

October 26, 2020

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

Re: [Docket No. FR-7024-N-40] "30-Day Notice of Proposed Information Collection: Project Based Vouchers (PBV) Data Collection"

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").

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.

CLPHA and Reno & Cavanaugh previously submitted joint comments in response to HUD's 60-day notice (84 FR 70986). In the previous comments, we expressed the following concerns about the new PBV data collection form:

- 1) HUD already receives sufficient information from PHAs through existing information collections to achieve its stated goal of developing a picture of the PBV program;
- 2) HUD's stated claim of needing additional information to inform risk-mitigation efforts is not well-supported and is insufficient to justify the imposition posed by this information collection; and
- 3) The proposed information collection imposes significant unfunded administrative burdens for PHAs and PBV project owners, particularly during the initial data collection stage.

We also note that while HUD suggested it may be willing to make changes in response to the comments received, very few changes were actually incorporated into the body of the information request itself. In the new version of the information request, HUD only removed the following two data fields: (1)

Effective Date(s) of AHAP, and (2) Management Entity. However, HUD did not offer any rationale for the deletion of these two data fields nor did HUD offer any additional rationale to proceed with its request of the remaining information fields. Accordingly, we find that HUD has not fully addressed the issues previously raised in our comments and find the proposed changes to be insufficient for the following reasons.

HUD already receives information through existing information collections and has not sufficiently justified its additional requests.

In our previous comments, we pointed to several different methods through which HUD already collects some of the data fields included in this form and disagreed with HUD's assertion that existing PBV submissions were insufficient to develop a universal and accurate picture of the PBV universe. In response to concerns about the duplication of data collection, HUD states that it will "explore the feasibility of aggregating these data to prepopulate those fields that could be prepopulated" and "anticipate[d] that some of the current PBV reporting would be replaced by the new online form."

While we appreciate this effort to reduce the burden on PHAs tasked with completing this new information collection, we note that if HUD has the capacity to pre-populate data fields with the information it collects elsewhere, then it should be equally capable of assembling this information to develop its desired collection of project-level data and should not be requiring these fields to be completed in the first place. We also request HUD provide additional detail regarding which existing information collections this new form is designed to replace and would request HUD immediately submit Paperwork Reduction Act ("PRA") notices of updates to existing information collections to effectuate these changes before any new information collection goes into effect.

Although we note that HUD has since recognized that select data fields may be optional or only required if the PHA can "readily obtain this information," HUD is unclear about which fields it intends to make optional and whether PHAs would face any repercussions if they fail to complete the optional fields. As a result, HUD continues to be opaque about its need for the information requested. As noted previously, this places a significant burden on both the PHA and the project owner for minimal benefit, and CLPHA members have expressed concerns about whether these additional reporting requirements may negatively affect PBV participation.

Our comments and concerns with respect to each of the individual fields requested are as follows:

- **HAP Contract Number, HAP Contract Code, Unique Project Building Code:** While the Notice suggests that these fields may eventually be produced by HUD's system or through another numbering mechanism, it is unclear why HUD seeks to develop three new tracking systems for Project-Based Voucher Housing Assistance Payments ("HAP") contract they are not party to. Many PHAs have already implemented internal monitoring systems, and the creation of three new tracking numbers per HAP contract introduces unnecessary confusion into administration of the PBV program.
- **Name of Project:** This information is already provided to HUD in each PHA's Annual Plan.
- **Address of Building(s) and Units:** This information is already provided to HUD in each PHA's Annual Plan and is also submitted to HUD in the PIH Information Center ("PIC") (see line 5a on form HUD-50058).

- **Number of Units under AHAP:** Units under an Agreement to Enter into Housing Assistance Payments Contract (“AHAP”) are unoccupied, under construction, and not yet ready for occupancy. Accordingly, until the units are placed under a HAP contract, they are not receiving any subsidy from HUD nor do they represent available units in the market.
- **Number of Units Under HAP Contract by Bedroom Size:** HUD should be able to discern this information from a PHA’s PIC submissions (line 5a and line 5d on form HUD-50058). We encourage HUD to use internal processes if it seeks to aggregate the information on a project-by-project basis rather than creating an unfunded mandate for PHAs to comply with.
- **Number of Total Units in the Project:** HUD already has access to the number of units under HAP contract by bedroom size. We believe that should be sufficient and strongly oppose HUD’s efforts to use this information collection to obtain information on units that do not receive subsidy from HUD and are unrelated to the PBV program.
- **Structure Type:** HUD should be able to discern this information from a PHA’s PIC submissions (line 5k on form HUD-50058). We encourage HUD to use internal processes if it seeks to aggregate the information on a project-by-project basis rather than creating an unfunded mandate for PHAs to comply with.
- **Type: Existing, Rehabilitated, or Newly Constructed:** If HUD retains this category, it should be modified such that it only asks whether a project is considered existing housing or whether the project is substantial rehabilitation/new construction. HUD does not distinguish between substantial rehabilitation and new construction in terms of its form of HAP contract or other PBV requirements. Therefore, attempts to distinguish between substantial rehabilitation and new construction are an unnecessary distinction.
- **Effective Date(s) of HAP Contract and Vacancy Payments Permitted:** HUD does not need a new information collection to obtain this information, which could instead be incorporated into a PHA’s Annual Plan submission.
- **Expiration Date:** For convenience and to align with existing HAP contract contents, HUD should revise this field to instead ask for the “HAP Contract Term (Number of Years).” This would allow PHAs to more quickly complete the field.
- **Owner Name and Owner Tax ID:** Because projects are often owned by special purpose entities to avoid cross-collateralization, HUD will not be able to use this information to identify common owners or developers. The PBV program is not subject to HUD’s previous participation certification (2530) requirements and is instead subject to a PHA’s procurement policy. Accordingly, it is unclear how access to this information will be used by HUD, and HUD has not articulated a compelling reason for this information to be included.
- **PHA-Owned, PHA Has Ownership Interest but Not PHA-Owned, No PHA Ownership Interest and if PHA-Owned: Name of Independent Entity or Entities:** As noted elsewhere, we do not find HUD’s stated rationale for this information to be compelling. Whether a project is considered PHA-Owned is purely a matter of regulatory compliance, which HUD can audit when and where there are concerns. With respect to independent entities, HUD should already have much of this information through its independent entity review and approval process. As PHAs routinely procure independent entities, updating this field for each HAP contract across an entire PHA’s PHA-Owned PBV portfolio would create a significant burden and provide minimal benefit.
- **Other Related Programs: Tax Credit, RAD, HUD-insured, VASH, or Other:** With the exception of the tax credit program, which is generally administered by state housing finance agencies, HUD’s records should be sufficient to determine which properties are within its

- RAD portfolio and which properties it insures. It is unclear and HUD has offered no compelling reason to request this information which is unrelated to the PBV program.
- **Population Served, Supportive Services Available, Number and Bedroom Distribution of PBV-Assisted Section 504 Mobility Units at the Project, Number and Bedroom Distribution of PBV-Assisted Section 504 Hearing/Vision Units at the Project:** We assume this information is being requested in connection with HUD's response to commenters hoping the information could be used by individuals and service agencies to identify available units and services for individuals in need. However, unlike the private market, where individuals might notice a unit vacancy and contact the landlord directly, the process for renting a PBV unit is simply not that easy and requires placement on a PHA's site-based or program wide waiting list, an eligibility determination from the PHA, and a suitability determination from the project owner. Instead, service providers and those in need would be better served contacting a PHA directly for placement on appropriate waiting lists.
 - **Does an Exception to the Income-Mixing Requirement Apply and, if Yes, which Exceptions:** Whether a project is subject to the income-mixing requirement or falls within an exception is purely a matter of regulatory compliance, which HUD can audit if it has concerns.
 - **Program Cap Exception and Program Cap Exception Category:** HUD already receives this information from a PHA on a per project basis as part of the fourteen-day advance submission that is required before a PHA may project-base vouchers pursuant to Attachment C of PIH 2017-21.
 - **Number of RAD PBVs:** HUD already has this information on a per project basis in multiple places including but not limited to, in the RAD Conversion Commitments ("RCCs") that it issues for each RAD project and on the RAD Resource Desk.
 - **Use Restriction End Date:** HUD's PBV program, on its own, does not place a recorded use restriction on the property. Accordingly, this is not information that a PHA would ordinarily have access to without expending significant time and resources to run a title search of each project within its PBV portfolio. While RAD PBV projects do have a Use Agreement, HUD already has that information on its RAD Resource Desk.
 - **Year Built:** HUD should be able to discern this information from a PHA's PIC submissions (line 5j on form HUD-50058). We would further note that the year a project was constructed should be of no significance to HUD. As long as the units covered by the HAP contract pass an HQS inspection and satisfy the other PBV requirements, a PHA is permitted to project-base vouchers regardless of when the building was constructed.

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

In our previous comments, we expressed concerns regarding HUD's intended use of the information. We also noted that HUD had not shared a convincing rationale for why this new data collection effort was needed. In its response to our comments and others received, HUD has done little to assuage those concerns. Although HUD says, "The primary purpose of this collection is not to implement any enforcement actions,"¹ this statement does not seem consistent with the broader information collection.

¹ We also note that HUD's full statement regarding the purpose of the information collection in response to commenters is incomplete and reads only, "The primary purpose of this collection is not to implement any

Whether enforcement actions are stated as a primary purpose of the information collection or not, it is clear that HUD intends to use this data for enforcement activities. Elsewhere in the Notice, the terms used by HUD to justify a need for the new information collection - “monitoring,” “risk-mitigation,” and “ensur[ing] that PBV projects meet the requirements” –clearly relate to HUD’s enforcement of the PBV program and to suggest otherwise does not hold up under scrutiny.

Our prior comments also took issue with HUD’s claim that it sought, in part, to impose new PBV data collections as part of a risk-mitigation effort for public housing RAD conversions and PHA-owned PBV projects. We objected to these claims on the basis that: (i) the initial construction of RAD projects is not paid for by HUD²; (ii) HUD appeared to single out RAD projects because they are below-market rent,³ despite the fact that this is a congressionally-mandated requirement of RAD; and (iii) HUD is unable to ensure projects remain affordable in perpetuity, apparently notwithstanding the RAD Use Agreement.⁴ As noted previously, when discussing PHA-Owned units, HUD’s stated concerns about PHA-Owned PBV projects directly conflict with HUD’s own approach towards its independent entity approval requirements as set forth in PIH 2017-21. In its current comment responses, HUD is silent with respect to our stated concerns about its purported need for risk-mitigation strategies. In doing so, HUD diminishes the role of the PHA, as Contract Administrator, in assessing risk and monitoring its own PBV portfolio. We would respectfully request a response from HUD to these concerns which are now being raised for the second time.

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

We also expressed concern in our February 2020 comments that this data collection effort creates a large amount of unfunded administrative work for PHAs, which CLPHA members believed HUD to be significantly underestimating. Members raised serious concerns about the amount of work that would be involved of both PHAs and project owners in collecting some of the data fields, especially as many of the requested fields ask for non-PBV information that a PHA may not have access to. HUD states in response that it would require only a one-time initial data collection and any future updates would only be required if data fields must be updated. As large agencies, CLPHA members have thousands of PBV units

enforcement actions. The purpose of the collection is for HUD to have data on the project level for this part of the HCV program which [remainder of sentence omitted].”

² While HUD did not directly respond to our comments on this point, we do note that HUD has revised its stated justification on this point from the 60-day notice, which previously read that the, “initial construction [of all RAD projects] was paid for by HUD.” However, even with this change, the statement that, “What distinguishes RAD PBVs from regular Project-Based Vouchers is the initial construction of public housing was paid for by HUD” is still incorrect. Many RAD projects consist of the conversion of mixed-finance public housing, which is often not funded by HUD, but is instead funded through a combination of low-income housing tax credit equity investments and traditional debt (hard and/or soft loans). We also note that we do not see HUD expressing the same concerns with respect to the continued use of PBVs at former public housing sites approved for demolition/disposition under Section 18 and former public housing approved for conversion under Section 22 of the Housing Act of 1937.

³ HUD offers no support for this statement, which appears to be HUD’s first stated concern about the risks to long-term project viability posed by below-market rents. We note that while public housing and RAD PBRA projects face the same rent level challenges, HUD is not imposing these requirements on those other types of projects.

⁴ In every RAD conversion, HUD requires there to be a first-priority RAD Use Agreement recorded against the property. HUD has not previously expressed any concerns about the ability of its RAD Use Agreement to ensure the property remains affordable. To the extent HUD has these concerns, it should look to the RAD program and revision of the Use Agreement as the appropriate remedy.

in their portfolio. We maintain our prior concerns that HUD continues to underestimate the time and costs required to undertake even the initial data collection process for large PHAs. HUD is also underestimating the frequency with which some data fields may need updates as information changes and is not giving appropriate consideration to the amount of time assembly and entry of information in each of the data fields would require of large agencies.

Conclusion

In the PBV context, it is not up to HUD to systematically collect information on the development or project level. PHAs serve as the contract administrators, not HUD. Accordingly, it is the responsibility of each individual PHA to monitor, track, and analyze each project under a PBV contract. If HUD seeks confirmation that a 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).

We are disappointed in HUD's response to the concerns raised by CLPHA, Reno & Cavanaugh, and other groups about the unfunded administrative burdens that accompany this new data collection effort and maintain that HUD has not articulated a convincing rationale as to why this effort is needed. In its response, HUD has not responded to several of our concerns, suggesting the Department is not seriously considering the feedback offered by stakeholders and views the comment period as a mere formality. In the new version of the information request, HUD only removed the following two data fields: Effective Date(s) of AHAP and name of the Management Entity. However, HUD did not offer any rationale for the deletion of these two data fields nor did HUD offer any additional explanation for why the remaining fields are necessary or providing any justification for why the burden should be on PHAs to fix HUD's internal difficulties with evaluating PBVs using existing data.

Thank you for the opportunity to submit these comments.

Sincerely,