



U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

Special Attention: Public Housing Hub
Office Directors; PIH Program Center
Coordinators; Multifamily Hub Directors;
Multifamily Program Center Directors; Section 8 Public
Housing Agencies; and Owners/Agents

NOTICE PIH 2001-41 (HA)

Issued: November 14, 2001
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Cross References:

Subject: Section 8 Tenant-Based Assistance (Enhanced and Regular Housing Choice Vouchers) For Housing Conversion Actions – Policy and Processing Guidance

1. **Purpose.** The purpose of this notice is to revise the funding process and several administrative policies concerning regular and enhanced vouchers provided as the result of Housing conversion actions.
2. **Background.** Over the past few years and subject to the availability of appropriations, HUD has provided tenant-based rental assistance in order to assist eligible residents that are affected by several different types of owner or HUD actions in HUD's Office of Multifamily Housing programs (collectively described as "Housing conversion actions"). These actions are owner decisions to opt-out of or not renew Section 8 project-based contracts (opt-outs); owner prepayment of the mortgage or voluntary termination of the mortgage insurance of a preservation eligible property (preservation prepayments); HUD enforcement actions against the owner (including termination or non-renewal of a Section 8 project-based housing assistance payments (HAP) contract); and HUD property disposition activities.

Depending on the Housing conversion action, eligible families receive either regular voucher assistance or enhanced voucher assistance. Enhanced voucher assistance under Section 8(t) of the United States Housing Act of 1937 differs from regular housing choice voucher assistance in two major respects. If the family remains in the project, the family must continue to contribute towards rent at least the amount the family was paying for rent on the eligibility event, and a higher "enhanced" payment standard is used to determine the amount of subsidy when the gross rent exceeds the normally applicable PHA payment standard.

This notice supersedes HUD Notice PIH 2000-9. While much of the information in this notice is the same as the guidance previously provided in HUD Notice PIH 2000-9, the following policy changes and clarifications are included:

- A. The procedures for processing housing choice voucher funding for Housing conversion actions have been significantly streamlined. In addition, the effective date of the annual contributions contract (ACC) is specified. (pages 13-17)
- B. PHAs are no longer required to cost-justify the \$250 special fee provided for the extraordinary administrative costs associated with a Housing conversion action. PHAs will automatically receive the full \$250 special fee for each occupied unit covered by the conversion action at the time the funding increment is added to the PHA's ACC exhibit. (pages 12-13)
- C. Guidance on the PHA screening of Housing conversion families has been slightly revised to ensure that the PHA screening of applicants is consistent with the PHA screening policy for regular admission applicants. (page 6)
- D. Additional guidance is provided on determining whether enhanced or regular voucher assistance is made available to eligible families. (pages 3-5, pages 24-25)
- E. The notice revises information previously provided on owner opt-outs to clarify families assisted under rent supplement contract that end are only eligible for enhanced voucher assistance under section 524(d) of the Multifamily Assisted Housing Reform and Affordability Act of 1997 (MAHRA) in very limited circumstances. (page 18)
- F. The notice adds a new component to the owner opt-out category. Eligible low-income families assisted under a rent supplement contract that terminates but is not covered by section 524(d) of MAHRA may now receive regular voucher assistance in certain circumstances, subject to the availability of appropriations. (page 4)

- G. Guidance on the enhanced voucher policy on over-housed families has been expanded. (pages 27-29, 35-36)
- H. The notice implements a new policy on retaining enhanced voucher protections for eligible families that do not immediately qualify for a voucher subsidy because the owner's initial gross rent following the eligibility event will be less than the family share. (page 25)
- I. The FY 2001 Military Construction and FY 2000 Emergency Supplemental Appropriations Act amended the enhanced voucher statute at 8(t) to provide that families have the right to elect to remain in the same project with enhanced voucher protection. The Section 8 Renewal Policy Guidebook, issued by the Office of Multifamily Housing on January 19, 2001, provides guidance on an owner's responsibility to accept enhanced voucher assistance on behalf of eligible tenants if the owner opts-out of the Section 8 project-based contract. The notice clarifies that these same protections also extend to families that receive enhanced voucher assistance as the result of preservation prepayments. (page 25)

PART I General Programmatic Policies for Housing Conversion Actions

- A. Covered housing conversion actions.
- B. Common tenant-based programmatic issues for Housing conversion actions.
- C. Funding processing issues and the special fee.
- D. Funding procedures.

A. Housing Conversion Actions

The following actions constitute "Housing conversion actions" and are covered by this notice.

Preservation prepayments. If appropriations are available, certain residents of preservation eligible properties (generally Section 236 and Section 221(d)(3) projects) are eligible for enhanced voucher assistance when the owner prepays the mortgage or voluntarily terminates the mortgage insurance. Part II of the notice covers family eligibility for enhanced vouchers as a result of a preservation prepayment.

Project-based opt-outs. When an owner chooses to end participation in certain programs by either opting-out of or not renewing certain expiring Section 8 contracts, eligible low-income residents assisted under the expiring Section 8 project-based contract are eligible for enhanced voucher assistance. The opt-out category includes cases where Section 8 contracts in restructured projects are converted to tenant-based assistance in accordance with section 515(c) of the Multifamily Assisted Housing Reform and Affordability Act of 1997. In the case of a 515(c) opt-out only, all families assisted under the expiring contract are income-eligible for enhanced voucher assistance.

Eligible low-income residents assisted under a rent supplement contract under Section 101 of the Housing and Urban Development Act of 1965 that ends at expiration of a Section 8 HAP contract for units in the project are also eligible for enhanced voucher assistance. In the case where a rent supplement contract ends and there is not an expiring Section 8 project-based contract at the project, regular vouchers are provided to the eligible low income families covered by the rent supplement contract, subject to the availability of appropriations.

HUD enforcement actions. In these cases, HUD is either terminating the Section 8 project-based HAP contract or not offering the owner the option to renew an expiring Section 8 project-based HAP contract due to an owner's failure to comply with the terms of the HAP contract. It includes suspensions and debarments.

HUD enforcement actions may also result from material adverse financial or managerial actions or omissions that lead to either owner default under a FHA-insured mortgage (monetary or technical) or a documented material violation of one or more of the obligations under the project's Regulatory Agreement.

Eligible families are usually assisted with regular vouchers in these circumstances because families must move to receive housing choice voucher assistance. Units subject to an enforcement action are usually not in decent, safe, and sanitary condition.

PHAs must not approve an assisted tenancy if the PHA has been informed that the owner is debarred, suspended, or subject to a limited denial of participation. Furthermore, PHAs may also disapprove owner participation in the housing choice voucher program for a number of other grounds described in the housing choice voucher program regulations. For example, the PHA may disapprove the owner if an owner has violated obligations under a HAP contract under Section 8 of the 1937 Act; if the owner has committed fraud, bribery or any other corrupt or criminal act in connection with any federal housing program; or if the owner has a history or practice of non-compliance with applicable housing standards leased with Section 8 project-based assistance or leased under any housing program. HUD encourages the PHA to disapprove a tenancy for any of these grounds in a case where vouchers are provided because HUD is taking an enforcement action against the owner.

In a few situations, however, families assisted under a Section 8 project-based HAP

contract that is being terminated may be able to remain at the property. In such a case, the project-based families would qualify for enhanced vouchers. These exceptions are further discussed in detail in Part II of the notice.

HUD property disposition (PD). In these cases HUD is selling the property at a foreclosure sale, or is the mortgagee-in-possession or owner of the multifamily property due to an owner default on an FHA-insured mortgage and is closing down the property or selling the property to a new owner. Regular vouchers are provided to assist eligible low-income families in these cases.

B. Common tenant-based program issues for Housing conversion actions.

In general, housing choice voucher program rules, regulations, and requirements apply to special admission vouchers made available for families as the result of Housing conversion actions. Enhanced vouchers have several unique requirements that are covered extensively in Part II of this notice.

The following program guidance is applicable to all Housing conversion actions and both regular and enhanced voucher assistance.

(1) Tenant-based nature of the assistance. Housing choice vouchers (including enhanced vouchers) provided as the result of a Housing conversion action are always tenant-based assistance. Families issued vouchers may elect to use the assistance in the same project and in all cases may choose to move from the property immediately. Families may immediately move outside of the jurisdiction of the administering PHA under the portability provisions of the voucher program. There is no guarantee to the owner that any housing choice voucher assistance will be used at the property for any period of time. The PHA should emphasize the tenant-based aspect of the assistance when briefing the families, who may be unfamiliar with the concept of tenant-based assistance and the freedom of choice associated with a tenant-based subsidy.

(2) PHA screening of families. By agreeing to administer the special admission tenant-based assistance, the PHA is not relinquishing its authority to screen potentially eligible families or deny assistance for any grounds allowed by §982.552 and §982.553. The screening of families and decisions to deny admission to the program must be the same as the PHA policy for screening regular admissions of families from the PHA waiting list.

The PHA must provide a family with an opportunity for an informal review if it denies the family admission to the voucher program in accordance with the housing choice voucher regulations. While the decision to deny assistance rests with the PHA, HUD encourages PHAs to provide an otherwise eligible resident with the opportunity to enter into a repayment agreement if the sole reason for the denial is that the family owes the PHA or another PHA rent or other amounts in connection with public housing or Section 8.

(3) Use of owner certifications for determining tenant income. In order to reduce processing time, HUD permits the PHA to use the owner's most recent family income examination if (a) the owner's current certification for the family is no more than six months old and (b) the PHA determines that the owner certifications are acceptable after reviewing a small sample for accuracy. The PHA is never required to use the owner certifications and may choose to conduct its own income determination and verification.

Federal law and program regulations require a reexamination of family income and composition at least annually. Therefore, if the PHA chooses to use the owner's income certification, the PHA must complete the subsequent family reexamination within one year of the date of the owner certification, not the date the PHA accepted the owner certification in lieu of conducting its own determination.

(4) PHA subsidy standards. The PHA issues the housing choice vouchers in accordance with the PHA subsidy standards, not the actual size of the unit the family is currently occupying. There is a special rule for enhanced vouchers concerning families who reside in over-sized units and wish to remain at the property. This exception only applies to enhanced voucher assistance and is covered in Part II of this Notice.

The normal tenant-based program rules apply in all other cases. The family unit size determined by the PHA subsidy standards is used to calculate the maximum rent subsidy for the family. The payment standard for the family must be the lower of the payment standard for the family unit size under the PHA subsidy standards or the payment standard for the actual size of the unit rented by the family (see §982.402(c)).

(5) Term of the voucher. Since these vouchers are targeted to specific families adversely affected by HUD or owner actions in HUD multifamily projects, the PHA is encouraged and expected to provide families with maximum search time that is reasonably required to locate housing.

(6) Rent reasonableness and approval of tenancy. All regular program requirements concerning the reasonableness of the rent apply, regardless of whether the vouchers are enhanced vouchers or regular vouchers. (Reasonable rent is defined at 24 CFR 982.4 as a rent to owner that is not more than rent charged: (1) for comparable units in the private unassisted market; and (2) for comparable unassisted units in the premises.) The PHA may not approve a lease until the PHA determines that the initial rent to owner is a reasonable rent, regardless of whether the family prefers to remain in the family's current unit. The PHA must determine the rent requested by the owner is a reasonable rent in comparison to other comparable unassisted units based on the current condition of the unit. The PHA does not base the rent

reasonableness determination on any pending or planned enhancements to the property. If the PHA determines the proposed rent is not reasonable, the owner must lower the rent or the family will have to find another unit in order to benefit from the voucher subsidy.

PHA approval of the assisted tenancy must be in accordance with program requirements, regardless of whether the family is staying in the unit at the property or moving to a new location. The PHA may not approve any temporary or short-term leases between the family and the owner. The initial lease term must be for at least one year unless the PHA has determined for the housing choice voucher program that a shorter term would improve housing opportunities for the tenant and such shorter term is the prevailing local market practice (see §982.309).

(7) Housing Quality Standards (HQS) inspections. The PHA must inspect the unit and ensure that the unit meets the housing quality standards of the program, regardless of whether the family is residing in a unit that was previously assisted under a Section 8 project-based contract. Under no circumstances may the PHA make housing assistance payments for any period of time prior to the date that the PHA physically inspects the unit and determines the unit meets the housing quality standards. The PHA does not make any exceptions to the normal housing quality standards used by the PHA and conducts a complete HQS inspection of the unit.

(8) Timing issues involving HAP contract execution and effective dates. The funding process is intended to result in issuance of the voucher to the family at least 60 days prior to the target date of the Housing conversion action. The target date refers to the date that the family would be impacted by a rent increase or possible displacement as a result of the conversion action. For example, under an opt-out or HUD enforcement action the target date is the date which the project-based HAP contract expires or is terminated. For a preservation property, the target date is the earliest date the owner may increase the rent (no earlier than 60 days following the effective date of the prepayment). However, in some circumstances it may not be possible to issue the voucher 60 days before the target date.

Before approving a family to lease a dwelling unit with voucher assistance, the PHA must determine that the following conditions are met: (1) the unit is eligible, (2) the unit has been inspected by the PHA and passes HQS, (3) the lease includes the tenancy addendum, (4) the rent to the owner is reasonable, and (5) at the time a family initially receives tenant-based regular voucher assistance for occupancy of a dwelling unit and where the gross rent of the unit exceeds the applicable payment standard for the family, the family share (gross rent minus subsidy) must not exceed 40 percent of the family's adjusted monthly income. (The 40 percent restriction is not applicable in the case of a family assisted with enhanced voucher assistance. See part II of this notice for a detailed discussion of the enhanced voucher subsidy calculation.)

Once these conditions are met, the PHA may approve the unit for leasing. PHAs are reminded that while the PHA must use best efforts to execute the HAP contract before

the beginning of the lease term, the HAP contract may be executed up to 60 calendar days after the beginning of the lease term (see §982.305(c)). If the HAP contract is executed during this period, the PHA will pay retroactive housing assistance payments to cover the portion of the PHA approved lease term before execution of the HAP contract. However, under no circumstances may the PHA make payments to the owner before the HAP contract is executed. Furthermore, any HAP contract executed after the 60-day period is void and the PHA may not pay any housing assistance payment to the owner for that period.

In some circumstances where the funding is not yet available on the target date, this 60-day window can prevent unnecessary hardship on the family. For instance, if the unit is approved by the PHA and the owner is willing to lease the unit to the family with the understanding they will receive HAP payments retroactively (provided the HAP contract is executed within the following 60 days), the family can be protected even though the funding is not available. It is crucial that the PHA make the unit approval determination before the target date, since under no circumstances may an assisted lease term commence before the date the PHA approves the unit for leasing. While the process is designed to have the voucher funding available well before the target date, HUD public housing staff and PHAs may find this 60-day measure of last resort a valuable tool for completing the transition with no disruption.

In establishing the effective date of the tenant-based HAP contracts, it is very important to make a distinction between families who choose to stay in the property and families who choose to move. The PHA may not approve a tenancy (and execute a housing choice voucher HAP contract) on behalf of a stayer (family that stays in the project) for a lease term that is effective prior to the target date of the Housing conversion action. For a family that is moving, however, the PHA may often approve a tenancy that begins before the target date, since in strong rental markets potential landlords will not hold a unit vacant.

- (9) Initial and subsequent use of vouchers. All housing choice vouchers (enhanced or non-enhanced) provided in connection with a Housing conversion action are special admission vouchers. Special admission vouchers differ from regular vouchers in that the assistance is provided by HUD with a specific family in mind. The PHA must first use the allocation to assist the families targeted for assistance. The PHA does not consider whether the family is on the housing choice voucher waiting list or the family's position on the housing choice voucher waiting list.

When HUD provides vouchers to a PHA as the result of a Housing conversion action, HUD will offer housing choice voucher funding on a one-for-one replacement basis to make up for the loss of the affordable housing units in the community, subject to the availability of appropriations. For example, if an owner is opting-out of a 100 unit Section 8 project-based contract, the Department will offer funding for 100 vouchers to the administering PHA. The PHA will use the assistance to assist the eligible families affected by the opt-out. Any additional vouchers under this allocation

(for example, unused vouchers resulting from vacant units under the expiring project-based contract or units occupied by ineligible families) may be used by the PHA to assist families on the PHA waiting list.

Similarly, if the owner of a preservation eligible 100 unit Section 236 property prepays the mortgage, the PHA will receive an allocation of 100 vouchers. If 15 vouchers remain unused after issuance to the eligible residents of the property, the PHA retains the vouchers and may use them to assist families on the PHA waiting list. If the PHA uses remaining voucher funding to assist families on the PHA waiting list, the voucher is simply a regular voucher and does not have any enhanced features.

Note that the one-for-one replacement is based on the number of units impacted by the Housing conversion action, which may or may not correspond to the total number of units in the project. For instance, in the case of Section 8 project-based contract opt-out, if the contract is for 50 units and the property has a total number of 75 units, the PHA would be offered an allocation of 50 units. Likewise, if an owner is prepaying the mortgage of a 100 unit preservation eligible property, but there is a Section 8 project-based contract for 40 units that is continuing (and will be handled as a separate Housing conversion action at the time of contract expiration), the PHA will be offered 60 vouchers under the one-for-one replacement policy.

If a voucher issued to a family as the result of a Housing conversion action turns over for any reason, the PHA retains the voucher for use as part of its housing choice voucher program. Note that in cases where an enhanced voucher turns over following initial issuance (i.e., an enhanced voucher participant leaves the program), the voucher loses its special enhanced characteristics and is subject to all normal program rules.

(10) Inapplicability of the PHA income targeting requirement. In general, not less than 75 percent of the families admitted to a PHA's tenant-based voucher program during the PHA fiscal year must be targeted to families whose annual income does not exceed 30 percent of median income. Families admitted to the PHA's tenant-based voucher program as a result of a Housing conversion action are not subject to the income targeting requirements of the tenant-based program, and their admission is not counted in determining whether the PHA is complying with the income targeting requirement.

C. Funding Processing Issues and the Special Fee.

(1) General information. The tenant-based funding process is complicated by the relatively short amount of time available to complete the process before families may be adversely affected by a Housing conversion action. Therefore, the most important step in the entire process is to initiate the funding process as early as possible. In general, the funding process must begin at least 120 days prior to the target date of the

Housing conversion action (and at least 180 days in cases where families will have to move to receive voucher assistance). Failure to initiate the process with sufficient time available is the single greatest obstacle to completing the Housing conversion action in a satisfactory manner.

Excellent communication between HUD's Offices of Housing, Public Housing, and the Section 8 Financial Management Center, as well as the owner, the PHA, and the residents, is critical to the process. Staff responsibility for communication and technical assistance in the Field Office should always follow program lines of authority.

For example, HUD's Office of Housing is primarily responsible for ensuring that the owner is aware of and complies with any owner requirements. Housing staff also serve as the owner's primary HUD contact throughout the entire conversion process. On the other hand, HUD oversight and management responsibilities for the housing choice voucher program rests with the Office of Public Housing. This means the Office of Public Housing is responsible for selecting the PHA that will be asked to administer the tenant-based assistance. Only the Office of Public Housing may extend an invitation to a PHA to administer housing choice voucher assistance. Also, only Public Housing staff should provide technical assistance and guidance on any related tenant-based program issues.

This does not mean that Housing staff is prohibited from communicating with the PHA or that Public Housing staff is barred from having discussions with an owner. However, it is important that HUD guidance and instructions are provided by the appropriate program staff person to avoid any errors or confusion that may hamper the process.

(2) Special fee for extraordinary costs associated with the covered Housing conversion actions.

(a) Background. In order to avoid or at least minimize any adverse impact of the conversion action on the affected families, the administering PHA must complete a number of tasks within a relatively short amount of time. These tasks include completing and submitting the funding application; determining each individual family's eligibility; reviewing proposed rents; and conducting housing quality standards inspections on potential units. In the majority of Housing conversion actions, the PHA will not be able to absorb the increased work-load over several months but must work with all the potentially eligible residents who are making the transition simultaneously. The challenge may be further exacerbated by the fact that many or all of the affected residents either want or are required to relocate.

Depending on the number of residents affected by the action, PHAs may have to borrow staff from neighboring agencies in order to promptly process and assist all the eligible families. Given the pressing deadlines associated with most Housing conversion actions, HUD has encouraged PHAs to begin tasks such as certifying families and approving units before the PHA actually receives the ACC funding exhibit.

PHAs will receive a special fee for the extraordinary costs resulting from a covered Housing conversion action. The purpose of this special fee is twofold: (1) to compensate PHAs for any extraordinary administrative costs associated with these special purpose allocations; and (2) to ensure PHAs will receive reimbursement for their efforts in the rare instances where the pending conversion action does not ultimately happen because of a decision by the owner or HUD. This fee only applies when a PHA agrees to administer tenant-based assistance for a potential Housing conversion action. The special fee is only applicable in the case of a Housing conversion action. Other conversion actions, such as public housing replacements or Section 8 moderate rehabilitation contract expirations, are not eligible for the special fee.

(b) Amount of fee. The amount of the fee is \$250 per unit for the total number of occupied units covered by the Housing conversion action as determined by HUD. PHAs are no longer required to cost-justify the amount of the fee claimed.

(c) Processing the special fee for extraordinary administrative costs. HUD will automatically include funding for the special fee under a separate funding code as part of the ACC funding increment for the tenant-based assistance.

D. Procedures for Processing Section 8 Voucher Funding For Housing Conversion Actions.

The greatest challenge to conducting a successful transition to housing choice voucher assistance as the result of a Housing conversion action is the relative lack of time. The timelines below are provided as a rough guide only. While the steps are identified in the general sequence they often occur, some steps are conditioned on completion of the preceding steps, whereas others may be completed simultaneously or even earlier than some of the preceding steps. The description of each step is followed by a code that identifies the entity primarily responsible for completing the step (e.g., OMH-2 indicates that the step in question is the second step for which the Field Office Multifamily staff has primary responsibility). All parties are encouraged to complete their respective tasks at the earliest opportunity possible.

Attachment 1 to this notice is the voucher funding request worksheet for Housing conversion actions. This worksheet is to be used for all Housing conversion actions. The worksheet is designed to significantly reduce the administrative burden on field staff and to speed the funding process. HUD Headquarters uses the information from the form to calculate the estimated budget authority on an average per unit cost basis.

Note that a separate voucher funding request worksheet is completed for each Housing conversion action. For example, if an owner is prepaying the mortgage of a preservation eligible property and opting out of a Section 8 project-based contract on the same property, the Field Office will prepare two voucher funding request worksheets – one for the prepayment and one for the opt-out.

Abbreviations

The following abbreviations are used:

FMC - Section 8 Financial Management Center staff

FO - HUD Field Office

HQ - HUD Headquarters (Program area follows)

OMH – Office of Multifamily Housing staff (Field Office unless otherwise noted)

OPH - Office of Public Housing staff (Field Office unless otherwise noted)

PAHD - PIH Office of Public and Assisted Housing Delivery

PHA - Public Housing Agency staff

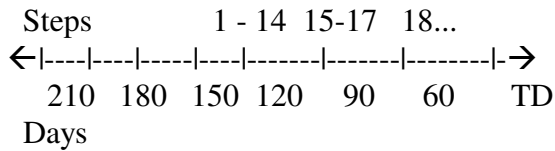
TD - Target Date (the date when a family may suffer a rent increase or displacement unless the Housing conversion action is completed and the eligible families are under Section 8 tenant-based HAP contracts).

The target dates for the various Housing conversion actions are as follows:

- Preservation prepayment -- The date the owner can first increase the rent after the prepayment (no earlier than 60 days from the effective date of the prepayment).
- Project-based Opt-out -- Expiration or termination date of the project-based contract or maturity of rent supplement mortgage.
- Enforcement Action -- Termination or expiration date of project-based contract.
- PD Sales -- The date of the sale of the property.

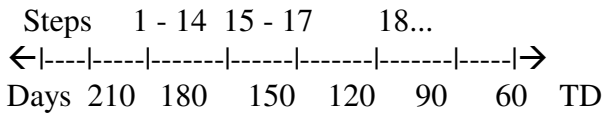
Timeline 1

This timeline applies to all Opt-outs and Preservation Prepayments. The timeline also applies to PD Sales where it is anticipated the units will meet voucher program requirements.



Timeline 2

This timeline applies to all HUD Enforcement Actions. It also applies to PD sales where units do not meet voucher program requirements.



Steps

1. Field OMH determines that housing choice vouchers are needed for a Housing conversion action. Field OMH informs the Field OPH director (or designated PH staff) by email or memorandum of the pending conversion action. The email or memorandum must include the following information:

- (a) the project name, address, and telephone number;

- (b) the project number/section 8 contract number;
- (c) type of conversion action and the target date;
- (d) indication of whether it is anticipated families will have to move;
- (e) bedroom size distribution of conversion action (e.g., project-based contract), and breakdown of occupied and unoccupied units by bedroom size;
- (f) total number of units and number of occupied units
- (g) for enforcement actions and PD sales, breakdown of number of assisted (units under project-based contract) and unassisted units impacted by action;
- (h) Field Multifamily Housing Contact (indicate whether staff contact is MF FO or PD Center staff).

Field OMH then takes steps to obtain the current Form HUD-50059s (or other information from the owner in cases where Form HUD-50059s do not apply) or otherwise coordinates with owner and PIH to ensure the PHA will have access to such records. **The memorandum or email must be provided at least 120 days before the target date for any Housing conversion action, and must provide at least 180 days before the date a family would be subject to a rent increase (e.g., the HUD termination date of project-based contract) when it is anticipated families will have to move (e.g., property is not decent, safe, and sanitary; owner is in non-compliance with Section 8 contract).** (OMH-1)

2. Upon receiving notice from Field OMH, Field OPH determines the appropriate PHA to administer the housing choice voucher assistance. Field OPH extends invitation to administer the housing choice voucher assistance to the PHA and indicates whether housing conversion action qualifies for enhanced or regular vouchers. (OPH-1)

3. If PHA accepts invitation, the Field OPH either provides copies of the Form HUD-50059s and/or tenant profiles to the PHA or otherwise coordinates with Field OMH to ensure the PHA has timely access to such information. **The PHA should not independently approach the owner for tenant information, particularly in the case of a pending enforcement action.** The Field OPH requests that the PHA submit an application with the unit distribution based on the actual bedroom size of the units affected by action. (OPH-2)

4. The PHA submits the application (Form HUD-52515) to Field OPH. (PHA-1)

5. The Field OPH completes the Housing Conversion Action voucher funding request worksheet(s) and submits it directly to the Section 8 Finance Division in HUD Headquarters. Field OPH copies the Field OMF contact person, indicating the date submitted to HQ PIH. The OMF Housing Contact is responsible for informing any other OMF staff (or the PAE) that the funding request has been submitted to HQ. (OPH-3)

6. The PHA should review owner income certifications to determine if those certifications are acceptable. The PHA is encouraged to begin income examination and verification process as necessary. (PHA-2)

7. Headquarters OPH reviews the Funding Worksheet and calculates the budget authority. Contacts Field OPH to obtain any additional information if necessary. (HQPH-1)

8. Headquarters OPH assigns budget authority for the tenant-based assistance to FMC (Form HUD 185 Fund Assignment, HUDCAPS record). (HQPH-2)
9. PHA must submit funding application if they have not done so already (Form HUD-52515 and certifications). (PHA-3)
10. Field OPH reviews and approves the PHA application; transmits the application approval letter to the PHA with a copy to FMC. (OPH-4)
11. Upon receiving approval letter from Field OPH and budget authority from HQ (HUDCAPS), FMC reserves/contracts the tenant-based funds. (FMC-1)
12. FMC prepares the ACC documents and the ACC transmittal letter, forwards transmittal letter and ACC documents to PHA with copy of letter to Field OPH. (FMC-2)
13. PHA issues vouchers to eligible families based on the PHA subsidy standards. **If at all possible, the PHA issues vouchers no later than 60 days before the target date to ensure the family is provided with opportunity to explore other housing opportunities before being subjected to possible rent increase.** (PHA-4)
14. PHA prepares and submits Budget Revision to FMC. (PHA-5)
15. FMC processes Budget Revision. (FMC-3)

16. The family decides whether to stay in place or move. The family submits request for tenancy approval to the PHA. The PHA reviews rents and inspects units. Once the unit is approved, the PHA executes the HAP contract with the owner. **NOTE: If family is staying in-place, the effective date of voucher HAP contract may not commence before the target date.**

(PHA-6)

E. ACC effective date and contract term. The effective date of the ACC is 60 days before the target date of the Housing Conversion Action for all preservation prepayments and owner opt-outs. For preservation prepayments, the ACC effective date is the date of prepayment or voluntary termination of the mortgage insurance (since an owner may not increase rents for at least 60 days). This is to ensure families are provided with housing search time and the opportunity to lease other units with housing choice voucher assistance prior to the date the owner can potentially raise rents. For project-based opt-outs, the ACC effective date is 60 days before the contract expiration or termination date.

In the case of a Housing conversion action (enforcement actions and PD sales) where the Field Office has indicated the units are not decent, safe, and sanitary, and it is anticipated families will have to move to use the housing choice vouchers, the effective date of the ACC is 120 days before the contract expiration or termination date or the date of sale. In all other cases, the effective date of the ACC is 60 days before the contract expiration or termination date or the date of sale.

PART II Enhanced Vouchers

- A. Covered conversion actions.**
- B. Enhanced voucher family right to remain.**
- C. Special conditions of enhanced voucher assistance.**
- D. Applicability of the special conditions for families currently assisted under the Section 8 tenant-based programs.**
- E. On-going administration of enhanced voucher assistance.**

A. Covered conversion actions.

Subject to the availability of appropriations, enhanced voucher assistance will be offered to eligible residents under the following categories of Housing Conversion actions - owner opt-outs and preservation prepayments, who are residing in the property on the date of the eligibility event (the contract expiration or the effective date of the prepayment).

- (1) Owner opt-outs. In the case of a contract for project-based assistance where the owner opts-out of or elects not to renew an expiring contract, HUD will make enhanced voucher authority available to eligible families covered by the expiring contract, subject to the availability of funding provided for this purpose in advance in

appropriations acts.

(a) Covered opt-outs. The project in question must consist of more than four dwelling units and be covered in whole or in part by a contract for project-based assistance under one of the following programs:

(i) the new construction or substantial rehabilitation program under Section 8(b)(2) of the United States Housing Act of 1937 (as in effect before October 1, 1983);

(ii) the property disposition program under Section 8(b) of the United States Housing Act of 1937;

(iii) the loan management assistance program under Section 8(b) of the United States Housing Act of 1937;

(iv) the rent supplement program under Section 101 of the Housing and Urban Development Act of 1965, provided that at the same time there is also a Section 8 project-based contract at the same project that is expiring or terminating and will not be renewed;

(v) Section 8 of the United States Housing Act of 1937, following conversion from assistance under section 101 of the Housing and Urban Development Act of 1965; or

(vi) the moderate rehabilitation program under Section 8(e)(2) of the United States Housing Act of 1937 (as in effect before October 1, 1991).

Note that an owner may not choose to opt-out of a rent supplement contract. Instead, the rent supplement assistance ends either at the end of the term of the contract (generally 40 years after the first rent supplement payment was made) or when the mortgage terminates, depending on which event occurs first.

In addition, although families affected by Section 8 moderate rehabilitation opt-outs are eligible for enhanced vouchers which are subject to the policies described by Part II of this notice, these opt-outs are not considered a *Housing* conversion action because the expiring contract is between the owner and the PHA. The PHA is not eligible to receive the special fee for extraordinary administrative costs and the specific funding process instructions contained in Part I of this notice do not apply to an owner decision to not renew an expiring Section 8 moderate rehabilitation contract.

(b) Family eligibility for enhanced vouchers as a result of an owner opt-out. In order to be eligible for enhanced voucher assistance, the resident must be:

- (i) a low-income family (including a very low income family); and
- (ii) residing in a unit covered by the expiring Section 8 project-based contract on the date of expiration.

A low-income family is a family whose annual income does not exceed 80 percent of the median income for the area as determined by HUD, and a very low-income family is a family whose annual income does not exceed 50 percent of the median income for the area as determined by HUD.

In the case of the expiration of a covered Section 8 contract under 515(c) of MAHRA only (mark-to-market restructuring where the Section 8 project-based assistance contract is converted to tenant-based assistance), all families assisted under the expiring contract are considered income-eligible for enhanced voucher assistance.

(c) Special income eligibility rules for opt-out families in properties where a preservation prepayment preceded the owner opt-out. If the owner opt-out of the Section 8 project-based contract occurs after the owner has prepaid the mortgage or voluntarily terminated the mortgage insurance of a preservation eligible property, families who do not meet the definition of a low-income family may still be eligible to receive an enhanced voucher. In such a case, the family must:

- (i) reside in a unit covered by the expiring contract on the date of expiration;
- (ii) have also resided in the property on the effective date of the prepayment; and
- (iii) meet the income requirements for enhanced voucher

eligibility for residents affected by a preservation prepayment, described below.

To determine family eligibility in this circumstance, the PHA first determines income eligibility of families based on the normal eligibility rules for opt-outs.

The vast majority of families assisted under the expiring or terminating contract should meet the low-income definition. For those families that are not low-income, the PHA will then determine if each family lived in the property on the date of prepayment. If the family resided in the property on the date of prepayment, the PHA then determines if the family is income-eligible under the preservation prepayment rules.

If the family meets the preservation income requirements, the family will receive an enhanced voucher by virtue of the preservation prepayment. For purposes of administrative simplicity, the PHA simply issues the family an enhanced voucher out of the opt-out voucher allocation.

(2) Preservation prepayments.

(a) Owner prepays the mortgage or voluntarily terminates the mortgage insurance (preservation prepayments). Tenant-based assistance is offered to eligible residents of projects covered by the Emergency Low-Income Housing Preservation Act of 1987 (ELIHPA) and the Low Income Housing Preservation and Resident Homeownership Act of 1990 (LIHPRHA). HUD's Office of Housing is responsible for identifying project eligibility under these provisions.

(1) Covered prepayments. To be considered an eligible project, the project must have reached its 20th year from final endorsement and meet one of the following criteria:

- o Section 221(d)(3) market rate limited distribution projects receiving Section 8 payments converted from Rent Supplement whose project number series is 35001-36599;
- o all Section 221(d)(3) below market interest rate projects whose project number series are 55001-55999 and 57501-57999, unless a Rent Supplement Contract remains in effect between HUD and the mortgage;
- o all Section 236 projects whose project number series are 44001-44799; 44801-44899; 45001-45999; and 58501-58999, unless a Rent Supplement Contract remains in effect between HUD and the mortgage;
- o a purchase money mortgage formerly insured under Section 221(d)(3) or 236;
- o a mortgage held by a state agency as a result of a sale by HUD without insurance, which immediately before the sale would have been eligible low-income housing under LIHPRHA; which mortgage (1) for LIHPRHA projects is, or is within 2 years of being, eligible for prepayment by

contract or regulation in effect before February 5, 1988 without HUD's prior approval; or (2) for ELIHPA projects is, or is within 1 year of being, eligible for prepayment under regulation or contract in effect before February 5, 1988; or

- o all State-assisted projects that are eligible for preservation assistance under LIHPRHA or ELIHPA.

(2) Flexible Subsidy Projects. Section 536 of the Preserving Affordable Housing for Senior Citizens and Families into the 21st Century Act provides that any project that receives or has received assistance under Section 201 of the Housing and Community Development Amendments of 1978 (the flexible subsidy program, 12 U.S.C. 1715z-1a) which is the subject of a transaction under which the project is preserved as affordable Housing (as determined by HUD) shall be considered eligible low income housing under section 229 of LIHPRHA for purposes of eligibility of residents for enhanced tenant-based assistance. The Office of Housing is responsible for determining on a case-by-case basis if a flexible subsidy project meets the requirements of Section 536 concerning the applicability of enhanced vouchers.

(b) Family eligibility for enhanced voucher assistance in preservation eligible projects.

The resident family must be residing in the preservation eligible project on the effective date of prepayment or voluntary termination of mortgage insurance (or the effective date of the transaction in the case of covered flexible subsidy projects), and must be income-eligible on that effective date.

- (1) Income Eligibility. In order to be eligible for enhanced voucher assistance, the resident must be either:
- o a low-income family (including a very low-income family);
 - o a moderate-income elderly or disabled family; or
 - o a moderate-income family residing in a low vacancy area (3 percent or less vacancy rate). The HUD local office economist is responsible for determining whether the project where the owner is prepaying or voluntarily terminating the mortgage insurance is located in a low vacancy area.

A low-income family is a family whose annual income does not exceed 80 percent of the median income for the area as determined by HUD.

A moderate-income family is a family whose annual income is above 80 percent but does not exceed 95 percent of the area median income as determined by HUD.

A resident family who does not fall into one of those categories on the effective date of the prepayment or voluntary termination is not eligible for one of these vouchers, regardless of whether the family's situation subsequently changes after the effective date of the prepayment.

(2) Unassisted and Assisted Families. Both unassisted and assisted residents may be eligible for enhanced voucher assistance as the result of a preservation prepayment.

A certificate or voucher participant who is residing in the project at the time of the eligibility event may receive enhanced voucher assistance if the family chooses to remain in the project. The applicability of the special conditions for residents who are already assisted under the tenant-based programs at the date of the eligibility event are discussed on page 33 of this notice.

Any family receiving Section 8 project-based assistance on the effective date of the prepayment will continue to receive the project-based assistance until the project-based contract expires or terminates. Such a family will receive enhanced voucher assistance at the time of the expiration and non-renewal of the Section 8 project-based contract.

(c) Eligibility event and existing leases. Note that the eligibility event (e.g., the prepayment of the mortgage or voluntary termination of a mortgage insurance contract for a preservation eligible project and the approval of the flexible subsidy

transaction for flexible subsidy projects) does not in itself necessarily terminate or modify the existing leases between the owner and the current residents of the project.

An owner may only legally increase the rent or terminate the lease as provided under the terms of the lease and in accordance with state and local law. In addition, an owner may not increase the rent for at least 60 days from the eligibility event in the case of a preservation prepayment or voluntary termination of the mortgage insurance.

If an eligible family chooses to stay at the project, the PHA may not enter into a HAP contract that commences prior to the effective date of the rent increase.

(d) Voluntary termination of mortgage insurance or prepayment of mortgage on Section 236 projects WHERE Section 236 rent rules remain applicable (decoupling actions). Where an owner voluntarily terminates the mortgage insurance or prepays the Section 236 mortgage in a preservation eligible Section 236 project AND the rent setting requirements of the Section 236 program are still applicable to the project, the enhanced voucher rent would be no greater than the Basic Rent established in accordance with HUD Notice H 2000-8. Since families must pay at least 30 percent of monthly adjusted income under the voucher subsidy formula, only those low-income families required to pay the basic rent will receive any voucher subsidy in such instance, unless the family chooses to move.

Regardless of the rents established under the rent formula for these projects, the rent reasonableness requirements of the housing choice voucher program must be met for the family to receive tenant-based assistance at the project.

The HUD field office is responsible for informing the PHA in cases where the rent setting requirements of the Section 236 program remain in effect.

(3) HUD enforcement actions -- Section 8 project-based contract termination or refusal to allow owner to renew and applicability of regular or enhanced voucher assistance.

As noted earlier, in most circumstances where HUD terminates a Section 8 project-based contract (or does not permit the owner to renew an expiring Section 8 project-based contract), eligible families assisted under the terminating contract will not be able to remain at the property and receive tenant-based assistance. For instance, in many cases the owner is being suspended, debarred, or a limited denial of participation has been issued. Such action will preclude the PHA from entering into Section 8 housing assistance payment contracts with the owner.

Where HUD is terminating the contract due to physical deficiencies at the property, there is little or no likelihood that the units will meet the housing quality standards of the housing choice voucher program. In addition, the housing choice voucher regulations provide that the PHA may deny approval to lease a unit from an owner if the owner has violated obligations under a housing assistance payments contract under Section 8 of the 1937 Act, or if the owner has a history of practice of non-compliance with the HQS for units leased under the tenant-based programs, or with applicable housing standards for units leased with project-based Section 8 assistance or leased under any other federal housing program. In most enforcement actions, HUD strongly encourages and expects the administering PHA to exercise its right to disapprove the tenancy for these reasons.

However, there may be a few occasions when the families will be able to remain at the project with tenant-based assistance after termination of the project-based contract. For instance, if the property is in good physical condition and the owner decides to turn the property over to new ownership, it may be possible for the eligible families assisted under the terminating contract to receive housing choice voucher assistance at the property. These families would be eligible for enhanced vouchers as the result of the Section 8 project-based contract termination.

Therefore, when HUD is terminating a Section 8 project-based contract (or not permitting the owner to renew an expiring contract), the field office should always consider the individual circumstances of the termination action in determining whether enhanced or regular voucher assistance is appropriate. Again, it is emphasized that regular housing choice vouchers are usually applicable in the case of a HUD enforcement action.

- (4) Family eligibility for enhanced voucher assistance in cases where there would be no initial housing assistance payment and the family wishes to stay in the project.

If the PHA determines that a family is income-eligible for an enhanced voucher but that there is no HAP payment because the family's total tenant payment equals or is greater than the gross rent, the PHA must maintain a record of the eligibility determination for that family. The PHA must inform the family that should the family's income decrease or the family's rent increase within three years of the eligibility event, the family may contact the PHA. Should the PHA then determine that the change in income would result in a housing assistance payment, the PHA will execute a housing assistance payment contract on behalf of the family at such time (assuming the unit is approved for leasing in accordance with the housing choice voucher program requirements). It is the family's responsibility to contact the PHA when there is a decrease in family income or an increase in the family rent.

B. Enhanced voucher family right to remain.

The FY 2001 Military Construction and FY 2000 Emergency Supplemental Appropriations law, Public Law No. 106-246, Section 2801, amended Section 8(t) of the United States Housing Act. A family that receives an enhanced voucher has the right to remain in the project as long as the units are used for rental housing and are otherwise eligible for housing choice voucher assistance (e.g., the rent is reasonable, unit meets HQS, etc.). The owner may not terminate the tenancy of a family that exercises its right to remain except for a serious or repeated lease violation or other good cause. If an owner refuses to honor the family's right to remain, the family may exercise any judicial remedy that is available under State and/or local law.

C. Characteristics of Enhanced Voucher Assistance.

Enhanced vouchers have several special requirements but in all other respects are subject to normal housing choice voucher program rules. For example, the PHA may not make payments to the owner until after execution of the HAP contract on behalf of an individual family, and the assistance may not be paid to cover any period of time before the PHA inspection and determination that the unit meets the housing quality standards of the program.

- (1) Payment standard where the family chooses to stay in the same project.
 - (a) Special payment standard. For a family that stays in the project, the payment standard used to calculate the voucher housing assistance payment is the gross rent (rent to owner plus the applicable PHA utility allowance for any tenant-supplied utilities) of the family's unit (provided the proposed gross rent is reasonable), regardless of whether the gross rent exceeds the normally applicable PHA payment standard.
 - (b) Rent reasonableness documentation and lease requirements. All regular program requirements concerning the reasonableness of the rent and the provisions of the HUD-prescribed lease addendum apply to enhanced vouchers. The PHA must determine that the proposed rent for the family's unit is reasonable. The PHA determines whether the proposed new rents for the property are reasonable just as it does for any other potential units under the tenant-based assistance programs.

The PHA determines whether the rent requested by the owner is a reasonable

rent for the unit in comparison to other comparable unassisted units based on the current condition of the unit. The PHA does not base the rent reasonableness determination on any planned future enhancements to the property. If the PHA determines the owner's proposed new rent is not reasonable, the owner must either lower the rent or the family will have to find another unit in order to benefit from the voucher.

The special payment standard for enhanced tenant-based assistance for a family that stays in the unit sometimes results in the PHA approving a tenancy for a unit that otherwise would be ineligible or unaffordable to a family with regular tenant-based assistance. If the rent is reasonable in comparison to the rents of comparable unassisted units, there is nothing improper or incorrect in approving the owner's new rent even if the rent would not normally be affordable for a family with regular voucher. However, it is very important for the PHA to make sure the owner's new rent is reasonable and to properly document this determination. The PHA must document the rent reasonableness of the owner's rent in the family's file by including the rents and addresses of the comparable units used to make the determination.

In some opt-out cases, the owner's mortgage has been restructured under mark-to-market renewal procedures and assistance under the Section 8 project-based contract has been converted to tenant-based assistance under section 515(c) of MAHRA. In other cases, owners may have first explored the possibility of restructuring the mortgage and lowering the Section 8 project-based rents before ultimately deciding to opt-out of or not renew the expiring Section 8 project-based contract. In either case, a rent comparability study has been conducted for HUD or the participating administrative entity (PAE). HUD will provide a copy of the rent comparability study for the project to the PHA.

The PHA may take the results of rent comparability study conducted by HUD or the PAE for purposes of the potential restructuring into consideration when determining the reasonableness of the owner's rents. The rent comparability study does not replace the PHA rent reasonableness determination and the PHA remains responsible for determining that the rent is reasonable in accordance with the housing choice voucher regulations. However, if the owner's proposed rent substantially exceeds the rent comparability study's determination of the market rent and the PHA determines the owner's rent is in fact reasonable, the PHA should be particularly sensitive to the fact that sufficient documentation must be retained to support the PHA determination.

(c) Effect of family unit size limitation – initial issuance. The PHA issues the eligible family an enhanced voucher based on the PHA subsidy standards, not on the actual size of the unit the family is presently occupying. However, if a family wishes to stay in the project but is living in an oversized unit (where the actual unit size is larger than the bedroom size on the voucher that determines the maximum subsidy for which the family qualifies under the PHA subsidy standards), the enhanced voucher family must move to an appropriate size unit *in the project* if one is available. To the extent there are more over-housed families than appropriate sized units available at any time, the PHA determines the process for deciding which over-housed enhanced

voucher family shall move to the appropriate size unit (e.g., PHA could make decision by lottery, or choose to take family circumstances into account (age, frailty, etc.)).

If there is no appropriate size unit currently available in the project, the family must then make a good faith attempt to find a unit outside of the project. In order to determine whether the family has made a good faith effort, the PHA may require the family to submit a list of potential units the family visited. The PHA should also take its knowledge of the market area into consideration, as well as the number of referrals to potential appropriate sized units it may have provided to the family over the course of the family's search.

If the family has not located an eligible unit at the end of the term of the voucher (including any extension granted by the PHA in accordance with its administrative policy) despite making a good faith effort, the PHA executes a housing assistance contract for the family's current unit, provided the unit complies with housing quality standards and the proposed rent is determined to be reasonable.

The effective date of the housing assistance contract for the oversized unit may not be earlier than the expiration date of the term of the family voucher. The family is responsible for the full rent of the unit prior to the effective date of the housing assistance contract.

The payment standard is the gross rent of the oversized unit. The PHA must advise the family that the enhanced subsidy based on the oversized unit's rent will only be paid for one year. During that year, the family may move to an appropriate size unit in the project if one becomes available and the owner agrees to mutually terminate the lease agreement for the oversized unit. The family would receive the special payment standard for the appropriate size unit if the family moves to the appropriate size unit under this circumstance.

After the initial year of assistance in the oversized unit, the PHA will apply the normally applicable payment standard in determining the family's housing assistance payment. If the family wishes to remain in the unit and can do so under the regular program rules, the family will have to pay the additional cost for the oversized unit out-of-pocket.

(2) Family Move: Normal Payment Standard is Applicable.

The normally applicable PHA payment standard is always used to determine the family's maximum voucher subsidy when the family moves from the project. This includes cases where the proposed new rent for the family's current unit is not reasonable or the unit fails HQS, requiring the family to move in order to receive tenant-based assistance.

(3) Enhanced Voucher Minimum Rent Requirement for Stayers.

Families assisted with enhanced housing choice voucher assistance have a special statutory minimum rent requirement. The law requires that a family receiving enhanced voucher assistance must pay for rent no less than the rent the family was paying on the date of the eligibility event for the project in question. (The eligibility event is the expiration date of the expiring project-based contract in the case of owner opt-outs. For preservation prepayments, the eligibility event is the effective date of the prepayment of the mortgage or voluntary termination of the mortgage insurance.)

The method for calculating the minimum rent changes if the family's income subsequently decreases to a significant extent (15 percent or more) from the family's gross income on the effective date of the prepayment. Guidance on recalculating the minimum rent in cases when a family's income significantly decreases is discussed in detail in subsection (c) below.

The enhanced voucher minimum rent only applies if the family remains in the project. The enhanced voucher minimum rent does not apply if the family moves from the project.

(a) Old gross rent for previously unassisted residents (preservation prepayments only).

Previously unassisted residents must pay at least the dollar amount of the gross rent the family was paying on the date of prepayment or voluntary termination. The PHA utility allowance is used to calculate the gross rent at prepayment if all utilities were not included in the rent the family paid to the owner.

(b) Old total tenant payment (TTP) or family share for previously assisted residents (all opt-out families and Section 8 tenant-based families in preservation prepayments).

A resident previously assisted under a project-based contract must pay no less than the dollar amount of the total tenant payment the family was paying on the date of the eligibility event.

For residents assisted under the regular certificate or voucher programs at the time of the prepayment or voluntary termination, the enhanced minimum rent provision only applies if the family chooses to remain in its present unit and receive the "enhanced" subsidy. In those cases the certificate family must pay at least the total tenant payment and the voucher family must always pay at least the family share that they were paying on the date of the prepayment or voluntary termination as the enhanced voucher minimum rent. The certificate or voucher family may choose not to accept the enhanced subsidy, in which case all regular rules remain in effect, regardless of whether the family chooses to remain at the property.

Under Section 8(t) of the United States Housing Act of 1937, a family who stays in the unit and receives enhanced voucher assistance must pay the enhanced voucher minimum rent, notwithstanding any other requirement of Section 8(o). If the enhanced voucher minimum rent exceeds 40 percent of the family's monthly adjusted income, a family must still pay at least the enhanced voucher minimum rent, and the restriction on the initial family contribution under §982.508 is not applicable.

(c) Significant Decline in Family Income – Effect on Enhanced Voucher Minimum Rent.

If an enhanced voucher family suffers a significant decline in family income, the minimum family share required of the family shall be reduced so that the percentage of income for rent does not exceed the greater of 30 percent or the percentage of monthly adjusted income actually paid by the family for rent (the rent to owner plus tenant-paid utilities) on the effective date of the prepayment. HUD is defining a significant decrease as a decrease in gross family income of at least 15 percent from the gross family income on the date of the eligibility event.

The PHA normally uses the specific dollar amount the family was paying for rent on the effective date of the eligibility event in determining the family's enhanced voucher minimum rent. However, if the family subsequently suffers a significant decline in family income, the PHA uses a different method for calculating the family's enhanced voucher minimum rent. The enhanced voucher minimum rent changes from an actual dollar amount to a specific percentage of income.

- (1) For families who were previously unassisted on the eligibility event, the family's new enhanced voucher minimum rent is the greater of (A) the percentage of the monthly adjusted income the family paid for gross rent on the effective date of the eligibility event or (B) 30 percent of the family's current adjusted monthly income.
- (2) For families who were previously assisted under a project-based or tenant-based contract on the eligibility event, the family's new enhanced voucher minimum rent is the greater of (A) the percentage of monthly adjusted income the family TTP or family share represented on the effective date of the eligibility event or (B) 30 percent of the family's current adjusted monthly income.

The new enhanced voucher minimum rent for these families is a percentage of income as opposed to a specific dollar amount. Once this change in the enhanced voucher minimum rent becomes effective for a family, the enhanced voucher minimum rent for the family remains that specific percentage of income (e.g., 32 percent) and will not revert to a specific dollar amount, even if the family income subsequently increases or decreases.

For instance, assume a previously unassisted family paid \$500 for gross rent on the effective date of the prepayment, which equaled 35 percent of the family's monthly adjusted income at that time. After receiving enhanced voucher assistance for ten months, the family suffered a 50 percent decrease in monthly gross income. The PHA now calculates the enhanced voucher minimum rent for the family as the percentage of monthly adjusted income the family paid for rent on the prepayment date (35 percent) instead of the actual dollar amount (\$500). The enhanced voucher family in this example must now pay at least 35 percent of the family monthly adjusted income for rent, regardless of any further changes in family income.

If the family enhanced voucher minimum rent is changed to a percentage of adjusted monthly income that is no greater than 30 percent of monthly adjusted income (as should be the case for most families that received enhanced vouchers under a project-based opt-out conversion), the enhanced voucher minimum rent is essentially meaningless for the family. A family is already required to pay at least 30 percent of monthly adjusted income under the housing choice voucher subsidy formula.

When a family reports a significant decrease in family income, the PHA conducts an interim redetermination and verifies the change in income as soon as possible to prevent hardship on the family, preferably by the first of the month following the date the family reports the change and provides the necessary documentation. The PHA may implement the reduction on a provisional basis before completing the verification in order to prevent undue hardship to the family.

The change in the determination of the enhanced voucher minimum rent only applies if a family suffers a significant loss of income (at least a 15 percent decrease in the gross family income on the eligibility event). Otherwise, the enhanced voucher minimum rent remains the specific dollar amount.

Regardless of which method is used to calculate the enhanced voucher minimum rent, the minimum rent represents the lowest amount the family may pay as their family share for as long as the family remains in the project. A family may pay no less than the enhanced voucher minimum rent. Depending on the circumstances, the family may have to pay more than the enhanced voucher minimum rent.

(4) Calculating HAP for Enhanced Voucher Assistance.

Regardless of whether the owner's new gross rent after the eligibility event exceeds or is less than the PHA payment standard, the housing assistance payment for a family that stays in their present unit (or moves from an oversized unit to an appropriate size unit within the project) is the following:

the gross rent for the unit minus the greatest of:

- (i) 30 percent of the adjusted family income;
- (ii) 10 percent of the family monthly income (gross monthly income);
- (iii) the welfare rent in as-paid states;
- (iv) the enhanced voucher minimum rent; or
- (v) such other minimum rent established by the PHA as authorized by Federal law (see 24 CFR §5.630.)

(5) Movers from the Project – All Regular Housing Choice Voucher Rules Apply.

If a resident decides to move from the project with the voucher assistance, the payment standard is not enhanced and the enhanced voucher minimum rent does not apply. This is the case when the family chooses to use the voucher to move from the property immediately, or if after receiving enhanced voucher assistance for a period of time the family chooses to subsequently move from the unit with continued voucher assistance. In either circumstance, the housing assistance payment and the family share at the new unit are calculated in accordance with the regular rules of the housing choice voucher program.

D. Applicability of enhanced voucher requirements for families currently assisted under the tenant-based programs in the property for a preservation prepayment.

A resident who is already receiving housing choice voucher assistance on the date of a preservation prepayment (including voluntary termination of the mortgage insurance) may also be covered by the special conditions afforded to stayers by enhanced voucher assistance. A resident currently assisted under the voucher or certificate program on the effective date of the prepayment or voluntary termination may choose not to be covered by the special provisions.

All of the following conditions must be met in order for a resident currently assisted through the housing choice voucher program on the effective date of the prepayment to be covered by the special enhanced voucher provisions:

- (i) the family must meet the income requirements on the date of the eligibility event;
- (ii) any rent increase under the voucher program must be in accordance with the lease agreement and program regulations;
- (iii) the new gross rent must be reasonable; and
- (iv) the family must decide to stay in the unit instead of moving.

Under the voucher program, an owner may increase the rent as permitted by the terms of the existing lease and local and state law, so long as the new rent is reasonable. The owner is not required by the program regulations to terminate the existing lease and HAP contract for current voucher participants to receive the special "enhanced" subsidy.

Assuming the above conditions are met, the payment standard used to calculate the housing assistance payment is the new gross rent of the family's unit. The enhanced voucher minimum rent requirement now applies to the family.

In the case of a current certificate family that the PHA determines is eligible for enhanced voucher assistance on the eligibility event, the family will receive an enhanced voucher at the time the family's certificate is converted to the housing choice program, provided the family remains at the project.

E. Administering enhanced voucher assistance.

The special conditions of enhanced voucher assistance (enhanced voucher minimum rent and the special payment standard rules) are applicable for as long as the family receives voucher assistance at the project.

If an owner subsequently raises the rent for an enhanced voucher family in accordance with the lease, State and local law, and voucher program regulations (including rent reasonableness), the PHA will use the new gross rent to calculate the voucher HAP payment for the family.

The PHA must identify an eligible family as an enhanced voucher family even if the gross rent of the family's unit does not currently exceed the normally applicable PHA payment standard. Since the enhanced payment standard rule also covers any subsequent rent increases, it is possible that the special payment standard may come into play later in the family's tenancy. An enhanced voucher family is also required by law to pay no less than the enhanced voucher minimum rent, regardless of whether the gross rent exceeds the normally applicable PHA payment standard.

(1) Enhanced voucher minimum rent. The enhanced voucher minimum rent requirement remains in effect for all families who receive enhanced voucher assistance and remain at the property.

(2) Special Payment Standard. Subject to availability of appropriations, the payment standard used to calculate the family subsidy will continue to be enhanced to match the gross rent for the unit if the gross rent exceeds the normally applicable payment standard and the PHA determines the rent is reasonable for as long as the enhanced voucher family continues to reside in the same project.

If the owner raises the rent for a family assisted with an enhanced voucher in accordance with the lease, State and local law, and voucher program regulations, the PHA will increase the enhanced payment standard to equal the new gross rent (rent to owner and the applicable PHA utility allowance for any tenant-supplied utilities) for the unit provided the PHA determines the rent is reasonable. The additional cost of the subsidy will be covered through the regular renewal process for the PHA's voucher program in accordance with §982.102.

If a change in the PHA utility allowance (either an increase or decrease) affects the gross rent for a family assisted with an enhanced voucher, the PHA must adjust the enhanced payment standard accordingly. The enhanced payment standard may never exceed the gross rent for the assisted family's unit.

Again, it is emphasized that the PHA always applies the normally applicable payment standard if the family subsequently moves from the project.

(3) Changes in enhanced voucher family size. If the PHA determines that the unit of an enhanced voucher family is no longer decent, safe, and sanitary under the HQS requirements because of an increase in family size that cause the unit to be overcrowded, the family must move to continue to receive housing choice voucher assistance. The family and the PHA must try to find an acceptable unit as soon as possible. The PHA must assist the family in locating other standard housing in the PHA jurisdiction. The PHA must terminate the HAP contract if the family rejects, without good reason, the offer of a unit that the PHA judges to be acceptable. If the family moves to an appropriate size unit in the project, the enhanced voucher subsidy rules would continue to apply to the family's voucher assistance. In the case of a family move from the project, the regular voucher program rules apply.

If, as a result of a decrease in family size, the enhanced voucher family no longer would qualify under the PHA subsidy standards for the size of the unit in which they currently reside and the gross rent exceeds the normally applicable payment standard for the unit size the family now qualifies for, the family must move to an appropriate size unit in the project, if one is available, to continue to receive enhanced voucher assistance. Otherwise, the family may receive enhanced voucher assistance in the

oversized unit for up to twelve months. The PHA will calculate a new housing assistance payment using the normal housing choice voucher subsidy rules and the normally applicable payment standard for the bedroom size the family qualifies for under the PHA subsidy standards at the end of the twelve month period.

Additional Information. Any questions pertaining to the Section 8 tenant-based aspects of Housing conversion actions may be addressed to Michael Dennis of the Office of Public and Assisted Housing Delivery in PIH. Mr. Dennis may be reached at (202) 708-0477, ext. 4059. Questions on subjects that fall under the responsibilities of the Office of Housing (e.g., owner notice requirements, preservation project eligibility for prepayments) may be directed to Ulyses Bridges of the Office of Business Products in Multifamily Housing. Ms. Bridges' telephone number is (202) 708-2866, ext. 2639.

<u>/s/</u> _____	<u>/s/</u> _____
Michael Liu	John C. Weicher
Assistant Secretary for	Assistant Secretary for
Public and Indian Housing	Housing – Federal
	Housing Commissioner

Attachments

Attachment 1

HOUSING CHOICE VOUCHERS
CALCULATION OF BUDGET AUTHORITY FOR FUNDING INCREMENTS
FOR HOUSING CONVERSION ACTIONS

Summary: This worksheet has been designed to provide the information necessary to estimate the budget authority required to assist families who are eligible for housing choice voucher assistance as the result of a Housing conversion action.

Project Name: _____

Project Number/Section 8 Contract Number: _____

Purpose and Target Date: _____

Indicate the type of conversion action (e.g., opt-out, termination, PD sales, or prepayment) above. In cases where there is more than one action occurring at the same project, complete a separate worksheet for each action. For example, assume the owner is prepaying the mortgage of a preservation eligible property and opting-out

of two Section 8 project-based contracts. The Field Office of Public Housing would complete 3 funding worksheets -- one worksheet for the prepayment to cover the unassisted units, and two worksheets for the units covered by the individual Section 8 project-based contracts. Indicate the target date of the conversion action (contract expiration date, effective date of prepayment), if known.

Public Housing Agency:

Public Housing Agency Number:

Unit Distribution:

Enter the number of units covered by the conversion action. Enter the number of occupied/unoccupied by bedroom size if known. At minimum, the worksheet must indicate total number units occupied/unoccupied.

Bedroom Distribution	Occupied	Unoccupied	Total
0 bedroom/eff			
1 bedroom			
2 bedroom			
3 bedroom			
4 bedroom			
Other			
Total			

Special Housing Fee

The Department will provide up to \$250 for each occupied unit as a special housing fee to compensate the PHA for any extraordinary Section 8 administrative costs associated with the housing conversion action.

Office of Public Housing Contact:

Telephone Number:

E-mail this request to Eileen T. Davis, Section 8 Finance Division.

NOTE: HUD Headquarters will normally use the average unit cost methodology to determine the budget authority of the voucher funding for the Housing conversion action. In cases where the HUD Field Office of Public Housing has concerns that this approach may result in insufficient funding (taking into consideration the amount of available funding in the PHA ACC reserve) for a particular action (e.g., a very small PHA tenant-based program absorbing a high cost, large conversion action), please indicate below or contact the Section 8 Finance Division at 202-708-2934.