Section 8: New York's Legal Landscape—Part I

Gerald Lebovits
I. INTRODUCTION

The Section 8 housing program enables almost a million low-income families to obtain safe, decent, and affordable housing nationwide. Yet the program remains a quagmire for landlords, tenants, and advocates. Governed by federal, state, and local laws as well as by reams of regulations particular to the administering public-housing authorities, the program is bureaucratic and complicated legally. Some landlords are unwilling to accept Section 8 because of its myriad requirements and obligations, while tenants feel discriminated against by potential landlords because of the tenants' status as Section 8 voucher holders.⁷ On the other hand, Section 8 expands the affordable housing options for poor households while guaranteeing a stream of rent income to landlords. Section 8, while expensive for taxpayers and burdensome for participants, encourages free private enterprise and reduces the demand for public housing.

In New York State, the intersection of federal Section 8 laws with rent-regulatory schemes, local tax laws, and other provisions has left a web of rules and exceptions. Recent developments in Section 8 law have added to this jumble. This article attempts to capture the landscape of the Section 8 in New York City.

II. SECTION 8: THE EVOLUTION

Public housing in the United States began as a response to the Depression. The United States Housing Act of 1937 created local Public Housing Authorities, or PHAs, which are established by individual states.⁵ PHAs became the administrative building blocks for most federal housing programs, including Section 8 and public housing.⁶ Initially and for a period of approximately thirty years, PHAs, operating by the Depression Era philosophies of job creation and slum elimination, built and operated public-housing projects as the primary source of housing assistance for low-income families.

In the years that followed, the U.S. Housing Act was widely criticized as costly, its housing ugly, and its policies segregationist.⁷ In response, the federal government tried to encourage the private sector to create and operate low-income housing. In 1965, Congress introduced the Section 23 Leased Housing Program amended the U.S. Housing Act to allow and encourage PHAs to contract with private (Continued on page 9)

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landlords to lease vacant properties. Under Section 23, PHAs paid market-value rent directly to private landlords, and the low-income tenants paid a reduced rent directly to the PHA. PHAs selected eligible families from their waiting list, placed them in housing from a master list of available units, and determined the rent that tenants would pay. PHAs also agreed to perform regular building maintenance for Section 23 tenants. Eventually, most Section 23-assisted units became Section 8 participants. In 1965, the Department of Housing and Urban Development (HUD) was created as a cabinet-level agency to develop and execute policy on housing and cities.

Before Section 23 was phased out, but before the inception of Section 8, Congress experimented with what later became the Housing Choice Voucher Program, a key element of Section 8. In 1971, Congress authorized the Experimental Housing Allowance Program, or EHAP. EHAP tested the feasibility of providing housing allowances to eligible families and was conducted in twelve locations between 1971 and 1980. During the EHAP experiment, nearly 50,000 households received cash assistance for housing. Participants leased units directly from private owners. Homeowners as well as renters were able to participate at two of the demonstration sites. The EHAP experiment demonstrated the following: (1) a housing-allowance program could preserve existing housing stock by encouraging owner repairs and maintenance; (2) allowing families mobility allowed them to select better neighborhoods; (3) families did not select expensive units; and (4) most tenants were able to pay their share of the rent for the selected units.

The federal Section 8 program was born out of the Housing and Community Development Act of 1974, which amended the U.S. Housing Act of 1937 to create housing-voucher and housing-certificate programs. This initiative cemented a shift in the federal housing strategy: More emphasis was placed on involving privately owned rental housing. The term “Section 8” referred to the new section of the U.S. Housing Act that the 1974 amendments added. At the outset, Section 8 was a rental certificate program modeled after the still-running EHAP, but it differed in two key respects. First, after a tenant selected an apartment, the PHA would make the subsidy payments directly to the landlord rather than to the family. The government’s rent contribution would be such that the families paid twenty-five percent of their adjusted income towards the rent. (This was changed to thirty percent in 1983.) Second, the gross rent of a unit leased could not exceed a fair-market value that HUD determined.

A decade after the Housing and Community Development Act of 1974, the Housing and Community Development Act of 1987 further expanded the federal public-housing regime by adding a rental-voucher program to Section 8. This program was similar to Section 8’s existing rental-certificate program, but it expanded the options available to recipients. With rental vouchers, the government’s contribution to an eligible family’s rent was pre-determined based on the family’s need. Unlike the certificate program, families could pay more than thirty percent of their adjusted income toward rent, depending on the cost of housing they chose. The government voucher payment would be fixed; thus, a fair-market-rent limitation was unnecessary. By the 1990s, the federal housing regime still included publicly provided housing projects, but Section 8’s certificate and voucher programs involved private-property owners in providing much housing for low-income families.

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Over the next decade, HUD issued three "conforming rules" to combine and conform the rental-certificate and rental-voucher programs. In July 1994, the first part of the conforming scheme established unified admissions rules. The next year, in 1995, several administrative and leasing activities between certificate and voucher became standardized. The next conforming rule, in June 1998, dealt with rent reasonableness and determining housing-assistance payments.

Shortly after the third HUD amendment, Congress took a more direct approach by enacting, in October 1998, the Quality Housing and Work Responsibility Act. This act once again amended the Section 8 of the U.S. Housing Act of 1937 and merged the certificate and voucher programs into a single program called the Housing Choice Voucher Program. The Housing Choice Voucher Program is colloquially called "Section 8," even though it is only a portion of Section 8 of the Housing Code. In May 1999, HUD issued an interim rule to implement the merger by phasing out the certificate program. From October 1, 1991, when the new regime took effect, all existing rental-voucher-program participants became subject to the requirements of the new Housing Choice Voucher Program. Those still under the rental certificate program would switch to the Voucher Program when they moved into a new home with assistance, renewed a lease, or received their second annual reexamination after October 1, 1991.17

III. SECTION 8: THE NUTS AND BOLTS

The current Housing Choice Voucher Program is similar to its predecessor, the rental-voucher program. PHAs pay subsidies directly to landlords. Tenants pay landlords the difference between the subsidy and the actual rent charged. This assistance is considered "tenant based" because the voucher is tied to the tenant, not the dwelling unit.18 Tenants are free to choose their homes. The voucher stays with them if they remain eligible.19

The program is funded by the federal government through HUD and administered locally by about 2500 PHAs across the country.20 PHAs are usually run by state or local governments, although some are independent.21 Each PHA is allocated a limited number of vouchers to administer. Congress annually allocates funding for each PHA’s voucher and may in its discretion provide for additional vouchers.22 Because vouchers are limited, about one in every four qualifying families who seek assistance actually receives it.23

In New York City, three different PHAs administer the Section 8 Housing Choice Voucher Program: (1) the New York City Housing Authority (NYCHA); (2) the New York City Department of Housing Preservation and Development (HPD); and (3) the Subsidy Services Unit of the New York State Division of Housing and Community Renewal (DHCR).

NYCHA administers vouchers to approximately 83,000 families in the five boroughs, making NYCHA’s Section 8 program the largest in the United States.24 HPD’s program serves special categories of New Yorkers and provides assistance to an additional 26,000 households.25 DHCR administers the Housing Choice Voucher Program across New York State.26

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Although NYCHA is New York City’s primary voucher-administering PHA, DHCR’s Subsidy Services Unit administers another 7200 vouchers in the five boroughs and Westchester County. HUD has appointed DHCR and the New York State Housing Trust Fund Corporation (HTFC) the administrators of Section 8’s project-based contracts in New York State. According to DHCR, DHCR/HTFC’s contracted private sector partner CGI-AMS, Inc., currently administers 999 contracts covering 91,969 units.

A. Eligibility

To be eligible to receive assistance from the Section 8’s Housing Choice Voucher Program, all applicants must satisfy HUD eligibility requirements. First, the family applying must fall within HUD’s income guidelines. To qualify, a family must be a “very low-income” household. A very-low-income household is a household whose annual income is at or below fifty percent of the median annual income of a household of that size living in a chosen county or area. HUD estimates and annually publishes the very-low-income limitation for each area. The entire New York metropolitan area is considered a single area for the purposes of these published income limits.

Although only very-low-income households are eligible for Section 8 voucher assistance, HUD requires all PHAs to provide seventy-five percent of its vouchers to “extremely low-income” applicants — households whose incomes are no more than thirty percent of the area’s annual median income.

In limited circumstances, HUD allows households to receive Section 8 assistance even if their income is no greater than eighty percent of the area’s annual median. These households are known as “low income” households. PHAs are also granted discretion to award assistance to low-income applicants if doing so is an essential local housing policy. For example, a financially strapped PHA might try to lower subsidy costs by allowing two very-low-income sisters to live together if their combined annual income exceeds the very-low-income level but not the low-income level. Assistance to a single two-bedroom apartment would be less than that paid to two one-bedroom apartments.

As a second eligibility requirement, HUD calls for all applicants to meet a local PHA’s definition of a family. PHAs are given a fair amount of flexibility in setting this definition.

As a third eligibility requirement, every Section 8 applicant must be a United States citizen, national, or permanent resident by immigration. Those granted asylum or who have refugee status are also eligible, as are those lawfully present in the United States with the Attorney General’s approval.

The fourth requirement is that voucher applicants must not have been evicted from public housing or any Section 8 program for drug-related criminal activity.

If a family has both eligible and ineligible members, the family is considered a mixed family, and its subsidy is prorated. The ineligible persons are not counted for the subsidy level. PHAs conduct a criminal background check on each member of the household sixteen years and older. Family composition is restricted to family members listed as household members. Before adding a family member (other than a newborn baby), the family must request permission from the PHA.

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Applicants might also be subject to additional eligibility requirements depending on where they live. This is because HUD has granted PHAs substantial flexibility under the federal guidelines to address the area’s needs. PHAs may, for example, favor certain types of families or housing needs. In New York City, the high demand for housing assistance has strained the three PHAs’ ability to accept new applications. The PHAs have been forced to exercise this flexibility to restrict the applications they accept.

i. NYCHA

As of May 15, 2007, the New York City Housing Authority stopped accepting general applications. It accepts Section 8 housing assistance applications only from those in the following three emergency categories: (1) applicants referred by the District Attorney’s Office to the Intimidated Witness Program; (2) applicants referred by the Administration for Children’s Services (ACS) Family Unification and Independent Living programs; or (3) victims of domestic violence. Further, applicants must meet NYCHA’s definition of a family. To qualify as an eligible family, applicants must fall into one of three categories: (1) two or more persons related by blood, marriage, registered domestic partnership, adoption, guardianship, or court-awarded custody; (2) two or more unrelated persons living together as a cohesive household group in a sharing relationship; or (3) a single person, with preference given to the elderly or disabled.

The applying family must also be a very-low-income household. NYCHA does not accept low-income applicants.

ii. HPD

As of July 2008, HPD serves only three categories of applicants. First, the homeless are eligible for HPD vouchers. Second are persons affected by an HPD-funded renovation. Some buildings owned by or transferred to New York City (or an entity the City designates to achieve its housing goals) need renovation. HPD offers funds in the form of loans or grants to renovate these buildings and may provide voucher assistance to tenants to locate permanent, alternate housing. Third, HPD can issue vouchers to residents currently living in buildings constructed or renovated with HPD financial assistance. Applicants in this last category must be referred by HPD program staff.

HPD also administers “enhanced,” or “sticky,” vouchers to protect residents of rent-regulated apartments when the private-property owner opts out of a project-based contract to convert the property to market-rate housing. Enhanced vouchers have higher income limits (up to ninety-five percent of the area’s median income) and provide more help to pay the now-higher market rent.

iii. DHCR

As of July 2008, DHCR is not accepting any new applications. It has closed its waiting list due to the large number of families already in line for DHCR vouchers.

B. Rent Setting

The amount of PHA assistance a voucher is worth to a household depends on three factors:

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(1) the household's adjusted income; (2) the selected dwelling's monthly rent; and (3) a PHA-determined "payment standard." In determining the amount of rent a voucher covers, a household's income is adjusted, with deductions granted for children, students, elderly family members, and family members with disabilities. The payment standard is a benchmark value that measures the amount needed to rent a moderately priced dwelling in a local housing market. PHAs must set payment standards between 90 and 110 percent of the HUD-estimated "fair market rent."  

If the rent of the dwelling unit selected by voucher recipients is at or below the payment standard, recipients pay thirty percent of their adjusted income toward the rent. The voucher covers the rest. Families are free to choose dwellings with rent above the payment standard, but the voucher will not cover any extra rent. Any rent the voucher does not pay must be met by an increase in the family's contribution. When the family first enters the voucher program, either by moving into a new unit or by signing its first voucher-assisted lease, it may not select a dwelling with a rent that would make the family's contribution greater than forty percent of its adjusted monthly income. Therefore, vouchers (with a few exceptions explained below) pay an amount equal to the payment standard less thirty percent of a family's adjusted monthly income, and the family pays between thirty and forty percent of its adjusted monthly income toward rent.

Some exceptions apply to the rule above. HUD requires PHAs to set a minimum rent value between $0 and $50. Families must pay at least this minimum contribution, even if it exceeds forty percent of their adjusted monthly income. NYCHA has no minimum dollar value. It instead requires a minimum contribution of ten percent of gross income if the family's rent contribution according to the thirty-to-forty-percent standard falls below ten percent of gross income. HPD requires tenants to pay the higher of thirty-to-forty percent of adjusted monthly income, ten percent of gross income, or $50. In addition, for dwellings in which the tenants pay utility costs directly to the landlord, a tenant's rent contribution will be reduced by a PHA-determined utility allowance.

PHAs reexamine the family's income and composition at least annually to ensure continuing eligibility. Payment amounts may be adjusted as a result of these recertifications based on changed income or increased rent.

Once accepted into the Housing Choice Voucher Program, tenants are free to move with their vouchers to anywhere in the United States. Families looking to move within a PHA's jurisdiction or to another jurisdiction might be subject to restrictions and must apply to their local PHA.

C. The Landlord's Obligations

Before approved voucher recipients may move into a dwelling they have selected, the local PHA must inspect it to ensure that it complies with HUD's minimum Housing Quality Standards (HQS). If the PHA approves the dwelling, the landlord enters into a lease with the tenant for at least one year, after which the landlord may initiate a new lease or allow the family to remain in the unit on a month-to-month basis. The landlord simultaneously enters into a housing assistance payments (HAP) contract with the PHA. Under this contract the landlord agrees to maintain both the minimum HQS as well as services agreed to as part of the tenant's lease. The PHA inspects the unit annually to ensure

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compliance. A landlord’s failure to correct HQS violations after a failed inspection can result in the PHA’s terminating or suspending the housing assistance paid to the landlord.\textsuperscript{70}

D. Project-Based Assistance

Assistance provided under the Housing Choice Voucher Program may also be “project based.” Project-based assistance is tied to a particular building rather than a particular family. Under a project-based HAP contract, the owner agrees to build or rehabilitate certain dwellings, and the PHA agrees to subsidize those dwellings upon the owner’s satisfactory completion of rehabilitation or construction.\textsuperscript{71} With project-based vouchers, PHAs can support the development of affordable housing. In return, the project owner is assured a steady stream of tenants and revenue.

HUD does not provide a separate funding allocation for project-based vouchers. Rather, PHAs are authorized to spend up to twenty percent of their Housing Assistance Voucher Program funds on project-based vouchers.\textsuperscript{72} Further, there is no separate application for project-based vouchers. Instead, PHAs offer project-based assistance to families that apply for tenant-based assistance when eligible dwellings become vacant.\textsuperscript{73} The family may then accept if it is interested or wait for a tenant-based voucher to become available. After a year under a project-based voucher, a family may transfer to a tenant-based voucher if one is available. Before the PHA approves that transfer, the voucher remains project-based, and the family loses the assistance if it moves.\textsuperscript{74}

Project-based vouchers are part of the Housing Choice Voucher Program and are different from the project-based Section 8 program.\textsuperscript{75} The latter, which is not funded through PHAs, refers to the remnants of the Section 23-style subsidy contracts with private building owners initially established during the 1970s and 1980s when the Section 8 program took over these operations.\textsuperscript{76}

(To be continued next month)

\textbf{Endnotes}

1 Congress has initiated reforms to the Section 8 program, called the “Section 8 Voucher Reform Act of 2007,” or “SEVRA,” to increase the number of vouchers, eliminate inefficiencies, and appease concerns of landlords and tenants. However, this bill remains controversial among low-income housing advocates and is currently stalled in a Senate committee. See http://thomas.loc.gov/cgi-bin/bdquery/z?d110:hr.1851: (last visited Aug. 4, 2008).


5 \textit{Id.} at 612

6 \textit{Id.} at 613.

7 \textit{Id.}


9 Guidebook, supra note 3, at 1-2.


11 Guidebook, supra note 3, at 1-2.

12 \textit{Id.} at 1-3.

13 \textit{Id.}

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15 Guidebook, supra note 3, at 1-3.
16 Id.
17 Guidebook, supra note 3, at 1-5.
19 Id.
21 Introduction, supra note 18.
22 Id.
23 Id.
27 Id.
29 Id.
31 Introduction, supra note 18.
32 Id.
33 Id.
35 Fact Sheet, supra note 30; Introduction, supra note 18.
36 Guidebook, supra note 3, at 5-3.
37 Id.
38 Id. at 5-1.
39 Id. at 5-3.
40 Id. at 5-1.
41 Fact Sheet, supra note 30.
43 Id. at 2-3.
44 Id. at 3; Income Limits, supra note 34, at 2.
45 Residential Tenants, supra note 25.
46 Id.
47 Id.
49 Residential Tenants, supra note 25.
50 N.Y. St. Div. of Hous. & Cnty Renewal, Subsidy Services Unit, http://www.dhcr.state.ny.us/Programs/Section8HCV/subsvs.htm (last visited Aug. 4 2008).
51 Introduction, supra note 18.
53 Fact Sheet, supra note 30.
54 Introduction, supra note 18.
55 Guidebook, supra note 3, at 6-2.
56 Introduction, supra note 18.

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57 Guidebook, supra note 3, at 6-2; NYCHA Guide, supra note 42, at 6; Residential Tenants, supra note 25.
58 Guidebook, supra note 3, at 6-7.
59 Id.
60 NYCHA Guide, supra note 42, at 6.
61 Residential Tenants, supra note 25.
62 Introduction, supra note 18.
63 Fact Sheet, supra note 30.
64 Id.
65 Guidebook, supra note 3, at 13-1.
66 Id.
67 Fact Sheet, supra note 30.
68 Id.
69 Id.
70 Id.
72 Id.
73 Id.
74 Introduction, supra note 18.
75 Id.
76 Id.

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