

OFFICE OF GENERAL COUNSEL

SEP 11 1984

IN REPLY REFER TO:

MEMORANDUM TO: Regional Administrators
Regional Housing Directors
Regional Counsels

Field Office Managers and Supervisors
Housing Management Division Directors
Chief Counsels, Chief Attorneys

FROM: *Robert S. Kenison*
Robert S. Kenison, Associate General Counsel
Office of Assisted Housing and Community Development, GC

SUBJECT: Section 8 Existing Housing - Certificate Program --
Questions on Assisted Tenancy

We are enclosing answers to a number of questions on termination of tenancy and continuation of housing assistance payments in the Section 8 Certificate Program. To facilitate reference use, and the addition of future materials, the answers are in looseleaf binder form.

Field Offices should reproduce the attached materials, and send a copy to each PHA administering the Section 8 Certificate Program.

- #1.3** If the owner will not execute a new lease and HAP Contract as required under the new rule, can the PHA extend the term of the old lease and HAP Contract?

In a few cases, an owner may refuse to enter a new lease and HAP Contract at expiration of a lease and HAP Contract entered before the new regulations, but may be willing to agree to an extension of the old lease and HAP Contract (HAP Contract on form dated October 1982). HUD Central Office will consider written requests by PHAs to allow contractual extensions of the old HAP Contracts and leases, in individual cases, to permit continuation of housing assistance payments during the time needed for a court to determine whether the owner has good cause for termination of the assisted tenancy. The HAP Contract and lease extensions shall be for a limited time, and shall in no case extend more than twelve calendar months after the original expiration date. (For example, if the original term expired June 10, 1984, the extension may not run beyond June 30, 1985.) In cases where extensions are allowed by HUD, the owner and PHA must enter an extension of the HAP Contract and the owner and tenant must execute an extension of the lease.

Requests to allow extensions of the old HAP Contracts and leases should be directed to:

Gerald J. Benoit
Existing Housing Division, Office of Elderly and Assisted Housing
U.S. Department of Housing and Urban Development
Room 6128
451 Seventh St., S.W.
Washington, D.C. 20410

- #1.4** What if a new HAP Contract and lease are not executed in time (for immediate continuation of assistance at the end of the old HAP Contract term)? Can assistance be paid for the period between expiration date of the original contract and actual execution of a new HAP Contract?

Generally, of course, the HAP Contract and lease are executed before the beginning of the lease term. However, the HUD program regulations do not prohibit execution of the HAP Contract and lease at a later date, but effective at an earlier date to avoid a gap in payments. After execution of the HAP Contract, housing assistance payments may be paid, in accordance with the HAP Contract, for the period between the commencement of the lease term and the actual date when the HAP Contract is executed. If an owner is unsuccessful in attempting to evict the family, and is required to enter into a new assisted lease, the PHA has authority to approve a lease, and to execute a new HAP Contract, for a term commencing on the expiration of the original HAP Contract term.

It must be emphasized that all Certificate Program requirements for approval of a lease and execution of a HAP Contract apply even if execution is delayed. Housing assistance payments may only be made for a past period if the unit met all HAP Contract requirements for the period, and the owner was in compliance with the contract terms. The PHA is allowed to enter a HAP Contract with an effective date prior to the date of actual execution, and to make

housing assistance payments for a past period, only if and to the extent that such payments would have been made if the HAP Contract and lease had been executed before commencement of the term.

Where there is an interruption of housing assistance payments, because the HAP Contract and lease have not been executed in time, it is a discretionary administrative determination by the PHA whether to approve an assisted lease term which runs prospectively only, or instead to approve a lease term which covers all or part of the interval after expiration of the original assisted lease. A PHA may for example decline to enter a HAP Contract with an earlier effective date because it cannot determine whether the unit was decent, safe and sanitary for lack of a pre term inspection.

#2. WHEN ASSISTED TENANCY TERMINATES

For HAP Contracts under the new rule (i.e., where the HAP Contract or the lease is executed after May 9, 1984), the HAP Contract and lease continue until termination of the tenancy. An owner may not terminate a section 8 existing tenancy except for certain statutory grounds or "other good cause."

The PHA does not determine whether an owner has good cause for termination of a tenancy. If a tenant refuses to vacate the unit, the way for an owner to show good cause is to succeed in an eviction proceeding in State court. For purposes of the Section 8 Certificate Program, a tenancy is considered as terminated only after a State court has determined that the tenant is not authorized to retain possession of the unit under the assisted lease.

Until the State court determination, the PHA must continue making housing assistance payments to the owner in accordance with the HAP Contract. While assistance payments continue, the tenant must continue to occupy the unit, and the conditions of occupancy must be consistent with requirements of the HAP Contract. By endorsing the monthly check from the PHA, for instance, the owner certifies that the unit is in decent, safe and sanitary condition, and that the PHA approved lease remains in effect.