAs, which CLPHA members believe significantly underestimate the time and effort needed and the nature and reporting frequency for some data points included in the proposed form, which will be difficult for PHAs to collect through this method and with such frequency.

HUD's burden estimate for PHAs to report on these data fields fails to adequately account for the amount of upfront work required by PHAs to obtain the various pieces of information requested or the burden this new data collection places on PBV project owners. The PBV program was created by the Quality Housing and Work Responsibility Act of 1998 ("QHWRA"), which merged a sister program called "certificates" with vouchers. Some of the PBV contracts that were signed when the

---

<sup>2</sup> See Rental Assistance Demonstration Closing Overview and Checklist: Project Based Voucher (PBV) Conversions.

<sup>3</sup> "HUD is changing the existing policy for independent entity review and approval by superseding the requirements established under Section III of Notice PIH 2015-05. Notice PIH 2015-05 required a PHA to submit documentation that demonstrated or supported the independent nature of the parties' relationship. With the publication of this notice, PHAs must, instead, submit a joint certification as explained in paragraph 3, HUD independent entity approval, below. The requirement to submit a joint certification is a change to HUD policy as laid out in the aforementioned PIH notice; it is not a change resulting from the enactment of HOTMA. HUD expects that this change will ease PHA administrative burden because PHAs will no longer need to produce documentation (such as financial statements, legal documents showing the structure of each organization, etc.) showing the independent nature of the parties." PIH 2017-21.

<sup>4</sup> PIH 2017-21.

program originated may not have required the same data points that HUD now seeks to obtain or may not be readily accessible, which would require PBV project owners to provide PHAs with supplemental information. In addition, to avoid unnecessary cross-collateralization, projects are frequently owned by individual special purpose entities, so it is not clear how the Owner Name or Owner Tax ID fields would help HUD develop its intended universal picture of the PBV program. Relatedly, because the majority of PBV units are owned by private entities, a PHA may not readily know what unrelated use restrictions, if any, are on the site or the year an existing housing project was constructed. This places significant burden on both the PHA and the project owner for minimal benefit, and our members have expressed concerns about whether these additional reporting requirements may negatively affect PBV participation. In listening sessions that HUD held with HCV landlords in 2019, HUD reported that the most frequent complaint from landlords about the voucher program was administrative burden. PHAs are concerned that burdening project owners with excessive administrative requirements may result in project owners declining to participate in the PBV program.

In addition to both the initial burden required of PHAs to collect PBV data, there is also an ongoing burden for both PHAs and owners required to ensure the data is timely and accurate. Asking PHAs and PBV project owners to report on this information six times per year is unduly burdensome, particularly considering the extent of duplicative reporting contained in the information request. For example, some of the seemingly straightforward data fields, such as address, might be difficult to capture on a project-by-project basis for projects that are covered under one HAP contract but consist of multiple buildings, each with different addresses.<sup>5</sup> In addition, if HUD truly intends for PHAs to update their responses every time there is a change in the data, we think the true frequency would be significantly higher. For example, the number of units under AHAP contract and the number of units under HAP contract may regularly change for projects with phased HAP contracts as units are removed from the AHAP and placed under HAP contract. Given that units under AHAP are not yet receiving any Section 8 subsidy, we also question what benefit this information would provide to HUD. Furthermore, as resident's incomes change, even something as simple as the number of units covered by the HAP contract is likely to change over time as some units are removed from the HAP contract and others are added. Trying to track this information and regularly report on it through the new form would be extremely burdensome for project owners and PHAs whose portfolios include a wide array of PBV units in various stages of the development pipeline and at various stages of occupancy.

While we recognize the importance of HUD having some information about PBV contracts, for the aforementioned reasons, we believe that HUD has not provided a sufficient justification for why this information collection is necessary in light of the information that HUD already receives and the unfunded additional information collections and reporting burdens it would impose. HUD already receives information from a PHA before any award of PBVs can be made and HUD's stated concerns about RAD PBV units and PHA-owned units appear as pretenses and simply do not hold up under scrutiny. Any benefit to be gained by the information that HUD now seeks to collect simply does not outweigh the burden to PHAs and PBV project owners. Further, HUD does not

---

<sup>5</sup> We would also note that this information is already collected by HUD on a household-by-household basis through HUD's 50058 form. We would again encourage HUD to seek internal mechanisms that could be used to aggregate this information, if desired, without additional burden to PHAs.

provide a rationale for requiring PHAs to update these PBV data fields six times per year or more often if changes occur on a more frequent basis, an excessive request that requires additional explanation. Should HUD proceed with this information collection, we would encourage HUD to request the information it seeks directly from PBV project owners.

Given the unclear justification for the information collection, the extent of data duplication, and the burden placed on PHAs, who are currently receiving only 80 cents on the dollar in administrative funding to support reporting requirements, we instead urge HUD to examine re-organization of its internal systems and existing information collections to obtain the aggregated project-level PBV data that it seeks. To the extent HUD implements this database collection, it is tacitly acknowledging that it is treating the PBV as a hybrid between tenant controlled assistance and a subsidized property, and HUD should obtain this information directly from PBV project owners rather than burdening PHAs with this request. We reject HUD's conclusion that the solution to its inability to reorganize its internal data systems is to subject PHAs to another data collection effort. We are concerned that HUD will begin to use the information collected as an enforcement tool against PHAs for both their actions and the actions of PBV project owners and share our members' concerns that the information sought under this notice could be used by HUD to further regulate and restrict the PBV program, an action we would strongly oppose, especially if promulgated through the Paperwork Reduction Act.

Thank you for the opportunity to submit these comments.

Sincerely,



Sunia Zaterman  
Executive Director  
CLPHA



Stephen I. Holmquist  
Member  
Reno & Cavanaugh, PLLC