I. Introduction

The Project-Based Voucher (PBV)\(^1\) program is a relatively small project-based housing assistance program, funded by the Department of Housing and Urban Development (HUD) and administered by public housing authorities (PHAs), and was the subject of the *Beginner’s Guide to Project-Based Vouchers* published in 2015, the predecessor to this publication. This important subsidy program allows PHAs and owners of private multifamily properties to commit subsidy to particular units in order to preserve the long-term affordability of those units. Currently, it is the only program within HUD that provides for the creation of new subsidized units rather than the preservation of existing subsidy. Since the original publication of the *Beginner’s Guide*, the PBV program has seen significant changes and expansions through continued use of the Rental Assistance Demonstration (RAD) program and the enactment of the Housing Opportunities Through Modernization

Act of 2016 (HOTMA). As of December 31, 2017, HUD reported 122,867 project-based vouchers (or certificates) nationally,\(^2\) including approximately 50,182 units converted under RAD.\(^3\) This represents a 34 percent growth in the program since the publication of the *Beginner’s Guide*.\(^4\) With the expansion of the program under HOTMA as discussed in Section III.A and expanded conversion of public housing units to PBVs under RAD, it is likely that this pace of expansion will keep pace and that PBVs will continue to be a vital development and affordable housing tool in the years to come.

This *Practitioner’s Guide* seeks to update and expand the *Beginner’s Guide* and provide additional information about the PBV program and its uses. As with the *Beginner’s Guide*, the *Practitioner’s Guide* is intended to help readers gain a basic understanding of the program and the associated thicket of regulations and processes, with particular attention to the updates and expansions made to the program under HOTMA. Section II describes the creation of the program and provides an overview of the evolution of the regulations and guidance governing the PBV program. Sections III–XII explain the practical issues surrounding the use of the PBV program, including how individual programs are set up, how to implement PBV assistance at a project, and how the program should be monitored during its operations. Appendix I provides a description of how the PBV program works with the RAD program\(^5\) including the primary differences found in the RAD-PBV program. Appendices II and III provide bibliographies for the laws, regulations, and promulgated guidance covering the PBV Program and the PBV Program as implemented through RAD respectively.

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3. RAD Talk, January 2018 (issued by the HUD Office of Multifamily Programs).
4. 81,364 project based vouchers were reported in 2014, including 8,014 converted under RAD. *See* U.S. GOV’T ACCOUNTABILITY OFFICE, GAO-14-402, HUD RENTAL ASSISTANCE DEMONSTRATION: INFORMATION ON INITIAL CONVERSIONS TO PROJECT BASED VOUCHERS 11 (2014).
II. Creation and Evolution of the PBV Program

The PBV program was created in 1998 by the Quality Housing and Work Responsibility Act of 1998 (QHWRA). QHWRA overhauled public housing and voucher programs and merged a sister program called “certificates” with vouchers. The PBV program is administered by PHAs under the supervision of the Office of Public and Indian Housing at HUD. The program is a subset of the larger and better-known Housing Choice Voucher (HCV) program through which PHAs provide vouchers to individuals to subsidize rent payments at the voucher holder’s housing unit of choice. The vast majority of funds in the HCV program are tenant-based, meaning the assistance belongs to individual tenants rather than to the project or building where they live. Under the PBV program, a PHA may use a portion of its authorized units under the Section 8 Annual Contributions Contract (ACC) to subsidize projects rather than individuals.

Traditionally, the HCV program has not been a useful tool for development—tenants can move out and take the assistance with them, so owners cannot be assured of continued funding. Therefore, the subsidy cannot be used to leverage or raise other private debt or equity financing, because lenders and investors exclude the PBVs from their underwriting.
processes. However, the PBV program permits vouchers to be used in underwriting because the subsidy is attached to the unit rather than the tenant. Through the PBV program, PHAs commit voucher funding to a project through a Housing Assistance Payments (HAP) Contract or an Agreement to enter into a HAP Contract (AHAP). As a result, the project owners can then use the voucher commitment in underwriting the financing for the project. Initially, the program was difficult to use due to differences between a one-year voucher commitment and the minimum 15-year financing used in the Low Income Housing Tax Credit (LIHTC) program and the general lack of guidance from HUD. Revisions in 2001, 2005, 2008, 2014, and 2016 provided additional guidance and clarifications that made the program more accessible, including by extending the initial voucher commitment term to 20 years and coordinating the PBV program with LIHTC and other financing. The remainder of this section offers a brief chronology of the HUD guidance after the initial authorization by QHWRA.

HUD first issued guidance as a six-page Initial Notice in 2001, the same year in which a change in appropriations legislation increased the voucher commitment term from 1 year to 10 years. That one change—extension of the contract term—made PBV a more useful tool in financing. But because of the 5-year gap between the 10-year maximum PBV term and the 15-year compliance period, parties had to carefully structure the financing (usually establishing a reserve) in case the HAP Contract was not renewed at expiration, which made the program cumbersome to use in development.

The Initial Notice, along with retained regulations for the then-defunct project-based certificate program, served as the operating guidance for the

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11. The Low Income Housing Tax Credit (LIHTC) program is a federal tax credit granted to owners of affordable-housing projects that meet certain income and rent restrictions; investors provide equity in exchange for tax credits. See 26 U.S.C. § 42 (2017). A good introduction to the program is the Beginner’s Guide to the Low Income Housing Tax Credits in this book series.


PBV program until 2005, when HUD issued the regulations codified at 24 C.F.R. part 983 (as subsequently updated). Issuance of the PBV regulation in 2005 cleared the way for use of the PBV program on more than an occasional basis.\(^{14}\) However, there was still significant dissonance between the PBV program and other housing financing programs, notably the LIHTC. Many of these issues were addressed by technical changes made by the Housing and Economic Recovery Act of 2008 (HERA).\(^{15}\) These provisions facilitated combination with low-income-housing tax credits, including the ability to enter into a 15-year HAP Contract and renew for another 15 years.\(^{16}\) Notices followed, identifying self-implementing and non-self-implementing provisions\(^{17}\) and establishing formal procedures for subsidy layering.\(^{18}\) HERA made some changes to the PBV program that HUD designated as non-self-implementing, particularly establishing a project’s 15-year “rent floor” at the initial rent under the HAP Contract that were not implemented until revision of the regulations six years later.\(^{19}\)

As the use of the PBV program increased, the HUD Office of Inspector General issued an audit in 2010 finding that HUD lacked sufficient information to adequately monitor the PBV program, did not adequately monitor the addition of new projects to the program, and did not implement


\(^{16}\) HERA also changed the maximum PBV assistance from 25 percent per building to 25 percent \textit{per project}. It also permitted owners to charge PBV rents if those rents exceed maximum LIHTC rents (subject to a test of rent reasonableness).

\(^{17}\) Housing and Economic Recovery Act of 2008 Applicability to HUD Public Housing, Section 8 Tenant-Based Voucher and Section 8 Project-Based Voucher Programs: Notice, 73 Fed. Reg. 71,037 (Nov. 24, 2008).

\(^{18}\) Administrative Guidelines; Subsidy Layering Reviews for Proposed Section 8 Project-Based Voucher Housing Assistance Payments Contracts, 75 Fed. Reg. 39,561 (July 9, 2010); Administrative Guidelines; Subsidy Layering Reviews for Section 8 Project-Based Voucher Housing Assistance Payments Contracts and Mixed-Finance Development, 79 Fed. Reg. 57,955 (Sept. 26, 2014). Subsidy layering is a HUD-wide requirement that a HUD official certify that no more assistance is provided than is necessary for the project. \textit{See} Department of Housing and Urban Development Reform Act of 1989 § 102(d), 42 U.S.C. § 3545 (2008).

\(^{19}\) Housing and Economic Recovery Act of 2008 (HERA): Changes to the Section 8 Tenant-Based Voucher and Section 8 Project-Based Voucher Programs: Final Rule, 79 Fed. Reg. 36,146 (June 25, 2014) [hereinafter Current Rule].
procedures and controls to ensure compliance with the regulation. HUD responded by collecting information from field offices and PHAs with respect to the use of the program and has issued more comprehensive guidance on the program. Doubtless, some of the subsequent flurry of guidance stems from issues presented in this audit.

In May 2012, HUD issued a proposed rule intended to formally implement HERA and clarify other points in the regulation (the Proposed Rule). The final rule (Current Rule), based on the Proposed Rule, was published in June 2014 and implemented the last provisions of HERA and codified many HUD policy positions. In addition, HUD has made the PBV program an option for the conversion of public housing and Mod Rehab projects under the RAD program, which includes a host of additional project-specific changes relating to rents, tenant protections, and procedures before assistance may be applied.

The most recent updates to the PBV program were enacted in the summer of 2016 in the Housing Opportunities through Modernization Act of 2016 (HOTMA). HOTMA built on the changes enacted in HERA to make the PBV program more flexible and useful as a development tool, while preserving core characteristics of the rental assistance such as deep income targeting and income-based rents. As with HERA, HUD published an initial Federal Register notice identifying which provisions were self-implementing in October of 2016. The PBV provisions of HOTMA were largely implemented in a more lengthy Federal Register notice published on January 18, 2017 (the “HOTMA Implementation Notice”) and became effective as of April 17, 2017. HUD did not choose to implement all of the HOTMA

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23. A summary of the “RAD Overlay” to the PBV program requirements is found in Appendix I.
provisions within that notice, leaving several for future rulemaking.\footnote{26} HUD later issued PIH Notice 2017-21 which provided additional clarity and provides the most comprehensive guidance HUD has published on the PBV program to date.\footnote{27} As of the publication of this book, HUD has not yet initiated rulemaking with respect to the HOTMA Implementation Notice and as a result many sections of the regulations for the PBV program are out of date or incorrect as published in the Code of Federal Regulations.\footnote{28} While the usefulness and utilization of the PBV program may have started off slowly, it has gained significant momentum in the past five years. Given the current emphasis placed on RAD by HUD, it seems likely that the PBV program will continue to grow and evolve as it becomes a larger piece of the HUD portfolio.

III. Setting Up a PBV Program

Establishing a PBV program is relatively easy compared with other HUD programs. As described in the following section, PHAs have immense flexibility in designing the program and can implement the program through approvals of the PHA’s board of directors and inclusion in the annual planning process.

A. Scope and Size of the PBV Program

Under the original program authorization, a PHA was limited to using only 20 percent of its authorized budget authority\footnote{29} for a PBV program (the

\footnote{26. For example, in the HOTMA Implementation Notice, HUD declined to implement authority for owner-maintained waiting lists, containing a HAP Contract after Constructive Commencement and automatic OCAF rent adjustments.}


\footnote{28. A similar delay occurred between the HERA Implementation Notice and publication of the Current Rule which often created confusion as to the correct rules to apply among PHAs, owners and HUD.}

\footnote{29. Budget authority is the amount of funds a Section 8 program is allocated in a given year and can fluctuate based on annual congressional appropriations, as well as utilization by the PHA.}