



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; and
Section 8 Public Housing Agencies

Notice PIH 99-40 (HA)

Issued: September 1, 1999
Expires: September 1, 2000

Cross References:

Subject: Section 8 Tenant-based Assistance and Housing Conversion Actions - Special Fee for Extraordinary Administrative Costs and Processing Guidance

1. **Purpose.** The purpose of this notice is to provide information on the availability of a new special fee to reimburse public housing agencies (PHAs) for the extraordinary costs associated with the administration of certain types of "special purpose" tenant-based assistance. The notice also provides guidance on the funding process for these tenant-based conversion actions.
2. **Background.** The Department currently provides Section 8 tenant-based assistance to PHAs to assist eligible residents who are affected by several different types of actions (collectively referred to as "Housing conversion actions") in HUD's Office of Multifamily Housing programs. In many cases HUD and the PHA must work under very tight time-frames to provide the housing voucher assistance to the residents before the families are subjected to significant rent increases or displacement. For example, an owner who prepays the mortgage of a preservation eligible property may in many cases raise the rent in as little as 60 days after the effective date of the prepayment.

The administering PHA must complete a number of tasks within a short amount of time, which include completing and submitting the funding application; determining each individual family's eligibility; reviewing proposed rents; and conducting housing quality standards (HQS) inspections for any potential units. In the majority of Housing conversion actions, the PHA does not have the luxury of absorbing the increased work-load over several months but must work with all the potentially eligible residents making the transition simultaneously. The challenge may be further exacerbated by the fact that all or many of the affected residents must relocate.

Depending on the number of eligible residents affected by the action, PHAs may have to borrow staff from neighboring agencies to promptly process and assist all 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 receiving the ACC funding exhibit to avoid the potential adverse impact on the families. (PHAs may not under any circumstances execute Section 8 HAP contracts prior to receiving the notification letter and the effective date of the funding contained on the ACC funding exhibit.) The vast majority of PHAs that took action before receiving an executed ACC funding exhibit did not experience any problems. However, in a few isolated cases the owner decided at the very last moment not to go through with their decision to prepay the mortgage or opt-out of the Section 8 project-based contract. As a result, the PHA could not be compensated for its efforts to assist the families.

HUD appreciates the past willingness of PHAs to begin work on Housing conversion actions prior to receiving the actual Section 8 funding after weighing the families' welfare against this risk, but believes it is inappropriate to expect our local partners to spend substantial time and effort on a Housing conversion action if there is any uncertainty as to whether the PHA will receive any compensation for its efforts.

Therefore, HUD is authorizing a special Section 8 fee to assure that a PHA will receive reimbursement for its efforts on a Housing conversion action that ultimately does not occur, and also reimburse PHAs for any extraordinary administrative costs incurred as a result of assisting HUD with the tenant-based conversion action. This fee only applies when a PHA agrees to administer tenant-based assistance for a potential Housing conversion action.

The purpose of this special fee is twofold: (1) to compensate PHAs for any extraordinary Section 8 administrative costs associated with these special purpose allocations; and (2) to ensure PHAs will receive reimbursement for their efforts in cases where the conversion action does not occur because of a change of mind of the owner.

This special fee will only be paid on an actual cost justified basis. In no event may the fee exceed \$250 per unit of the total number of units in the proposed allocation for the Housing conversion action.

Over the last two years HUD's Office of Housing and Office of Public Housing have significantly changed their organizational structures in both the field and in Headquarters. A new Section 8 Financial Management Center has been created to consolidate financial processing functions for all of the Section 8 programs. Much of the written guidance concerning the funding process for conversion actions has not kept pace with these organizational changes.

Therefore, this notice also outlines the general steps necessary to process a Housing conversion action under HUD's new organizational structure. In addition, the notice addresses several significant programmatic issues affecting the transition from project-based to tenant-based assistance in Housing conversion actions.

3. **Covered Actions.** The following actions constitute "Housing conversion actions" and are covered by this notice and the special fee.
 - A. Preservation prepayment or voluntary termination actions. Section 8 preservation tenant-based assistance (also known as "enhanced" vouchers or "sticky" vouchers) is provided for certain residents of preservation eligible properties (generally Section 236 and Section 221(d)(3) projects) where the owner prepays the mortgage or voluntarily terminates the mortgage insurance.

Preservation tenant-based assistance has several eligibility requirements and special conditions that make it unique among the Housing conversion actions. The most recent instructions on preservation tenant-based assistance are contained in HUD PIH Notice 99-16, issued March 12, 1999.

- B. "Regular" or "Straight" Opt-out. These terms refer to a conversion action when an owner chooses to opt-out of the Section 8 program by not renewing an expiring Section 8 project-based contract. In these cases HUD provides Section 8 housing vouchers to the eligible residents assisted under the expiring contract.

The adjective "regular" or "straight" is used to distinguish this type of opt-out from one that is related to a preservation prepayment action. A "regular" or

"straight" opt-out is one that does not occur within one calendar year from the effective date of a preservation prepayment or voluntary termination. Since vouchers provided to residents under a regular or straight opt-out scenario currently have no unique statutory requirements or conditions, it is vital for the PHA and HUD staff to recognize if an opt-out is "regular" or connected to a preservation prepayment action.

- C. HUD enforcement action. 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 contract due to an owner's failure to comply with the terms of the Section 8 HAP contract.

HUD enforcement actions may also result from material adverse financial or managerial actions or omissions which 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.

- D. HUD Property Disposition (PD). In these cases HUD 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 or selling the property to a new owner.

4. Special fee for extraordinary costs associated with the covered Housing conversion actions.

- A. Amount of fee. PHAs may now receive a special fee for the extraordinary administrative costs resulting from a covered Housing conversion action. The fee is also used to reimburse PHAs for Section 8 administrative costs in cases where the Housing conversion action ultimately does not happen as a result of HUD or the owner's action. The amount of the fee is limited to the lower of the actual costs justified by the PHA and approved by HUD or \$250 per unit for the total number of units included in the Housing conversion action.
- B. Allowable costs. The PHA may seek reimbursement under this special fee for administrative expenses that are necessary to assist eligible affected families in a timely manner.

These administrative expenses include but are not limited to the following:

- (1) the cost of the temporary services of additional inspectors or eligibility staff needed to process and assist the affected families within the necessary time-frames;
- (2) the cost of over-time paid to PHA staff that is necessary to assist the affected families within the necessary time-frames;
- (3) the cost of any intensive owner out-reach and housing search assistance efforts, and the cost of transportation provided for families to facilitate a successful housing search in cases where families must relocate as a result of the conversion action, beyond those services normally provided by the PHA; and
- (4) any additional cost associated with holding informational meetings, tenant eligibility interviews, and voucher briefings at the affected property instead of the PHA offices.

In cases where the Housing conversion action fails to go through to completion, the PHA may claim all Section 8 administrative costs incurred (e.g., costs associated with determining the unit size and preparing the funding application, determining family eligibility and conducting income certifications, approving tenancies and performing unit inspections, etc.) on a cost-justified basis up to the maximum fee of \$250 per unit in the proposed allocation.

Under no circumstances may the total amount claimed under this one-time Section 8 special fee exceed \$250 per unit of the total number of units included in the proposed allocation for the Housing conversion action.

- C. Processing the Special Fee for Extraordinary Administrative Costs. The actual steps for processing the special fee are included in the information on processing Housing conversion actions in section 6 below. In brief, HUD will approve a separate ACC funding increment for this special fee once the PHA first accepts an invitation to administer the tenant-based assistance. This ACC funding increment only provides budget authority for the special fee and is separate from the ACC funding increment for the tenant-based assistance. This special ACC funding increment will provide funding for \$250 per potential unit covered by the Housing conversion action, which is the maximum amount of funding available under the fee. The HA will submit the cost justification for

the actual amount claimed under the special fee as part of the PHA's year-end settlement process. HUD will reconcile the approved amount of special fee with the amount of special fee initially provided as part of the year-end settlement process.

5. **Common tenant-based programmatic issues for Housing conversion actions.**

In general, all regular Section 8 tenant-based program rules, regulations, and directives apply to special admission vouchers made available for families as the result of Housing conversion actions. Preservation tenant-based assistance has several unique requirements which are covered extensively in HUD Notice PIH 99-16. Those preservation requirements, however, are not applicable to housing vouchers provided as a result of a straight opt-out, a HUD enforcement action, or HUD property disposition and sales activities.

The following programmatic guidance is applicable to all Housing conversion actions.

- A. Tenant-based nature of the assistance. Section 8 vouchers provided as a result of these Housing conversion actions are always tenant-based assistance. This means that the families issued the housing vouchers may use the assistance to move from the property immediately. Families may 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 of the Section 8 tenant-based assistance will be used at the property in question for any period of time. The PHA should emphasize the tenant-based aspect of the assistance to the families, some of whom may be unfamiliar with the concept of tenant-based assistance and the freedom of choice associated with a tenant-based subsidy.
- B. 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 and deny assistance under the grounds of §982.552 and §982.553. In accordance with the program regulations, the PHA must provide the family with an opportunity for an informal review if it denies the family admission to the program. While the decision to deny assistance in accordance with the program regulations rests with the PHA, HUD encourages PHAs to provide an otherwise eligible resident with the opportunity to enter into a repayment agreement when 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.

- C. Use of owner certifications for determining tenant income. Due to the severe time constraints often associated with providing special purpose tenant-based assistance to affected families, HUD permits the PHA to use the owner's most recent tenant income examination if (1) the owner's current certification for the family is no more than six months old and (2) 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.

The law and program regulations require that the PHA must conduct 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.

- D. PHA subsidy standards. The PHA issues the special admission 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 preservation prepayments concerning families who reside in over-sized units at the property (see HUD Notice PIH 99-16). This exception only applies to preservation tenant-based assistance. The normal tenant-based program rules apply for all of the other Housing conversion actions, which means the family unit size determined by the PHA subsidy standards will be used to calculate the maximum rent subsidy for the family in oversized units. 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)).

- E. Term of special purpose voucher. Since these special purpose vouchers are targeted to specific families adversely affected by HUD or owner actions in HUD multifamily projects, the PHA is encouraged to provide families with the maximum search time allowable of 120 days. In addition, the PHA may choose to immediately reissue the voucher to the targeted family for a second 120 days if the PHA determines the family made a good faith effort to find an eligible unit within the term of the voucher and the family's failure was due to very

tight market conditions or other circumstances beyond the family's control. A regulatory waiver is not required in those circumstances for these special admissions. The decision to reissue the voucher rests solely with the PHA and the family is not entitled to any informal review if the PHA chooses not to reissue the voucher to the family.

- F. Rent reasonableness and lease terms. All regular program requirements concerning the reasonableness of the rent apply to these special purpose vouchers. 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 wishes to remain in the family's present unit. The PHA must determine whether the rent requested by the owner is a reasonable rent in comparison to other comparable unassisted units and does not base the 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 rental voucher subsidy. HUD intends to issue additional guidance on rent reasonableness determinations shortly.

The term and conditions of the proposed lease must be in accordance with program requirements. The PHA may not approve any temporary or short-term leases between the family. The initial lease term must be for at least one year unless the PHA determines that the shorter term would improve housing opportunities for the tenant and such shorter term is the prevailing local market practice.

- G. 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 staying in the same unit which was previously assisted under a Section 8 contract. Under no circumstances may the PHA make housing assistance payments for any period of time prior to the date that the PHA inspects 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, such as only inspecting the unit for "major" or "life-threatening" violations.

- H. Timing issues involving HAP contract execution and effective dates. In all Housing conversion actions, the process is intended to provide the family with the housing voucher at least sixty days prior to the target date. (The target date refers to the time that the family would be faced with a rent increase or possible displacement as a result of the conversion action. For example, under a straight 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, it is the earliest date the owner may increase the rent, usually sixty days following the prepayment.) However, HUD recognizes that in some cases this will be not possible.

Before approving a family to lease a dwelling unit with housing 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 lease addendum, and (4) the rent to the owner is reasonable. Once these conditions are met, the PHA may approve the unit for leasing and the family and owner can execute the lease. 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. Under no circumstances, however, 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.

In some circumstances where the funding is not yet available by the target date, this 60-day window can prevent unnecessary hardship on the family. For instance, if the unit is determined to be approvable 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 by the target date. In such cases (as in all cases) it is crucial that the PHA determines if the unit is approvable prior to 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 ideally have the funding in-place well before the target date, HUD public housing staff and PHAs may in certain circumstances find this 60-day "measure of last resort" a valuable tool for completing a smooth transition.

With respect to the effective date of the Section 8 tenant-based HAP contracts for all Housing conversion actions, it is very important to make a distinction between families who choose to stay in the property (assuming the units are eligible) and families who choose to move. The PHA may not execute a voucher HAP contract on behalf of a "stayer" that is effective prior to the target date of the Housing conversion action. For a family that is moving, however, the PHA may often execute HAP contracts that are effective prior to the target date, since in strong rental markets potential landlords will not hold a unit vacant for weeks. Keep in mind that the PHA may not execute any HAP contracts for any affected family until the ACC funding increment for the tenant-based funding is effective. It is therefore imperative that the funding process commence as early as possible to ensure families are afforded a realistic opportunity to consider other housing opportunities.

6. Processing Issues and Procedures.

Processing tenant-based funding for special purpose vouchers can on occasion be difficult for all involved parties due to the relatively short amount of time available to complete the action. The most important step in the entire process is the first one, which is initiating the procedure 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 some cases described below). Failure to initiate the process with sufficient time available is the single greatest obstacle to completing the Housing conversion action in a satisfactory manner.

Equally critical to the process is 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. Staff responsibility for communication and technical assistance in the Field Office should always follow program lines of authority.

For example, during a Housing conversion action HUD's Office of Housing is primarily responsible for ensuring that the owner complies with any owner requirements. Housing staff also serve as the owner's primary HUD contact throughout the conversion process. On the other hand, HUD oversight and

management responsibilities for the Section 8 tenant-based programs rest 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 Section 8 voucher assistance. Public Housing staff also provide all technical assistance and guidance on any tenant-based related issues throughout the process.

This clarification is not intended to prohibit Housing staff from communicating with the PHA or bar Public Housing staff from having discussions with an owner. However, it is important that HUD guidance and instructions are provided by the appropriate staff person to avoid any errors or confusion that may hamper the process. Communication between all of the involved parties remains a most essential component.

Processing Timelines

The greatest challenge to a successful transition to voucher assistance is time. The purpose of these timelines and the processing steps is to identify the various tasks that must occur to complete the process in the context of the dates by which they should be completed.

Please keep in mind these timelines are provided as a rough guide only. While the steps are identified in the general sequence they may occur, some steps are conditioned on completion of the preceding steps, whereas others may be completed concurrently 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.

Abbreviations

The following abbreviations are used:

- OMH - Office of Multifamily Housing staff (Field Office unless otherwise noted)
- OPH - Office of Public Housing staff (Field Office unless otherwise noted)
- FMC - Section 8 Financial Management Center staff
- PHA - Public Housing Agency staff
- HQ - HUD Headquarters (Program area follows)

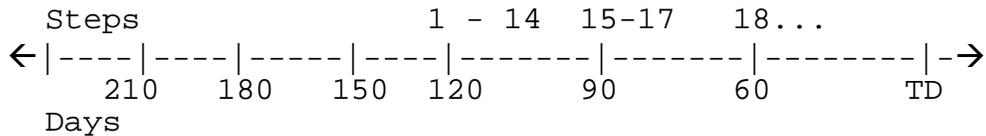
TD - Target Date (the date when a family may suffer a rent increase or displacement unless the Housing conversion action is completed and the eligible families are under Section 8 tenant-based HAP contracts)).

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, generally 60 days after effective date of prepayment.
- Straight Opt-out -- Expiration date of the project-based contract.
- Enforcement Action -- Termination or expiration of project-based contract.
- PD Sales -- The date of the sale of the property.

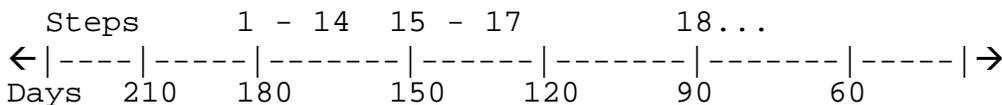
Timeline 1

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



Timeline 2

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



Steps

1. Field Office OMH determines that housing vouchers are needed for a Housing conversion action. Field OMH advises Field OPH of the number of occupants and family composition using the current Form HUD-50059s (or other information from the owner in cases where Form HUD-50059s do not apply). Provides copies of project fact sheet and Form HUD-50059s or other tenant profiles to OPH. **This step must occur at least 120 days prior to the TD for opt-outs and preservation prepayments, and at least 180 days before the TD for HUD enforcement actions.** (OMH-1)
2. Upon receiving notice from Field OMH, Field OPH determines the appropriate PHA to administer the tenant-based assistance. Contacts PHA and extends invitation to the PHA. Upon PHA acceptance of offer, Field OPH completes memorandum for special fee funding (attachment 1) that is jointly signed by OMH director. Submits memorandum to PIH HQ, PAHD, Funding Division. (OPH-1)
3. Field OPH then provides copies of the Form HUD-50059s and/or tenant profiles to the PHA and requests that the PHA submit an application with the unit distribution based on tenant profile and PHA subsidy standards as soon as possible. (OPH-2)
4. PHA informs Field OPH of bedroom distribution. The PHA submits the application (Form HUD-52515) to Field OPH as soon as possible. (PHA-1)
5. Field OPH determines budget authority requirements for tenant-based funding in consultation with Field OMH. Use the Preservation Funding Worksheet for Preservation prepayments, for all other conversion actions use the New Increment Funding Worksheet for Housing Vouchers. Provides completed worksheet to Field OMH. (OPH-3)
6. Field OMH notifies HQ OMH of funding needs and the PHA identified by Field OPH through memo/email and Funding Worksheet. (OMH-2)
7. As necessary, Headquarters OMH reallots budget authority to Headquarters OPH through Budget Office. (HQMF-1)
8. Headquarters OPH reviews special fee memorandum and assigns budget authority for the fee. Transmits Form HUD-185 to the Financial Management Center. (HQPH-1)

9. FMC reserves special fee funds. Prepares special fee ACC documents and transmittal letter. Executes special fee ACC and sends to PHA with copy of letter to Field OPH. (FMC-1)
10. PHA should review owner income certifications to determine if acceptable. PHA is encouraged to begin income examination and verification process as necessary. (PHA-2)
11. Headquarters OPH reviews Funding Worksheet. Contacts Field OPH to obtain corrections if necessary. (HQPH-2)
12. Headquarters OMH authorizes HQ OPH to assign Section 8 funds to Field OPH. (HQMH-2)
13. Headquarters OPH assigns budget authority for the tenant-based assistance to FMC (form 185 Fund Assignment, HUDCAPS record). (HQPH-3)
14. PHA must submit application if they have not done so already (Form HUD-52515 and certifications). (PHA-3)
15. Field OPH reviews and approves the PHA application; transmits the application approval letter to the PHA with a copy to FMC. (OPH-4)
16. Upon receiving approval letter from FO PH and budget authority from HQ (HUDCAPS), FMC reserves/contracts the tenant-based funds. (FMC-2)
17. FMC prepares the ACC documents and the ACC transmittal letter, forwards transmittal letter and ACC documents to PHA with copy of letter to Field Office OPH. (FMC-3)
18. PHA issues vouchers to eligible families. **If at all possible, issue vouchers no later than 60 days before TD.** (PHA-4)
19. PHA prepares and submits Budget Revision to FMC. (PHA-5)
20. FMC processes Budget Revision. (FMC-5)
21. Family decides whether to stay in place or move. Family submits request for lease approval to PHA. PHA reviews rents and inspects units. If unit is approved, executes HAP contract. **NOTE: If family is staying in-place, effective date of voucher HAP contract may not commence before TD.** (PHA-6)

22. PHA submits justification for amount of special fee actually claimed to FMC as part of the PHA fiscal year-end settlement (submit with Form HUD-52681 and Form HUD 52595.) (PHA-7)

23. FMC reconciles approved fee amount during year-end settlement process. (FMC-6)

7. Further Information.

Any questions regarding this notice may be addressed to the Real Estate and Housing Performance Division in the Office of Public and Assisted Housing Delivery, at (202) 708-0477.

_____/s/_____
Harold Lucas
Assistant Secretary for
Public and Indian Housing

_____/s/_____
William C. Apgar
Assistant Secretary for
Housing - Federal
Housing Commissioner

Attachment

Attachment

Sample Notification Memorandum For Special Fee Funding

MEMORANDUM FOR: Director, Funding and Financial Management
Division, Office of Public and Assisted
Housing Delivery

FROM: _____, Director, Office of Public Housing

_____, Director, Office of Housing

SUBJECT: Special Fee Funding Request for Housing
Conversion Action

Please commence processing the special fee for the following
Housing conversion action:

- Preservation Payment/Voluntary Termination Action
- Regular Opt-out
- HUD Enforcement Action
- PD Sales

Name of Property: _____

Address: _____

Project Number: _____

PHA: _____

PHA Number: _____

Number of
potential units: _____ x \$250 = _____

The above PHA has been contacted and has indicated its
willingness to administer the housing choice vouchers provided
in connection with this action.

The Request for Funding Worksheet for the tenant-based funding
will be submitted shortly. If you have any questions
concerning this action, please contact _____
at the following telephone number: _____.