



June 30, 2023

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

RE: [Docket No. FR-7076-N-11] 60-Day Notice of Proposed Information Collection: Project Based Vouchers (PBV) Online Form, OMB Control No.: 2577-0296

Dear Ms. Pollard,

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 units in the nation’s public housing program, administer a quarter of the subsidies in 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.

CLPHA and Reno & Cavanaugh have previously submitted comments twice regarding this information collection.<sup>1</sup> Our previous comments rejected HUD’s conclusion that the solution to its inability to reorganize its internal data systems is to subject PHAs to another data collection effort and encouraged HUD to examine the reorganization of its internal systems and existing information collections to obtain the aggregated project-level PBV data that it seeks. We also expressed concerns that HUD may try to use the information collected as an enforcement tool against PHAs to further regulate and restrict the PBV program. We remain 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. As per our previous comments, instead of burdening PHAs with an additional reporting requirement that duplicates existing requirements, we would again encourage HUD to work towards 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’s stated need for additional information to inform risk-mitigation efforts is insufficient to justify the imposition of this information collection.**

It continues to be 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. HUD’s stated reason for this information collection continues to be that existing PBV submissions are “insufficient to give HUD a universal and currently accurate picture of the Project Based Voucher universe” because “HUD currently does not systematically collect information on the project or development level for PBVs.” However, as stated in our prior comments, from the individual tenant data that HUD already collects and from the PHA-level data that is submitted as part of the 14-day notice requirement, HUD should be able to aggregate this data to extrapolate at least a portion of the project-level information it seeks.

Throughout the Notice, the terms used by HUD to justify a need for the new information collection – “monitoring” and “risk-mitigation” – clearly relate to HUD’s enforcement of PBV program requirements. 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 to help inform enforcement activities. Indeed, much of the information requested by HUD seems specifically designed to identify projects to investigate for regulatory compliance – a task designated to HUD’s field offices, which are already equipped with the tools to conduct such compliance monitoring reviews and have the local contacts and market understanding.

HUD also states that the lack of information “prevents HUD from having data with which to make informed decisions on risk-mitigation strategies with respect to PBVs” and that “[p]otential risks

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<sup>1</sup> See comments submitted jointly by CLPHA and R&C on February 24, 2020 in response to Docket No. FR-7015-N-10 (“60-Day Notice of Proposed Information Collection: Project Based Vouchers (PBV) Online Form”) and comments submitted jointly by CLPHA and R&C on October 26, 2020 in response to Docket No. FR-7024-N-40 (“30-Day Notice of Proposed Information Collection: Project Based Vouchers (PBV) Data Collection”).

are particularly heightened in the case of Rental Assistance Demonstration (“RAD”) PBV where a PHA-owned property is required to have an independent entity that performs inspections and determines rent adjustments.” However, HUD’s stated justification as to why the RAD units deserve heightened scrutiny has been inconsistent. First, HUD stated that “initial construction was paid for by HUD, rents are initially set below market level, and they are supposed to remain affordable in perpetuity,”<sup>2</sup> which we reminded HUD was factually incorrect as to the funding of construction, a programmatic design as to the rent-setting, and that HUD already requires and reviews a RAD Use Agreement for all RAD properties to ensure long-term affordability.<sup>3</sup> Then, HUD stated, “What distinguishes RAD PBVs from regular Project-Based Vouchers is the initial construction of public housing was paid for by HUD,”<sup>4</sup> which was, again, incorrect as many mixed-finance public housing properties converting through RAD were funded through low-income housing tax credits, private funds, and other sources.<sup>5</sup>

Now, HUD states that RAD projects require heightened scrutiny because some may require an independent entity, but this, too, simply does not hold up under scrutiny as the independent entity requirement applies to all PHA-owned PBV projects, regardless of whether they are covered by a RAD or non-RAD Housing Assistance Payments (“HAP”) contract, and initial rents in RAD are limited by HUD’s public housing subsidy levels and adjusted by an annual operating cost adjustment factor (“OCAF”). Furthermore, such a concern about PHA-owned projects 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>6</sup> 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.

**HUD already receives sufficient information on the PBV portfolio to provide a “universal and currently accurate picture of the PBV universe” through existing data collections.**

In the Notice, HUD again suggests that because of the perceived lack of information it receives on PBV projects, it faces challenges monitoring, tracking and analyzing them. However, HUD has continually failed to offer any convincing policy or regulatory rationale for this information collection or for those concerns. In addition, Notice PIH 2017-21 (HA) already requires PHAs to

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<sup>2</sup> See Docket No. FR-7015-N-10.

<sup>3</sup> See comments submitted jointly by CLPHA and R&C on February 24, 2020 in response to Docket No. FR-7015-N-10 (“60-Day Notice of Proposed Information Collection: Project Based Vouchers (PBV) Online Form”).

<sup>4</sup> See Docket No. FR-7024-N-40.

<sup>5</sup> See comments submitted jointly by CLPHA and R&C on October 26, 2020 in response to Docket No. FR-7024-N-40 (“30-Day Notice of Proposed Information Collection: Project Based Vouchers (PBV) Data Collection”).

<sup>6</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.

submit portfolio-wide information on their PBV portfolios to HUD through a centralized email address ([pbvsubmission@hud.gov](mailto:pbvsubmission@hud.gov)) at least 14 days prior to issuing a request for proposals, selecting a project based on a previous competition, or selecting a project without following a competitive process.

When aggregated across PHAs, we continue to believe that 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. Additionally, PHAs are required to report on and describe proposed PBV activities as part of the PHA's Annual Plan in Form 50075. 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 should instead utilize the RAD Resource Desk to obtain the new information fields requested from PBV project owners, rather than PHAs.**

New to this proposed data collection are additional fields specific to RAD PBV projects that will need to be completed. These new fields of collection for RAD PBV projects include:

- Annual Replacement Reserve Deposit Amount
- Annual Replacement Reserve Withdrawal Amount
- Ending Balance for the Replacement Reserve Account
- Replacement Reserve Deposits Suspended/Waived Indicator?
- Date Replacement Reserve Deposits Suspended/Waived?

We assume that HUD is requesting this information in order to monitor the compliance of RAD PBV properties with the RAD Conversion Commitment ("RCC") requirements related to replacement reserves. However, this is information that is maintained by project owners, not PHAs. Accordingly, HUD should be looking to obtain it from the project owners directly, as they would be best suited to provide this information to HUD. To facilitate this, we would suggest adding an additional field or fields to either the "Post-Closing Processing" or the "Asset Management" tabs that already exist under the "Transaction Pages" section of the RAD Resource Desk. This way, when HUD obtains the information, it would already be linked directly with the RAD project that it pertains to and project owners, who are already able to access the RAD Resource Desk, could submit this information directly to HUD on a project-by-project basis without needing the PHA to serve as a liaison.

**We are pleased to see HUD remove several previously required fields from the information collection.**

We are pleased that HUD is discontinuing and removing several fields from the PBV data collection form. We previously objected to the inclusion of these fields and, although no reason

for their removal was provided by HUD, are nonetheless glad to see that they will no longer be part of the information collection. However, we do not believe that HUD has provided a sufficient justification for why the information collection of the remaining fields is necessary in light of the information that HUD already receives. As described above, 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 remaining information that HUD now seeks to collect simply does not outweigh the burden to PHAs. Should HUD proceed with this information collection, we would encourage HUD to request the information it seeks directly from PBV project owners who directly manage these projects on a day-to-day basis.

**The proposed information collection continues to create unfunded administrative burdens for PHAs and PBV project owners.**

The proposed information collection continues to create unfunded administrative burdens for PHAs and PBV project owners. 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 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. This places a 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 addition, as large agencies, CLPHA members have thousands of PBV units in their portfolios. 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. 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. 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. For example, as residents' 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 PHAs whose portfolios include a wide array of PBV units in various stages of the development pipeline and at various stages of occupancy.



### Conclusion

We again remind HUD that, 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. To the extent HUD implements this database collection, it is tacitly acknowledging that it is treating the PBV as a hybrid between tenant-based assistance and a subsidized property. One of the reasons many PHAs and their partners have been motivated to convert from public housing to PBVs, whether through RAD or the use of tenant protection vouchers, has been to enter a more flexible, streamlined regulatory environment. If HUD seeks confirmation that a PHA is administering their PBV portfolio consistent with HUD requirements, HUD has the ability to audit the PHA, and HUD field offices can also conduct monitoring reviews to determine compliance with the applicable regulatory requirements. If, in the course of an audit or compliance monitoring review, 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).

While we are pleased to see the reduction of information fields being required, we remain disappointed in HUD's lack of 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. Given the unclear justification for the information collection, the extent of data duplication, and the burden placed on PHAs, who are currently receiving only 97 cents on the dollar in administrative funding to support reporting requirements, we continue to strongly urge HUD to examine the reorganization of its internal systems and existing information collections to obtain the aggregated project-level PBV data that it seeks.

Finally, we remain 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,



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CLPHA



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