



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

Special Attention:

Notice PIH 99-16 (HA)

Directors, Offices of Public Housing;
Administrators, Offices of Native American
Programs; Directors, Offices of Housing;
and Section 8 Public Housing Agencies

Issued: March 12, 1999

Expires: March 31, 2000

Cross References:

Subject: Tenant-Based Rental Vouchers for Eligible Residents of Preservation Eligible Projects Approved for Prepayment of the Mortgage or Voluntary Termination of the Mortgage Insurance in Federal Fiscal Year (FY) 1999

1. Purpose. This notice alerts public housing agencies (HAs) that the Department of Housing and Urban Development (HUD) will provide funds for Section 8 tenant-based assistance to assist certain residents of preservation eligible projects where the owner elects to prepay the mortgage or is approved for voluntary termination of a mortgage insurance contract in FY 1999. The notice also provides information on the unique statutory requirements governing these special preservation rental vouchers, including a recent statutory change in the calculation of the family's preservation minimum rent if the family's income subsequently declines to a significant extent (which HUD has defined as a decrease of 15 percent or more from the gross family income on the effective date of the prepayment/voluntary termination).

The change in the minimum rent calculation for families whose income significantly declines not only applies to families provided preservation tenant-based assistance in FY 99 but also to families currently assisted with preservation tenant-based assistance resulting from FY 97 and 98 prepayments. Therefore, in those cases where the HA has previously determined (either through an interim or annual reexamination) that the gross income of a family currently assisted with preservation tenant-based assistance has declined 15 percent or more from the gross family income at the effective date of the prepayment, the HA must change the minimum rent calculation. If this decrease of 15 percent or more occurred before November 1, 1998, this change must be made retroactive to November 1, 1998.

This notice covers projects where the owner prepays or voluntarily terminates the mortgage insurance contract on eligible low-income housing in FY 1999. Unless specifically noted (such as the change in the minimum rent calculation), the notice does not apply to

prepayments or voluntary terminations that occurred in FY 1996, 1997, or 1998, and does not supersede HUD Notices PIH 96-61, PIH 97-29, and PIH 98-19. The policies and procedures outlined by those notices remain in effect for assistance provided for residents of projects where the owner prepaid or voluntarily terminated the mortgage insurance in FY 1996, FY 1997, and FY 1998.

2. Background. The Department of Housing and Urban Development's FY 1999 Appropriations Act (Public Law 105-276, enacted on October 21, 1998) makes funding available for "enhanced" vouchers as provided under the 'Preserving Existing Housing Investment' account in the Department's FY 1997 Appropriations Act. This means that subject to the availability of appropriated funds, certain families residing in an eligible preservation project on the date of the owner's prepayment or voluntary termination will be offered tenant-based assistance under Section 8 if, as the result of a rent increase no later than one year after the date of the owner's prepayment or voluntary termination, the family's rent exceeds 30 percent of adjusted income.

The law establishes special requirements concerning the minimum amount of the family's contribution towards rent. The law also provides a special voucher payment standard for families who choose to stay in their current units.

Preservation tenant-based admissions are reported to MTCS as part of the HA's regular Section 8 tenant-based assistance program. HUD will issue up-dated instructions in the near future on how to identify preservation families and properly report the statutory variations in MTCS. In the interim, HAs should continue to refer to HUD Notice PIH 97-38 and the MTCS information posted on the MTCS website (<http://www.hud.gov/pih/systems/mtcs/pihmtcs.html>) for reporting instructions.

Tenant-based assistance will be 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 will identify eligible projects for assistance under these provisions. To be considered an eligible project, the project must have reached its 20th year from final endorsement and meet one of the following criteria:

- (a) Section 221(d)(3) market rate limited distribution projects receiving Section 8 payments converted from Rent Supplement whose project number series is 35001-36599;

- (b) 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 mortgagor;
- (c) 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 mortgagor;
- (d) a purchase money mortgage formerly insured under Section 221(d)(3) or 236 and now held by HUD; or
- (e) 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.

3. Family Eligibility for the Preservation Tenant-based Assistance.

Families must meet two separate criteria in order to be eligible for a preservation voucher:

- (1) the resident family must be income-eligible on the effective date of the prepayment, and
- (2) as a result of the owner's rent increase occurring no later than one year after the prepayment, the family would have to pay more than 30 percent of monthly adjusted income for rent unless the family received Section 8 tenant-based assistance.

Both assisted and unassisted residents may be eligible for preservation tenant-based assistance.

(A) Income Eligibility. In order to be eligible for one of the special rental vouchers, the resident must be either:

- (1) a low-income family (including very low-income families);

- (2) a moderate-income elderly or disabled family;
or
- (3) a moderate-income family residing in a low-vacancy area (3 percent or less vacancy rate). HUD 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, with adjustments for smaller and larger families.

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.

A resident family is only eligible for one of the special vouchers made available due to the owner's prepayment or voluntary termination if the family qualifies under one of the categories above on the effective date of the prepayment or voluntary termination. 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 special preservation vouchers, regardless of whether the family's situation changes during the following year.

Section 513 of the Quality Housing and Work Responsibility Act establishes new income targeting requirements for the Section 8 tenant-based programs beginning in FY 1999. Section 513(d) provides that if approved by the Secretary, an HA may for good cause establish and implement an admission standard other than the standard required by the law. HUD recognizes that the HA has no control over the selection of these families and any subsequent effect on compliance with the new statutory income targets. HUD will automatically grant an income targeting exception on behalf of each special admission family effective when HUD provides the funding and the HA may include the HUD-approved requirement in the HA's next annual plan. HAs are encouraged to include in the Section 8 administrative plan and the PHA plan a general exception from the income targeting requirements for all special admissions (see §982.203) to the tenant-based programs.

(B) Rent Increase Effective No Later Than One Year After the Date of Prepayment or Voluntary Termination that Results in Family Paying More than 30 Percent of Adjusted Income for Rent.

Even though the family has met the income eligibility requirements on the effective date of the prepayment, the family may only receive a preservation rental voucher if:

- (a) The family lived in the project on the effective date of the prepayment,
- (b) A rent increase will take effect no later than one year after the effective date of the prepayment or voluntary termination, and
- (c) The amount the family pays for gross rent would exceed 30 percent of the family's adjusted monthly income as a result of the owner's rent increase.

For the family to qualify for special preservation tenant-based assistance, the rent increase must be effective no later than one year after the effective date of the prepayment or voluntary termination. A family does not qualify for preservation tenant-based assistance on the basis of a rent increase that becomes effective after the one year anniversary date of the prepayment or voluntary termination.

Gross rent is the sum of the rent payable to the owner and any utility allowance. (If the proposed contract rent does not include all the utilities, the utility allowance schedule of the administering HA is used to calculate the new gross rent of the unit.) The family must present documentation confirming that the owner intends to increase the rent, and the amount the family must pay for rent after the increase (e.g., the owner's rent increase notice or a letter from the owner indicating the owner intends to increase the rent, the amount of the rent demanded by the owner, and the effective date of the rent increase).

A rent increase means that the family's gross rent is increasing as a result of an owner action. For instance, if an owner did not increase the rent for the unit but switched the responsibility for certain utilities to the family, the family would be eligible if as a result the family's new gross rent (rent plus the applicable HA utility allowances) increased to the point the family

would have to pay more than 30 percent of monthly adjusted income for rent.

A family already paying more than 30 percent of adjusted monthly income for gross rent on the effective date of the prepayment or termination may still qualify for the preservation voucher. The family is eligible for preservation tenant-based assistance if owner proposes to increase the rent in the year following the prepayment and the new rent paid by the family continues to exceed 30 percent of the family's adjusted monthly income.

(C) Unassisted and Assisted Families. Both unassisted and assisted residents may be eligible for the special voucher assistance made available for prepayments or voluntary terminations that occur in FY 1999. Assisted residents are:

- (1) Families with Section 8 tenant-based certificate and voucher assistance at the time of prepayment or voluntary termination. A Section 8 certificate or voucher participant who is residing in the project at the time of the prepayment may be covered by the special provisions of the preservation vouchers if the family chooses to remain in the unit. The applicability of the special conditions for residents who are already assisted under the Section 8 tenant-based programs at the date of the prepayment or voluntary termination are discussed in section 8 on page 21 of this notice.
- (2) Families assisted under a Section 8 project-based contract. Any family receiving Section 8 project-based assistance will continue to receive this assistance until the project-based contract expires. Subject to the availability of appropriated funds and provided the owner gave the one year opt-out notice, the family may receive a special preservation rental voucher if the owner prepays in FY 1999 and the project-based contract expires no later than one year after the date of the prepayment/voluntary termination.

If the owner prepays in FY 1999 but the project-based contract does not expire within one year of the date of the prepayment, the assisted families are not eligible for preservation voucher assistance. If an

assisted family was not a resident on the effective date of prepayment, the family is not eligible for a special preservation voucher. In both cases, the assisted family would receive regular voucher assistance at the expiration of the contract and the special provisions regarding the payment standard and the minimum rent do not apply.

4. HUD invites the HA to administer preservation tenant-based assistance. Once notified by the Office of Housing that an owner intends to prepay the mortgage of a preservation property, the HUD Field Office of Public Housing is responsible for contacting the appropriate HA to determine if the HA is willing to administer the tenant-based assistance for the eligible residents. The HUD Field Office of Public Housing decides which HA is the appropriate agency to administer the tenant-based rental assistance.

In some instances HAs have been approached by owners or other parties and invited to administer preservation assistance for a specific property. Only HUD's Field Office of Public Housing may request that an HA administer special purpose vouchers on behalf of the Department. In addition, Section 8 tenant-based regulations and directives may not be waived or amended except by HUD's Office of Public and Indian Housing, regardless of whether the Section 8 tenant-based assistance in question is allocated to assist families affected by actions in the Office of Housing's Multifamily projects.

HUD's Office of Public and Indian Housing and Office of Housing will issue detailed guidance in the near future on the specific procedures for processing all Housing conversion actions (including Section 8 preservation tenant-based assistance) under the Department's new organizational structure that resulted from the HUD 2020 management reform plan. In the interim, HAs and HUD field offices should continue to follow the current processing procedures for preservation prepayments that are outlined in Preservation Letter 97-4.

Administration of preservation tenant-based assistance is often complicated by short processing deadlines. On occasion these difficulties have been exacerbated by a lack of adequate notice and coordination between the various offices in HUD, the HA, and the owner of the property. In order to ensure that the affected families are provided with tenant-based assistance and adequate

search time to explore other housing opportunities, it is imperative that if at all possible the funding process is initiated at least 120 days prior to the date the owner may initially increase rents. Generally, the owner can raise rents 60 days after the effective date of the prepayment. Owners should be advised that in order to ensure a smooth transition to tenant-based assistance, the HUD Office of Housing project manager must be notified of the actual prepayment date at least 60 days prior to the prepayment.

The Office of Housing project manager must immediately alert the Office of Public Housing director of any potential or actual prepayments. Communication between Housing, Public Housing, owners and HA staff is critical throughout the process.

In general, HUD field office responsibilities for communication and technical assistance follow program lines of authority throughout the conversion process. For example, the Office of Housing is responsible for informing the Office of Public Housing of potential and actual prepayments, ensuring that the owner complies with all of the owner requirements, and serving as the owner's primary HUD contact until the prepayment occurs. The Office of Public Housing focuses on the HA and the tenant-based assistance related issues.

This clarification is not intended to prohibit Housing staff from communicating with the HA or bar Public Housing staff from having a discussion with an owner prior to effective date of the prepayment. However, Housing's main focus during the conversion process should be on the owner and owner-related issues (e.g., ensuring all notification requirements have been met, gathering necessary information on the tenant profile from the owner), while Public Housing's work is primarily with the HA. Coordination and communication between all of the involved parties, however, remains the most essential component in ensuring the tenant-based assistance is made available for the affected residents in a timely manner.

5. HUD identifies potentially eligible families. Upon owner notification of intent to prepay the mortgage or terminate the insurance and confirmation from the appropriate HA that it will administer the Section 8 assistance, the HUD Field Office of Housing is responsible for ensuring that each potentially eligible family in the affected project receives a letter identifying the administering HA and describing the circumstances under which the family may qualify for one

of these special rental vouchers. The letter directs the family to contact the HA. If the owner has not yet notified the family of a rent increase, the potentially eligible family must also contact the HA once the owner notifies the family of a rent increase that will be effective within one year from the date of the prepayment/voluntary termination.

The HUD Field Office will promptly send the administering HA a list that identifies all potentially eligible families, a copy of the most recent HUD Form 50059 for each of the families, and the rents for the eligible project on the date of the prepayment or voluntary termination. The HUD Field Office will also send the owner's proposed new rents and the effective date of the rent increase for each family to the HA in cases where HUD has received this information from the owner. However, the family is ultimately responsible for contacting the administering HA if the owner has informed the family of the proposed rent increase.

The HA must determine whether the family will meet the definition of a low-income family, a moderate income elderly or disabled family, or a moderate income family in a low vacancy area (provided HUD has informed the administering HA that the low vacancy area category is applicable due to the location of the project) on the effective date of the prepayment.

Due to the tight time constraints often associated with providing special purpose tenant-based assistance to affected families, HUD allows the HA to use the owner's most recent tenant income examination if (1) the current owner certification for the family is no more than six months old and (2) the HA determines that the owner certifications are acceptable by reviewing a small sample for accuracy. The HA is not 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 HA must conduct a reexamination of family income and composition at least annually. Therefore, if the HA chooses to use the owner's income certification, the HA must complete the subsequent family reexamination within one year of the date of the owner certification, not the date the HA accepted the owner certification in lieu of conducting its own determination.

The HA is not relinquishing its authority to screen the potential families and deny assistance under the grounds of §982.552 by agreeing to administer the special purpose tenant-based assistance. In accordance with the program regulations, the public housing agency must provide the family with an opportunity for an informal review if the HA denies the family assistance. While the decision to deny families assistance in accordance with the regulations rests solely with the HA, HUD encourages HAs to allow a family targeted for a special purpose voucher an opportunity to enter into a repayment agreement in cases where a family owes the HA or another HA rent or other amounts in connection with public housing or Section 8.

6. Issuance of Voucher. (This section does not apply to residents currently assisted under the regular certificate or voucher program at the time of the prepayment/voluntary termination.) Eligible families will receive preservation voucher assistance as the result of a prepayment or voluntary termination in FY 1999. No certificate funding will be made available for preservation tenant-based assistance in FY 1999.

Once the HA determines that the family is income-eligible on the effective date of the prepayment, the HA must still determine if the family will be paying more than 30 percent of adjusted monthly income for gross rent as a result of the owner's rent increase. If the family will not have to pay more than 30 percent of adjusted monthly income for gross rent as a result an owner rent increase no later than one year after the effective date of the prepayment, the family is not eligible to receive the preservation rental voucher assistance, regardless of whether they are income eligible on the date of the prepayment.

The law provides that an owner may not increase the rent for at least sixty days after the effective date of the prepayment/voluntary termination. In addition, the prepayment of the mortgage or the approval of the voluntary termination of a mortgage insurance contract for a preservation eligible project does not in itself terminate or modify the terms and conditions of 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 cases where an eligible family chooses to stay in the family's present unit, the HA may not enter into a HAP contract that commences prior to the effective date of the owner's rent increase.

In many cases owners will time the prepayment so that the majority of the units are eligible for a rent increase at the same time. However, some income eligible families may not be subject to a rent increase for several months after the majority of the affected residents. In such a case the HA simply holds the family voucher until the family presents the HA evidence of the rent increase, which must include the effective date of the rent increase. The HA must then determine if the rent increase would result in the family paying more than 30 percent of adjusted monthly income for rent.

The HA should make every effort to issue a family who wishes to move the preservation voucher 60 days prior to the effective date of the owner's rent increase. However, HUD recognizes that in many cases this is not possible.

Preservation certificates and vouchers are targeted by law to specific families adversely affected by the owner's decision to prepay the mortgage. HUD encourages the HA to provide these families with the maximum search time allowable of 120 days. In addition, the HA may choose to immediately reissue the special purpose voucher to the targeted family for a second 120 days if the HA 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 under these circumstances to reissue the preservation voucher to the family. However, any decision to reissue the voucher rests solely with the HA. The family is not entitled to any informal review if the HA chooses not to reissue the voucher to the family.

7. Special Conditions of Preservation Tenant-based Assistance. Preservation vouchers have several special requirements but in all other respects the vouchers are subject to normal program rules. For example, the HA may not make payments to the owner until after execution of the housing assistance payments (HAP) contract, and the HAP contract may not be effective prior to the date the HA determines that the unit meets the housing quality standards of the program. The unique requirements of preservation tenant-based assistance are discussed below.

(A) Payment Standard Where the Family Chooses to Stay in the Same Unit.

(1) Staying in same unit.

For a family staying in the same unit who receives preservation assistance under the voucher program, the payment standard used to calculate the voucher housing assistance payment is the gross rent (rent to owner plus any applicable HA utility allowance) of the family's unit, provided the proposed gross rent is reasonable and exceeds the applicable HA payment standard. (Note, however, the effect of the family unit size limitation discussed below.)

If the new gross rent is less than the HA payment standard, the regular payment standard applies. The FY 99 Appropriations Act eliminated the shopping incentive for all families who stay in same unit or complex and were first admitted to the voucher program after December 20, 1998. Therefore, if the initial HAP contract executed for a preservation tenant-based family first becomes effective after December 20, 1998, the family will not benefit from the shopping incentive even though the owner's new gross rent is less than the HA's regular payment standard. The HA uses the owner's new gross rent to calculate the family subsidy. The subsidy calculation is further explained beginning on page 15.

(2) Rent reasonableness documentation and lease requirements. All regular program requirements concerning the reasonableness of the rent and the term and conditions of the approved lease apply to preservation vouchers. If a family wishes to stay in its present unit and receive preservation voucher assistance, the HA must ensure that the proposed rent for the family's unit is reasonable. The HA determines whether the proposed new rents for the preservation property are reasonable as it does for any other potential units under the tenant-based assistance programs.

The HA determines whether the rent requested by the owner is a reasonable rent for the unit in comparison to other comparable unassisted units and does not base the determination on any planned future enhancements to the property. If the HA 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 rental voucher.

The special payment standard for preservation tenant-based assistance sometimes result in the HA approving a unit that otherwise would be ineligible or unaffordable to a family with regular tenant-based assistance. Provided the rents are reasonable in comparison to unassisted comparable units, there is nothing improper or incorrect in approving the owner's new rent even if it would not normally be affordable without the enhanced subsidy. However, it is very important for the HA to ensure the owner's new rent is reasonable and document that determination. HUD requires that the HA document the rent reasonableness of the owner's new rent in the family's file by including the rents and addresses of the comparable units used to make the determination.

The initial term of the lease between the family and the owner must be at least one year. The HA may not approve any temporary or short term lease agreement between the family and the owner.

(4) Effect of family unit size limitation.

The HA issues the eligible family a voucher based on the HA subsidy standards, not on the actual size of the unit the family is presently occupying. If a family wishes to stay in the project but (1) qualifies under the HA subsidy standards for a smaller family unit size than the actual size of their current unit and (2) the gross rent exceeds the applicable HA payment standard for the bedroom size on the family voucher, the family must move to an available unit within the project that is the appropriate size as determined by the HA subsidy standards.

In such a case, the new gross rent for the smaller size unit in the project is considered to be the applicable payment standard, provided the new gross rent exceeds the applicable HA payment standard. (In this case only, the preservation minimum rent discussed below is the rent the family would have been paying on the date of the prepayment/voluntary termination for the smaller size unit to which the family moves.)

If there is no appropriate size unit 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 HA may require the family to submit a list of potential units the family visited. The HA 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 HA in accordance with its administrative policy) despite making a good faith effort, the HA 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 HA and the owner must execute the attached addendum to the housing assistance payments contract, which automatically terminates the contract after one year. The HA must advise the family that the 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.

The HAP contract will automatically terminate after the initial year of assistance in the oversized unit and the HA will apply the normally applicable payment standard in determining the family's new level of subsidy. 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.

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

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

(B) Preservation Minimum Rent Requirement. All families assisted with preservation tenant-based assistance have a statutory preservation minimum rent. 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 of the minimum rent in cases where a family's income significantly decreases is discussed in section (3) below.

(1) Old gross rent for unassisted residents.

Regardless of whether a previously unassisted family stays or moves, the law requires that a family must pay for rent no less than the rent the family was paying on the date of the prepayment or the voluntary termination.

Unassisted residents must pay at least the gross rent the family was paying on the date of the prepayment or voluntary termination. The HA 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.

- (2) Old total tenant payment (TTP) or total family contribution for previously assisted residents.

Regardless of whether a resident previously assisted under a Section 8 project-based contract stays or moves, the family must pay no less than the total tenant payment the family was paying on the date of the prepayment or the voluntary termination.

For residents assisted under the regular certificate or voucher programs at the time of the prepayment or voluntary termination, the "rent at prepayment" 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 total family contribution they were paying on the date of the prepayment or voluntary termination.

- (3) Significant Decline in Family Income - Effect on Preservation Minimum Rent.

The FY 1999 Appropriations Act provides that in cases where there is a significant decline in family income, the rental payment required of the family shall be reduced so that the percentage of income does not exceed the greater of 30 percent or the percentage of income paid by the family on the effective date of the prepayment. HUD is interpreting the words "significant extent" to mean a decrease of at least 15 percent from the gross family income on the date of prepayment.

This provision in the law applies to families who receive preservation tenant-based assistance as a result of a prepayment or voluntary termination of the mortgage insurance occurring in FY 1999. In addition, this change

applies to those families who are currently assisted with preservation tenant-based assistance as a result of FY 98 and 97 prepayments where gross family income has subsequently decreased at least 15 percent from the gross family income on the effective date of the owner's prepayment.

For those currently assisted families who have had a decrease of 15 percent or more in gross family income prior to the issuance date of this notice, the HA must make the change in the calculation of the preservation minimum rent and any change to the family subsidy retroactive to November 1, 1998. The HA must notify families currently assisted with preservation tenant-based assistance of this change.

The HA normally uses the specific dollar amount the family was paying for rent on the effective date of the prepayment in determining the family's preservation minimum rent, as described in section 7(B)(1) and (2) above. However, in cases where the family subsequently suffers a significant decline in family income, the HA changes the method for calculating the family's preservation minimum rent. The preservation minimum rent changes from an actual dollar amount to a specific percentage of income.

- (A) For families who were previously unassisted, the family's new preservation minimum rent is the greater of (1) the percentage of the monthly adjusted income the family paid for gross rent on the effective date of the prepayment or (2) 30 percent of the family's current monthly adjusted income.
- (B) For families who were previously assisted, the family's new preservation minimum rent is the greater of (1) the percentage of monthly adjusted income the family total tenant payment (TTP) or family contribution represented on the effective date of the prepayment or (2) 30 percent of the family's current monthly adjusted income.

The new preservation minimum rent for these families changes to a percentage of income as opposed to a specific dollar amount. Once this change in the preservation minimum rent calculation becomes effective for a family, the preservation minimum rent for the family remains that specific percentage of income (e.g., 32 percent) and does not revert to a 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 preservation tenant-based assistance for ten months, the family suffered a 50 percent decrease in monthly adjusted income. The HA now calculates the preservation 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 preservation 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.

When a family reports a significant decrease in family income, the HA 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 HA may implement such reductions on a provisional basis prior to the completion of the verification in order to prevent undue hardship to the family.

The change in the determination of the preservation 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 effective date of prepayment). Otherwise, the preservation minimum rent remains the specific dollar amount determined in accordance with section 7(b) above.

It is important to remember that regardless of which method is used to calculate the preservation minimum rent, the minimum rent represents the lowest amount the family may pay as their family contribution or total tenant payment. In either case a family may pay no less than the preservation minimum rent.

Depending on the circumstances, the family may have to pay more than the preservation minimum rent.

(4) Calculating HAP -- Preservation Voucher Assistance.

As noted above, the FY 99 Appropriations Act eliminates the shopping incentive for all families who stay in same unit or complex who are newly admitted to the voucher program after December 20, 1998. Therefore, regardless of whether the owner's new rent exceeds or is less than the HA payment standard, the housing assistance payment for a resident who first receives voucher assistance after December 20, 1998, and stays in their present unit (or moves to an appropriate size unit within the project) will equal the new gross rent for the unit minus the greatest of:

- (a) 30 percent of the adjusted family income;
- (b) 10 percent of the family monthly income (gross monthly income);
- (c) the applicable "rent" that the family was paying on the date of the prepayment or voluntary termination; or
- (d) such other minimum rent established by the HA as authorized by Federal law.

A family "initially receives" assistance on the effective date of the voucher preservation HAP contract. If the family was initially assisted in the same unit or complex after December 20, 1998, and the owner's new gross rent is less than the HA payment standard, the HA calculates the family's voucher subsidy following the "mover" model described below.

If a resident assisted with a preservation voucher decides not to stay but moves from the unit (except in cases where a family is moving to an appropriate size unit within the project) the housing assistance payment equals the lesser of:

- (a) The HA payment standard minus 30 percent of the adjusted family income; or
- (b) The gross rent of the family's unit minus the greatest of:

- (1) 10 percent of the family monthly income (gross monthly income);
- (2) the applicable "rent" the family was paying on the date of the prepayment or voluntary termination; or
- (3) such other minimum rent established by the HA as authorized by Federal law.

(5) Determining TTP -- Preservation Certificate Assistance.

In prior fiscal years some families received preservation certificate assistance. The total tenant payment, regardless of whether the family stayed in the unit or moved, is the greatest of:

- (a) 30 percent of family monthly adjusted income;
- (b) 10 percent of family monthly income (gross monthly income);
- (c) welfare rent in as-paid states;
- (d) the applicable "rent" the family was paying on the date of prepayment or voluntary termination; or
- (e) such other minimum rent established by the HA as authorized by Federal law.

An example demonstrating how the special conditions affect the rent calculations for a previously unassisted family are attached to this notice.

The HA may find that some of the moderate income families who immediately move from the unit will not initially receive any housing subsidy under the subsidy calculation due to the amount of the family's income. If the HA determines the initial housing assistance payment is \$0, the HA is not required to enter into a housing assistance contract on behalf of that family. However, if within one year of the effective date of the owner's prepayment/voluntary termination the family income or composition changes, and as a result the family would

qualify for a housing assistance payment, the HA may then execute a housing assistance contract for the family (assuming the family leases an eligible unit).

Note that this situation only applies if the family initially qualified under the law for the special preservation assistance on the effective date of the prepayment (the family met the income requirement at prepayment and owner's rent increase requires the family to pay more than 30% of adjusted monthly income for rent).

8. Applicability of the Special Conditions for Stayers for Families Currently Assisted under the Section 8 Tenant-based Programs. As noted above, a resident who is currently assisted under the Section 8 tenant-based programs on the date of the prepayment or voluntary termination in FY 1999 may also be covered by the special conditions afforded to stayers through the preservation vouchers. A resident currently assisted under the rental voucher or certificate program may choose not to be covered by the special provisions.

All of the following conditions must be met in order for a resident assisted through the regular certificate or voucher program on the effective date of the prepayment to be covered by the special preservation provisions:

- (A) the family must meet one of the three income eligibility categories described in section 3 of this notice;
- (B) the termination of the existing lease under the certificate program or the rent increase under the voucher program must be in accordance with the lease agreement and program regulations and may not be earlier than sixty days after the effective date of the prepayment/voluntary termination;
- (C) the new lease for families formerly assisted under the certificate program or the rent increase under the voucher program must be effective no later than one year from the effective date of the prepayment/voluntary termination;
- (D) the proposed new rent must be reasonable;
- (E) the new rent would result in the family paying more than 30 percent of adjusted income for rent; and

(F) the family must decide to stay in the unit instead of moving.

If a currently assisted certificate or voucher family decides they do not want to stay in the unit after the owner's prepayment or voluntary termination but will move prior to the effective date of the new rent, the family is not covered by these special provisions. Unlike the unassisted residents or the project-based residents who receive special preservation certificates or vouchers, the minimum rent requirement (i.e., family must pay at least the amount of rent the family was paying on date of prepayment) does not apply if the regular certificate or voucher family moves rather than stays in the unit. However, if the family stays in the unit and accepts the benefit of the additional "preservation" subsidy, the minimum rent requirement applies. It will continue to apply if the family subsequently moves from the unit.

An owner may only receive the special "preservation" subsidy for residents already receiving Section 8 tenant-based certificate assistance by terminating the existing lease and housing assistance payments contract. The HA will execute a new voucher housing assistance payment contract with the owner on behalf of the family. HAs are reminded that the HA may not give approval for a family to lease a unit and that the HA may not execute a HAP contract until certain requirements are met (see §982.305).

These requirements apply regardless of whether the family already occupies the unit and apply even if the family has previously received assistance in the same unit. Therefore, the HA must inspect the unit to ensure it complies with HQS before the new lease term may commence. An HQS inspection that was conducted under the previous HAP contract does not fulfill this requirement.

Under the voucher program, an owner may increase the rent in accordance with the terms of the existing lease and local and state law. The owner is not required to terminate the existing lease and HAP contract for current voucher participants to receive the special "preservation" subsidy.

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

HUD amends the existing ACC. In cases where the special

conditions apply to residents who were currently assisted under the tenant-based programs at the time of the prepayment or the voluntary termination, the HA should immediately contact the HUD Field Office of Public Housing. HUD will use funds appropriated for preservation assistance to amend the existing ACC with the HA to cover the additional cost of the subsidy. Note that no new "preservation" certificates or vouchers are provided to the HA to assist these certificate and voucher families.

9. Normal Program Requirements. Except for the special conditions outlined by this notice, the normal program requirements apply to the preservation rental vouchers and certificates. For example, the HA is responsible for conducting income verifications to ensure families are eligible for the assistance. The HA must conduct the initial and annual HQS inspections.

Under no circumstances may the HA make housing assistance payments for any period of time prior to the date that the HA inspects and determines the unit passes inspection. The HA does not make any exceptions for special purpose vouchers to the normal housing quality standards used by the HA, such as only failing the unit for "major" or "life threatening" violations.

The HA should clearly explain to the family that the preservation voucher is tenant-based assistance and the family is under no obligation to remain in the project. The family has the same portability rights as any other family assisted under the certificate and voucher programs.

Preservation rental vouchers provided for FY 99 prepayments do not under any circumstance increase the administering HA's Family Self-Sufficiency (FSS) minimum size. HAs earn the same ongoing fee for these vouchers as they do under the regular program rules. Note that the HA does not receive any preliminary fee for new vouchers if the HA is already administering a Section 8 tenant-based program.

10. Initial use and reissuance of preservation vouchers. Preservation tenant-based assistance are "special admission" vouchers. Special admission vouchers differ from regular vouchers in that the assistance is provided by HUD with a specific family or individual in mind.

In many cases not all of the special admission vouchers are actually issued (e.g., the HA determines some of the potential families are ineligible or the family refuses to accept the assistance). These excess vouchers must presently be returned to HUD because this assistance was not used for the specific purpose for which Congress appropriated the funding under the law. The HA should contact HUD as soon as it determines there are excess special admission vouchers in order to simplify this adjustment process.

However, the statutory obligation of the special admission voucher has been fulfilled once the voucher is issued to a targeted family regardless of whether the family is ultimately assisted under a housing assistance payments contract. For example, if the HA issues a special admission voucher to a targeted family and the family fails to lease an eligible unit, the HA retains the rental voucher for use as part of its rental voucher program.

If a preservation certificate or voucher turns over any time after initial issuance (i.e., a preservation assisted family leaves the program), the funding is subject to the normal program rules.

11. Applicability of the Special Conditions after the First Year of Assistance.

- (A) "Preservation" minimum rent. The preservation minimum rent continues after the initial year of assistance for all families who received preservation tenant-based assistance as the result of prepayment/voluntary terminations that were effective in FY 97, FY 98, and FY 99. These families, whether they stayed or moved from the unit, must continue to pay at minimum the applicable "rent" the family was paying on the effective date of the prepayment/voluntary termination. (If a family suffers a significant decrease in income (15 percent or more), the applicable minimum rent requirement changes from a specific dollar amount to a percentage of income.)

The preservation minimum rent requirement applies to residents who were already assisted under the Section 8 certificate or voucher program on the date of the prepayment/voluntary termination only if the family chose to accept an enhanced subsidy under the special conditions for preservation tenant-based assistance. The minimum rent remains applicable

whether the preservation family continues to reside in the unit or subsequently moves. If the family moves under the portability procedures, the HA must indicate to the receiving HA that the family is covered by the preservation minimum rent.

- (B) Special FMR or Payment Standard. The law provides the special FMR and payment standard to cover the owner's rent increase after the prepayment/voluntary termination, which must be effective within one year of the date of the prepayment/voluntary termination. Regardless of the year of the prepayment/voluntary termination, the special FMR and payment standard rules do not apply to any subsequent rent increases.

In the case of the rental certificate program, any subsequent rent increase is restricted by the normal annual adjustment and rent reasonableness requirements of the program. If the owner's rent increase is higher than the rent adjustment allowed under the normal program rules, the family will have to move to continue to receive rental certificate assistance.

Under the rental voucher program, the preservation voucher payment standard is not readjusted to cover any future rent increases. The family must decide whether to move to a less expensive unit or pay for the increase in rent out of pocket.

However, in accordance with §982.505, the preservation voucher family's payment standard is not decreased at the annual recertification unless there is a change in the family's size or composition that requires the HA to use the payment standard for the now appropriate bedroom size or there is a decrease in the rent to owner. Otherwise, the special payment standard set at the owner's initial rent increase after the prepayment/voluntary termination remains in effect for the family until the HA's regular payment standard for that bedroom size surpasses it or the family moves from the unit. The HA always applies the regular payment standard if the family subsequently moves from the unit.

12. HA local admissions policy and families assisted with preservation tenant-based assistance. Some HAs have questioned the fairness of applying the minimum rent to families who are moving from the preservation property since the special FMR or

payment standard does not apply to these families. While the Department is sympathetic to these concerns, the law makes no distinction between movers and stayers with respect to the minimum rent. HUD may not as a matter of policy simply eliminate the minimum rent requirement for families who have moved from the project.

A case was brought to the Department's attention where a preservation assisted family reached the top of the regular Section 8 waiting list shortly after receiving preservation tenant-based assistance. Had the owner not prepaid the mortgage, the previously unassisted family would have received the regular voucher in the normal course of events. The HA wished to offer the family the regular voucher because the family had moved from the project and was not benefiting from the enhanced subsidy. The family was having difficulty paying the minimum rent.

The Department determined that the offer and acceptance of tenant-based assistance as a result of a preservation prepayment or voluntary termination did not prohibit the HA from permitting a family to remain on the regular HA waiting list or subsequently apply under the regular admissions process, assuming the family meets the income eligibility requirements of a continuously assisted family. Once the family's name is reached on the HA Section 8 waiting list, the HA could offer a family with preservation tenant-based assistance the option of accepting a regular voucher.

Upon lease-up of a unit with the regular voucher, all normal program rules would apply to the family's assistance. The family's preservation voucher or certificate then becomes part of the HA's regular program and is subject to normal program rules. Preservation certificates and vouchers become part of the HA regular program at turnover (whenever the preservation assisted family has left the program for any reason).

Since FY 1996, HUD's Appropriations Acts have suspended the federal preferences for the rental certificate and voucher programs. The Quality Housing and Work Responsibility Act of 1998 permanently repealed the use of federal preferences for the certificate and voucher programs.

The Section 8 voucher and certificate program regulations at §982.202(b)(2) provide that admission to the program may not be based on where the family lives before admission to the program. Furthermore, admission to the program may also not be based on where the family will live with assistance under the program. As a result, the HA may not limit the local selection preference for preservation families to only those families who have moved or are intending to move from the project.

However, the existing 'preservation' Section 8 tenant-based lease and housing assistance payments contract must be terminated and a new lease and contract must be executed in order to admit the family into the regular program. These actions are necessary even if the family intends to remain in the same unit. As a result, families who are receiving assistance through admission to the regular program may no longer benefit from the enhanced subsidy (even if they stay in the project) because the HA regular payment standard or applicable FMR must be used under the normal program rules.

13. Further Information. Any questions regarding this notice should 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

Attachments

Examples of Rent Calculations for Preservation Vouchers and Certificates for Stayers (Previously Unassisted Families)

Certificate Program

The Smith family is in a 2 bedroom unit and is issued a 2-bedroom certificate under the HA subsidy standards.

Contract Rent at Prepayment =	\$370
Utility Allowance =	\$50
Gross Rent paid by Family at Prepayment =	\$420
2BR FMR/exception rent limit=	\$525
Proposed Contract Rent =	\$580
Utility Allowance =	\$50
Proposed Gross Rent (is reasonable) =	\$630
PHA minimum rent =	\$25
30% of monthly adjusted income =	\$290
10% of total monthly income=	\$110

A. Rent Limitation

The owner's proposed new rent is reasonable and the Smith family wishes to stay in their current unit. Since the proposed gross rent is reasonable, the HA approves the rent, even though it exceeds the applicable FMR/exception rent limit.

B. Total Tenant Payment

TTP = \$420 Since the previously unassisted family must pay at least the gross rent it was paying on the date of prepayment, the TTP for the Smith family is \$420, even though 30% of monthly adjusted income is only \$290.

C. Rent Calculation

Contract Rent to Owner =	\$580
Utility Allowance=	\$50
Gross Rent (CR + UA)=	\$630
TTP (greater of gross rent family was paying at prepayment, 30% adjusted monthly income, 10% gross monthly income, welfare rent in as-paid states, HA minimum rent) =	\$420
Tenant Rent (TTP - UA) =	\$370
HAP (CR - TR) =	\$210

Voucher Program

The Jones family is in a 2 bedroom unit and is issued a 2 bedroom voucher under the HA subsidy standards. The Jones family will stay in its current unit.

Contract Rent at Prepayment =	\$370
Utility Allowance =	\$50
Gross Rent Paid by Family at Prepayment =	\$420
2BR Payment Standard =	\$495
Proposed Contract Rent =	\$580
Utility Allowance =	\$50
Proposed Gross Rent =	\$630 (is reasonable)
30% of adjusted monthly income =	\$290
10% of gross monthly income =	\$110
HA minimum rent=	\$25

Payment Standard

The proposed gross rent must be reasonable.

Short-Cut Voucher Subsidy Calculation for Stayers.

a. Higher of HA Payment Standard or Proposed Gross Rent	= \$630
b. minus greatest of 30% adjusted monthly income (\$290); 10% gross monthly income (\$110) or rent paid by family at prepayment (\$420)	= \$420
c. Housing Assistance Payment	= \$210

Voucher Subsidy Calculation (Long Form)

A. Payment Standard =	\$630
B. 30% of Adjusted Monthly Income =	\$290
C. Maximum Subsidy (A-B) =	\$340
D. HA Utility Allowance=	\$50
E. Rent to Owner=	\$580
F. Gross Rent (D+E)=	\$630
G. Gross Rent less Maximum Subsidy (F-C) =	\$290
H. 10% of Total Monthly Income=	\$110
I. Gross Rent at Prepayment=	\$420
J. Minimum Family Contribution (higher of H or I)* =	\$420
K. Total Family Contribution (higher of G or J) =	\$420
L. Gross Rent less Family Contribution (F-K)=	\$210
M. Total Voucher Subsidy (lower of C or L) =	\$210
N. HAP to Owner (lower of E or M) =	\$210
O. Family Rent to Owner (E-N) =	\$370
P. Utility Reimbursement to Family (M-N) =	0

* Regardless of whether the family stays or moves, the minimum family contribution is the greatest of 10% of total monthly income, HA minimum rent, or the applicable rent the family was paying on the date of prepayment/termination.

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

Housing Assistance Payments Contract, ADDENDUM
Section 8 Tenant-Based Assistance
Rental Voucher and Certificate Program

Purpose and Use: This addendum to the housing assistance payments contract is only used under the following circumstances.

The family is a resident of a preservation eligible project that prepays the mortgage or voluntarily terminates the mortgage insurance in FY 1999, and the family qualifies under the public housing agency (HA) subsidy standards for a smaller family unit size than the actual size of the family's current unit. The family was not receiving Section 8 tenant-based assistance on the effective date of the prepayment or voluntary termination.

There is no appropriate size unit available in the project and the family has made a good faith attempt to find a unit outside of the project but has not located an eligible unit by the end of the term (including extensions) of the certificate or voucher. Therefore, the HA and owner are executing this housing assistance contract to assist the family in the family's present oversized unit for a period not to exceed twelve months. The HA has advised the family that the subsidy based on the oversized unit's rent will only be paid for twelve months.

This addendum must be attached to Part A and Part B of the Housing Assistance Payments Contract (form HUD-52641 or form HUD-52635).

Fill in all contract information below.

1. Contract Unit (enter address of unit, including apartment number, if any.)

2. Tenant (Enter full name of tenant)

3. Beginning of Term The term of the HAP contract begins on (Enter the first day of the lease term. The lease term may not begin before the term (including any extensions) of the certificate or voucher expires):

4. HAP Contract Termination Date

The HAP contract terminates on (one year minus one day from the beginning of the term):

The automatic termination of the HAP contract terminates the lease agreement between the family and the owner (see lease addendum).

5. Signatures and Date (must be the same signature and date as found on Part A of the HAP contract)

Housing Agency

Owner
