U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-8000

ASSISTANT SECRETARY FOR HOUSING-
FEDERAL HOUSING COMMISSIONER

Special Attention of

All Multifamily Hub Directors
All Multifamily Program Center Directors
All Multifamily Operations Officers
All Directors of Project Management
All Field Counsel
All Public Housing Directors

Notice H 2012-3

Issued: February 24, 2012

Expires: February 28, 2013

Cross References: PIH Notice 01-41
Housing Notice 10-14

SUBJECT: Guidance on Eligibility for Tenant Protection Vouchers Following Certain Housing Conversion Actions

I. Purpose

The Office of Multifamily Housing oversees thousands of properties supported by a range of insured and Direct Loans, including Section 236, Section 221(d)(3), Section 202, and Section 221(d)(4) mortgages. In addition, the Office of Multifamily Housing has oversight of rental assistance provided under rental assistance contracts, including the project-based Section 8 Housing Assistance Payments (HAP) Program, the Rent Supplement Payments Program (Rent Supplement) and the Rental Assistance Program (RAP). Many properties are reaching the end of their original mortgage term, and rental assistance contracts are also reaching expiration. Residents may be eligible for Tenant Protection Vouchers (TPVs) in certain scenarios related to mortgage prepayment, contract termination or expiration.

Many Owners, tenants, and other stakeholders seek updated information from HUD on the applicability of TPVs for residents of HUD-assisted or HUD-insured properties following various actions related to the mortgage or rental assistance contract. This Notice supplements the Office of Public and Indian Housing (PIH) Notice 2001-41. It describes the features of TPVs and the eligibility criteria for households to receive TPVs in different scenarios. The Notice implements certain authorities set forth in the Department of Housing and Urban Development Appropriations Act, Fiscal Year 2012 ("2012 Appropriations Act") (P.L. 112-55, 125 Stat. 552).[1] Please note that,

[1] The relevant section of the 2012 Appropriations Act states: "$75,000,000 shall be for section 8 rental assistance for relocation and replacement of housing units that are demolished or disposed of pursuant to section 18 of the Act, conversion of section 23 projects to assistance under section 8, the family unification program under section 8(x) of the Act, relocation of witnesses in connection with efforts to combat crime in public and assisted housing pursuant to a request from a law enforcement or prosecution agency, enhanced vouchers under any provision of law authorizing such assistance under section 8(t) of the Act, HOPE VI vouchers, mandatory and voluntary conversions, and tenant protection assistance including replacement and relocation assistance or for project-based assistance to prevent the

by law, the provision of TPVs is subject to the availability of appropriations. While provision of certain TPVs issued following a qualifying mortgage prepayment or Opt-Out are mandatory, subject to the availability of appropriations, HUD also has discretionary authority to provide TPVs in other circumstances, such as Rent Supplement or Rental Assistance Payment (RAP) contract terminations and Section 202 Direct Loan prepayments. HUD reserves the right to prioritize provision of discretionary vouchers in a particular fiscal year to protect tenants deemed most at risk of displacement due to an eligibility event. This Notice does not implement the new language in the 2012 Appropriations Act which sets aside $10 million from the $75 million appropriation for provision of TPVs to new categories of eligible households, including households impacted by maturing mortgages.[2] The provision related to the new TPVs to be issued under the $10 million set-aside will be implemented through distinct guidance separate from this Notice.

II. <u>Types of Tenant Protection Vouchers</u>

TPVs provided in connection with Housing Conversion Actions consist of two types of housing choice vouchers: Enhanced Vouchers (EVs) and Non-enhanced, or Regular Housing Choice Vouchers ("regular vouchers"). The specific triggering event determines which type of TPVs HUD must offer. Enhanced Vouchers are provided in response to an "eligibility event," as defined in section 8(t)(2) of the United States Housing Act of 1937 and discussed below. HUD makes regular vouchers available in response to certain contract terminations or mortgage prepayments described in this Notice, subject to the availability of funds.

Enhanced Vouchers and regular vouchers differ in several important aspects. A family that receives an EV has the right to remain in a Multifamily housing project in which the family was residing on the date of the eligibility event, as long as the housing is offered as rental housing and is otherwise eligible for Housing Choice Voucher assistance (e.g., the rent is reasonable, the unit meets Housing Quality Standards, etc.). If the family chooses to remain at the property, an "enhanced" payment standard applies if the gross rent for the unit exceeds the otherwise applicable payment standard

---

displacement of unassisted elderly tenants currently residing in section 202 properties financed between 1959 and 1974 that are refinanced pursuant to Public Law 106–569, as amended, or under the authority as provided under this Act: Provided, That when a public housing development is submitted for demolition or disposition under section 18 of the Act, the Secretary may provide section 8 rental assistance when the units pose an imminent health and safety risk to residents: Provided further, That the Secretary may only provide replacement vouchers for units that were occupied within the previous 24 months that cease to be available as assisted housing, subject only to the availability of funds…"

[2] The relevant 2012 Appropriations Act language states: "Provided further, That of the amounts made available under this paragraph, $10,000,000 may be available to provide tenant protection assistance, not otherwise provided under this paragraph, to residents residing in low-vacancy areas and who may have to pay rents greater than 30 percent of household income, as the result of (1) the maturity of a HUD-insured, HUD held or section 202 loan that requires the permission of the Secretary prior to loan prepayment; (2) the expiration of a rental assistance contract for which the tenants are not eligible for enhanced voucher or tenant protection assistance under existing law; or (3) the expiration of affordability restrictions accompanying a mortgage or preservation program administered by the Secretary: Provided further, That such tenant protection assistance made available under the previous proviso may be provided under the authority of section 8(t) or section 8(o)(13) of the United States Housing Act of 1937 (42 U.S.C. H. R. 2112—127 1437f(t)): Provided further, That the Secretary shall issue guidance to implement the previous provisos, including, but not limited to, requirements for defining eligible at-risk households within 120 days of the enactment of this Act…"

established by the Public Housing Authority (PHA) and the PHA determines that the rent charged for the unit, although higher than the otherwise applicable PHA payment standard, is nevertheless reasonable in comparison to rent for other comparable unassisted units. The initial rent reasonableness determination is based on the current condition of the units at the time of the eligibility event and is not based on future planned rehabilitation of the units.

In cases where a regular voucher is provided, the rent subsidy paid on behalf of the family to the Owner is capped at the "payment standard" established by the administering PHA for each bedroom size, based on the Fair Market Rent published annually by HUD. The gross rent for regular vouchers must also be reasonable, as determined by the PHA, in comparison with other comparable unassisted units. A tenant may utilize a regular TPV to stay in the unit, or to move elsewhere – but the tenant does not have the "right to remain" in the unit, and the owner is not required to enter into a voucher tenancy with the tenant. In all cases, tenants receiving regular TPVs must meet the Housing Choice Voucher income and other eligibility criteria as described below.

III. <u>Mortgage Prepayment Eligibility Events Under Section 8(t)</u>

Many Owners of HUD properties are prepaying mortgages to refinance, lower interest rates and/or complete repairs. Others are prepaying mortgages to sell properties and transfer them to a new Owner. In some cases, the act of prepayment constitutes an "eligibility event," as defined in Section 8(t)(2) of the United States Housing Act of 1937. Under Section 8(t)(2), these various "eligibility events" make certain populations of tenants eligible for EVs.

When an Owner prepays an FHA-insured loan, EVs may be provided to tenants in units not covered by rental assistance contracts under certain conditions. Hub/PC Directors are strongly encouraged to contact Owners in their regions that meet the below criteria, and to advise Owners that EVs may be provided to eligible tenants at mortgage prepayment, and that EVs are <u>not</u> provided to unassisted residents if the mortgage matures. Enhanced Vouchers may be provided at mortgage prepayment if one or more of the following conditions are met:

1) If Section 229(1) of the Low-Income Housing Preservation and Resident Homeownership Act of 1990 (LIHPRHA) is satisfied – meaning that the mortgage is among those enumerated in Section 229(1)(A) and may be prepaid without prior HUD approval – then EVs must be offered to eligible tenants residing in units not covered by rental assistance contracts. In practice, this includes some, but not all, profit-motivated mortgagors. Nonprofit-owned properties generally require HUD permission to prepay the mortgage and, therefore, any prepayment by a nonprofit mortgagor does not meet the requirements of Section 229(1) of LIHPRHA and the unassisted residents at the property are not eligible to receive EV. To receive EVs, families must meet the eligibility criteria in Section 223(f) of LIHPRHA.[3]

2) If the mortgage prepayment is on a property that also has or has had a Flexible Subsidy note, HUD may provide EVs to project tenants not currently receiving rental assistance,

---

[3] Families are eligible for EV assistance under this provision of LIHPRHA if the family is a low-income family, or is a moderate-income family that is: an elderly family, a disabled family, or residing in a low-vacancy area. Families must be residing in the eligible project on the date of the prepayment of the mortgage.

if the project is the subject of a transaction under which the project is preserved as affordable housing. The Office of Multifamily Housing, HUD Headquarters, determines on a case-by-case basis if the proposed transaction triggers EVs. To be eligible to receive EVs, tenants must meet the eligibility requirements of 223(f) of LIHPRHA.

Owners must comply with prepayment notification requirements that require the Owner to notify residents of the intent to prepay the mortgage at least 150 days prior to the mortgage prepayment. However, the Department understands that an Owner may decide to prepay the mortgage in the final year prior to the mortgage maturity, in part out of a desire to protect tenants through the provision of EVs. In such a case, the 150-day tenant notification may not be a possibility. The Owner may instead execute and record a Use Agreement that will require the property to continue to operate as affordable housing at the same affordability level until the date the mortgage would have matured.

Those properties that received preservation assistance under the Emergency Low-Income Housing Preservation Act (ELIHPA) may have mortgages in place that meet the criteria under Section 229(1) of LIHPRHA. However, for these properties, the mortgage prepayment does not result in a termination of the underlying affordability Use Agreement. HUD may provide EVs to eligible residents not currently assisted by a rental assistance contract at prepayment of a qualifying mortgage of an ELIHPA property. HUD does not have authority to provide EVs to residents at the time of expiration of the Use Agreement if such expiration occurs after the mortgage prepayment.

The chart below provides an overview of eligibility for EVs at mortgage prepayment.

Ownership	**No Flexible Subsidy Loan on Property**	**Flexible Subsidy Loan on Property**
Profit-Motivated	EVs provided to eligible tenants residing in units not covered by a rental assistance contract if the prepayment meets the requirements of Section 229(1) of LIHPRHA.	EVs provided to eligible tenants residing in units not covered by a rental assistance contract under two possible scenarios: 1) The prepayment meets the requirements of Section 229(1) of LIHPRHA; or 2) A qualifying Flexible Subsidy transaction at the property under Section 201(p) of the Housing and Community Development Amendments of 1978.
Nonprofit	EVs not provided because the prepayment does not meet the requirements of Section 229(1) of LIHPRHA.	EVs provided to eligible tenants residing in units not covered by a rental assistance contract if a qualifying Flexible Subsidy transaction at the property meets criteria under Section 201(p) of the Housing and Community Development Amendments of 1978.

IV. Provision of Vouchers to Residents of Section 8, Rent Supplement or RAP Units

In certain cases, HUD may provide TPVs, either EVs or regular vouchers, to residents of housing supported by project-based rental assistance contracts including Section 8 HAP contracts, Rent Supplement and RAP contracts.

A. Enhanced Vouchers

1. Section 8 HAP Contract Terminations due to Opt-Out

   HUD provides EVs to residents of units covered by a Section 8 HAP contract when that contract terminates due to an Owner Opt-Out of the contract. Tenants must meet eligibility criteria set forth in Section 524(d) of the Multifamily Assisted Housing Reform and Affordability Act (MAHRA).

2. Rent Supplement and RAP Contract Terminations due to expiration or prepayment

   In certain cases, HUD also provides EVs to residents of units covered by Rent Supplement and RAP contracts:

   a) EVs are provided to eligible low-income Rent Supplement residents if a project is subject to both a Section 8 HAP contract and a Rent Supplement contract, and both contracts expire on the same day.

   b) In limited circumstances, EVs are provided to eligible tenants in RAP units when the property's mortgage is prepaid, provided that the note allows prepayment without prior HUD approval and satisfies Section 229(1)(A) of LIHPRHA. To receive EVs, families must meet the eligibility criteria in Section 223(f) of LIHPRHA.

B. Regular Vouchers

Pursuant to the 2012 Appropriations Act, HUD also has authority, subject to appropriations, to provide regular vouchers to eligible families when a Rent Supplement or RAP contract terminates due to expiration, prepayment of the underlying mortgage, or enforcement action; and therefore, the Rent Supplement or RAP contract units at the property cease to be available as assisted housing. HUD provides TPVs to the administering PHA for all units on the original Rent Supplement or RAP contract that were occupied within 24 months of the contract termination.

To receive regular voucher assistance as the result of the Rent Supplement or RAP contract termination, tenants must be low-income families. The provision of these regular vouchers is subject to the availability of appropriations.

The chart below summarizes the provision of TPVs to Section 8, Rent Supplement and RAP units when contracts terminate.

Form of Rental Assistance	Eligible for Enhanced Vouchers when contract terminates upon mortgage prepayment?	Eligible for Enhanced Vouchers when contract expires?	Eligible for Regular Vouchers when contract terminates at mortgage prepayment?	Eligible for Regular Vouchers when contract expires?
Rent Supplement contract units	No[4]	No, except where there is a Section 8 HAP contract expiring the same day	Yes	Yes
RAP contract units	Yes, if the mortgage prepayment constitutes an "eligibility event" under Section 8(t)	No	Yes[5]	Yes
Section 8 units	No[6]	Yes (this is considered an Owner Opt-Out)	No[7]	Yes, if the contract terminates due to certain enforcement actions

The Multifamily Hub/PC must work closely with the Owner of a Rent Supplement or RAP assisted property prior to expiration of the contract to ensure that the tenants are notified of the impending contract expiration, and that the TPVs are requested following the process detailed in PIH Notice 01-41 with sufficient time for tenants to receive them prior to the contract expiration date. Tenants should be notified in writing at least 60 days prior to the contract expiration to provide sufficient time to secure other housing if a move is necessary. All notifications should be sent in a manner that is effective for persons with hearing, visual, and other communications-related disabilities and appropriate translations should be provided to Limited English Proficient (LEP) individuals.

V. <u>Provision of Regular Vouchers to Residents of Certain Section 202 Direct Loan Properties</u>

The 2012 Appropriations Act also authorizes HUD to provide TPVs to prevent the displacement of unassisted elderly tenants currently residing in section 202 properties financed between 1959 and

[4] When a Rent Supplement note is prepaid, tenants are not eligible to receive EVs. The underlying mortgages for Rent Supplement properties do not satisfy Section 229(1)(B) of LIHPRHA – all notes linked to Rent Supplement contracts require prior HUD approval for the mortgagor to prepay the mortgage.

[5] Note: if a RAP contract terminates due to prepayment and the prepayment constitutes an "eligibility event" under Section 8(t), residents of the RAP contract units will receive EVs rather than regular vouchers.

[6] The prepayment of an FHA-insured mortgage does not trigger the termination of a Section 8 HAP contract. Since the contract is not terminated, TPVs are not issued.

[7] The prepayment of an FHA-insured mortgage does not trigger the termination of a Section 8 HAP contract. Since the contract is not terminated, TPVs are not issued.

1974 that are refinanced under Section 811 of the American Homeownership Economic Opportunity Act of 2000, as amended. If the mortgage prepayment is a qualifying Section 202 mortgage prepayment, then residents of the Section 202 project being refinanced that are not currently receiving rental assistance may be eligible to receive regular vouchers at the time of the mortgage prepayment. The provision of regular vouchers is discretionary and is subject to the availability of appropriations. Qualifying prepayments include the approved prepayment of a Section 202 mortgage with an interest rate of 6 percent or below, for a property built between 1959 and 1974, where the prepayment involves substantial rehabilitation and where HUD determines that unassisted elderly residents would face rent increases absent the TPV assistance. HUD prepayment approval is required in these cases.[8] Guidance for review and approval of these Section 202 Direct Loan prepayments is provided in Housing Notice 10-14 and may be updated through subsequent Notice.

VI. <u>Procedural Requirements</u>

This Notice does not alter the required process for requesting and administering TPVs. In the case that TPVs are authorized following a prepayment or contract Opt-out, expiration or other termination, the Hub/PC Director will work with the HUD Office of Public Housing Director to request tenant protection funding. This process is currently described in detail in PIH Notice 01-41.

If you have questions, please contact your Desk Officer in Headquarters, Office of Asset Management.

____
Carol J. Galante
Acting Assistant Secretary for Housing –
Federal Housing Commissioner

[8] Please note: subject to the availability of appropriations, HUD may provide Senior Preservation Rental Assistance Contracts (SPRACs) to these unassisted Section 202 households, rather than regular vouchers. SPRACs are authorized by the Supportive Housing for the Elderly Act of 2010. HUD will issue separate guidance related to the provision of such contracts.