



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

Special Attention: Public Housing Hub Office Directors; PIH Program Center Coordinators; Multifamily Hub Directors; Multifamily Program Center Directors; Senior Community Builders; Section 8 Public Housing Agencies; and Owners/Agents	NOTICE PIH 2000-9 (HA) Issued: March 7, 2000 Expires: March 31, 2001
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Cross References:

Subject: Section 8 Tenant-based Assistance (Enhanced and Regular Housing Choice Vouchers) For Housing Conversion Actions in Federal Fiscal Year (FY) 2000 - Policy and Processing Guidance

- Purpose**. The purpose of this notice is to alert public housing agencies (PHAs) that the Department of Housing and Urban Development (HUD) will provide funds for Section 8 housing choice vouchers (vouchers) to assist certain residents affected by owner or HUD actions resulting from a Housing conversion action. This notice (1) describes the types of Housing conversion actions under which the Department, subject to the availability of appropriations, will make Section 8 tenant-based assistance available through the administering PHA to the eligible residents, (2) explains which conversion actions will result in the residents qualifying for enhanced voucher assistance under Section 8(t) of the United States Housing Act of 1937 as opposed to regular voucher assistance, (3) provides program guidance on the administration of enhanced voucher assistance, and (4) covers general programmatic issues and describes the funding process for all tenant-based conversion actions in FY 2000.

The notice also provides information on several statutory changes affecting the administration of preservation vouchers and certificates made available through HUD's FY 1997, 1998, and 1999 Appropriations Acts.

- Background**. Over the past few years and subject to the availability of appropriations, HUD has provided Section

8 tenant-based assistance in order to assist eligible residents that are affected by several different types of owner or HUD actions in HUD's Office of Multifamily Housing programs (collectively described as "Housing conversion actions"). These actions are owner opt-outs of Section 8 project-based contracts; owner prepayment of the mortgage or voluntary termination of the mortgage insurance of a preservation eligible property (preservation prepayments); HUD enforcement actions against the owner (including termination or non-renewal of a Section 8 project-based housing assistance payments (HAP) contract); and HUD property disposition activities.

In the case of preservation prepayments, the Department provided enhanced tenant-based rental assistance (also know as preservation tenant-based assistance) as provided in HUD's appropriations acts. Enhanced tenant-based rental assistance differed from regular Section 8 tenant-based assistance in two major respects -- the law required that the family continue to contribute towards rent at least the amount the family was paying for rent on the date of the prepayment, and the law substituted the use of a higher "enhanced" payment standard or Fair Market Rent in cases where the family wished to stay in the unit (and the owner's new gross rent after the prepayment exceeded the normally applicable payment standard or Fair Market Rent).

Regular Section 8 tenant-based assistance was made available for eligible families affected by the other types of Housing conversion actions. In the past federal law did not provide for the use of enhanced vouchers to assist families affected by these other actions.

HUD provided guidance on the various types and program aspects of Housing conversion actions through several different directives. Since HUD's Office of Housing and Office of Public Housing have each significantly changed their organizational structures in both the Field and in Headquarters over the last few years, HUD recently issued PIH Notice 99-40 to up-date the funding processing steps and clarify the responsibilities of various offices within HUD for all categories of Housing conversion actions. In addition, PIH Notice 99-40 addressed a number of programmatic issues affecting the transition from project-based to tenant-based assistance in Housing conversion actions. Policy guidance on program issues unique to enhanced vouchers was not included in PIH Notice 99-40, but was extensively covered by a number of earlier notices, the most recent being PIH Notice 99-16.

Title V of the Department of Housing and Urban Development's FY 2000 Appropriations Act (Public Law 106-74, enacted October 20, 1999) consists of the "Preserving

Affordable Housing for Senior Citizens and Families into the 21st Century Act." Section 538 of this Act amends Section 8 of the United States Housing Act of 1937 by creating a new subsection (t), thereby providing permanent statutory authority for enhanced vouchers.¹ The requirements of Section 8(t) differ to some extent from the statutory requirements of enhanced vouchers made available under HUD's previous Appropriation Acts as the result of preservation prepayments.

The new law further provides that notwithstanding any other provision of law, any enhanced voucher assistance previously provided for preservation prepayments under HUD's FY 1997, 1998, and 1999 Appropriations Acts shall be subject to the same requirements as enhanced vouchers under Section 8(t). This provision simplifies PHA administration by standardizing the exception rules for all existing enhanced voucher assistance.

In addition, Title V extends the eligibility of families for enhanced voucher assistance beyond those affected by preservation prepayments. For example, families impacted by Section 8 project-based opt-outs occurring in FY 2000 are eligible to receive enhanced as opposed to regular voucher assistance.

HUD will promulgate regulations on the Section 8(t) enhanced voucher authority. Until such time that these regulations become effective, PHAs should refer to Parts II and III of this notice for programmatic guidance on the unique policies that affect the administration of enhanced vouchers.

Part I provides general policy and funding procedure guidance on all Housing conversion actions and is applicable to both enhanced and regular voucher assistance made available as a result of a conversion action. Part II covers enhanced voucher requirements for those Housing conversion actions that occur in FY 2000 and describes the eligibility criteria.

¹ Until enactment of P.L. 106-74, enhanced vouchers were authorized annually through HUD's Appropriations Acts, with the exception of vouchers authorized by Section 515(c)(3) and (4) of the Multifamily Assisted Housing Reform and Affordability Act of 1997 for families in restructured subsidized multifamily projects. As of the date of this notice, no tenant-based assistance has yet been requested for tenants in a restructured subsidized multifamily project.

Part III discusses the impact of the new law on the administration of enhanced vouchers that were previously provided as a result of preservation prepayments that occurred in FYs 1997, 1998, and 1999.

PART I General Programmatic Policies for Housing Conversion Actions

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

A. Covered Housing Conversion Actions

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

Preservation prepayment or voluntary termination actions (preservation prepayments). Certain residents of preservation eligible properties (generally Section 236 and Section 221(d)(3) projects) are eligible for tenant-based assistance where the owner prepays the mortgage or voluntarily terminates the mortgage insurance. Eligible families under this category will receive enhanced vouchers subject to the availability of appropriations. Part II of the notice covers project and family eligibility for enhanced vouchers as a result of a preservation prepayment.

Project-based opt-outs. This term refers to a conversion action where an owner chooses to opt-out of certain programs by not renewing an expiring Section 8 or Section 23 project-based contract. This category also includes situations where a rent supplement contract under Section 101 of the Housing and Urban Development Act of 1965 ends. Commencing in FY 2000 and subject to the availability of appropriations, enhanced vouchers are provided for the eligible residents who were assisted under the expiring project-based contract on the date of expiration. Part II of the notice provides additional information on the covered contracts and family eligibility for enhanced vouchers as the result of an owner opt-out or when a rent supplement contract ends.

HUD enforcement actions. In these cases, HUD is either terminating the Section 8 project-based HAP contract or not offering the owner the option to renew an expiring

HAP contract due to an owner's failure to comply with the terms of the HAP contract. It includes suspensions and debarments.

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

Regular vouchers will normally be provided in these circumstances to assist eligible families affected by the enforcement action to move from the property. In a few unique situations, however, families may qualify for enhanced vouchers and remain at the property. These rare exceptions to the general rule are discussed later in Part II of the notice.

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 the property or selling the property to a new owner. Regular vouchers will be provided to assist eligible families in these cases.

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

In general, all regular Section 8 housing choice voucher program rules, regulations, and directives apply to special admission vouchers made available for families as the result of Housing conversion actions. Enhanced vouchers have several unique requirements which are covered extensively in Part II of this notice.

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

(1) Tenant-based nature of the assistance. Section 8 vouchers provided as a result of these Housing conversion actions (regardless of whether the vouchers are enhanced or not) are always tenant-based assistance. This means that the families issued vouchers may generally elect to use the assistance in the same project and in all cases may choose to move from the property immediately. Families may immediately move outside of the jurisdiction of the administering PHA under the portability provisions of the voucher program. There is no guarantee to the owner that any 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 when briefing 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.

(2) PHA screening of families. By agreeing to administer the special admission tenant-based assistance, the PHA is not relinquishing its authority to screen potentially eligible families 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 voucher 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.

(3) 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 (a) the owner's current certification for the family is no more than six months old and (b) the PHA determines that the owner certifications are acceptable after reviewing a small sample for accuracy. The PHA is never required to use the owner certifications and may choose to conduct its own income determination and verification.

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.

(4) 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 enhanced vouchers concerning families who reside in oversized units at the property. This exception only applies to enhanced vouchers, not all conversion actions, and is explained in Part II of this Notice. The normal tenant-based program rules apply in cases where the family does not receive an enhanced voucher, 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)).

(5) 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 and expected to provide families with maximum search time that is reasonably required to locate housing. It is noted that the final rule for the voucher program (effective November 22, 1999) eliminates the former regulatory limit of 120 days as the maximum search term (see §982.303(b)).

(6) Rent reasonableness and approval of tenancy. All regular program requirements concerning the reasonableness of the rent apply to these special purpose vouchers, regardless of whether the vouchers are enhanced vouchers or regular vouchers. (Reasonable rent is defined at 24 CFR 982.4 as a rent to owner that is not more than rent charged: (1) for comparable units in the private unassisted market; and (2) for comparable unassisted units in the premises.) The PHA may not approve a lease until the PHA determines that the initial rent to owner is a reasonable rent, regardless of whether the family 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 based on the current condition of the unit. The PHA does not base the rent reasonableness determination on any pending or planned enhancements to the property. If the PHA determines the proposed rent is not reasonable, the owner must lower the rent or the family will have to find another unit in order to benefit from the voucher subsidy. HUD intends to issue additional guidance on rent reasonableness determinations shortly.

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

(7) 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 project-based contract. Under no circumstances may the PHA make housing assistance payments for any period of time prior to the date that the PHA 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.

(8) Timing issues involving HAP contract execution and effective dates. In all Housing conversion actions, the process is intended to provide the family with the voucher at least 60 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 an opt-out or HUD enforcement action the target date is the date which the project-based HAP contract expires or is terminated. For a preservation property, it is the earliest date the owner may increase the rent, in many cases the effective date of the prepayment.) However, HUD recognizes that in some cases this will be not possible.

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

Once these conditions are met, the PHA may approve the unit for leasing and the family and owner may 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 approved by the PHA and the owner is willing to lease the unit to the family with the understanding they will receive HAP payments retroactively (provided the HAP contract is executed within the following 60 days), the family can be protected even though the funding is not available by the target date. In such cases (as in all cases) it is crucial that the PHA make the unit approval determination 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 the transition smoothly.

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 for assistance) and families who choose to move. The PHA may not execute a housing choice 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.

(9) Initial and subsequent use of vouchers. All housing choice vouchers (enhanced or non-enhanced) provided in connection with a Housing conversion action are "special admission" vouchers. Special admission vouchers differ from regular vouchers in that the assistance is provided by HUD with a specific family or individual in mind. In such cases the PHA must first use the allocation to

assist the families in question. The PHA does not consider whether the family is on the Section 8 waiting list or the family's position on the section 8 waiting list.

In FY 2000, whenever HUD provides vouchers to a PHA as the result of a Housing conversion action, the funding will be provided on a one-for-one replacement basis to make up for the loss of the affordable housing units in the community. For example, if an owner is opting-out of a 100 unit Section 8 project-based contract, the Department will provide an allocation of 100 vouchers to the administering PHA. The PHA will use the assistance to assist the eligible families affected by the opt-out. Any additional vouchers under this allocation (for example, unused vouchers resulting from vacant units under the expiring project-based contract or units occupied by ineligible families) may be used by the PHA to assist families on the PHA waiting list. Likewise, if the owner of a preservation eligible 100 unit Section 236 property prepays the mortgage, the PHA will receive an allocation of 100 vouchers. If there are 15 unused vouchers remaining after issuance to the eligible residents of the property (through a combination of vacant units and families who are ineligible or refuse voucher assistance), the PHA retains the vouchers and may use them to assist families on the PHA waiting list. In any case that the PHA uses remaining vouchers to assist families on the PHA waiting list, the voucher is simply a regular voucher and does not have any "enhanced" features.

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

(10) Inapplicability of the PHA income targeting requirement. In general, not less than 75 percent of the families admitted to a PHA's tenant-based voucher program during the PHA fiscal year must be targeted to families whose annual income does not exceed 30 percent of median income. Families admitted to the PHA's tenant-based voucher program as a result of a Housing conversion action are not subject to the income targeting requirements of the Section 8 tenant-based program, and their admission is not counted in determining whether the PHA is complying with the income targeting requirement.

C. Funding Processing Issues and the Special Fee.

(1) General information. The tenant-based funding process is complicated by the relatively short amount of time available to complete the process before families could be potentially adversely affected by the Housing conversion action in question. The most important step in the entire process 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, 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. Also, only Public Housing staff should provide technical assistance and guidance on any tenant-based related issues throughout the process.

This is not to say that Housing staff may not communicate with the PHA or that Public Housing staff is barred from having discussions with an owner. However, it is important that HUD guidance and instructions are provided by the appropriate program staff person to avoid any errors or confusion that may hamper the process. Communication between all of the involved parties is essential to the process.

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

(a) Background. In order to avoid or at least minimize any adverse impact of the conversion action on the affected families, the administering PHA must complete a number of tasks within a short amount of time. These tasks include completing and submitting the funding application; determining each individual family's eligibility; reviewing proposed rents; and conducting housing quality standards inspections for the 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 who are making the transition simultaneously. The challenge may be further exacerbated by the fact that many or all of the affected residents either want or are required to relocate.

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

PHAs may receive a special fee for the extraordinary costs resulting from a covered Housing conversion action. The purpose of this special fee is twofold: (1) to compensate PHAs for any extraordinary Section 8 administrative costs associated with these special purpose allocations; and (2) to ensure PHAs will receive reimbursement for their efforts in the rare instances where the pending conversion action does not ultimately occur because of a decision by the owner or HUD. This fee only applies when a PHA agrees to administer tenant-based assistance for a potential Housing conversion action. Any Housing conversion action that was completed (i.e., the PHA received the ACC funding increment for the conversion action) prior to September 1, 1999, is not eligible for this special fee. The special fee is never applicable to any non-Housing conversion action, such as a Section 8 moderate rehabilitation contract expiration.

(b) Amount of fee. 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 occupied units covered by the Housing conversion action.

(c) Allowable costs. The PHA may seek reimbursement under this special fee for increased 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:

(i) 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;

(ii) the cost of over-time paid to PHA staff that is necessary to assist the affected families within the necessary time-frames;

(iii) 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

(iv) 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 occupied unit in the proposed allocation.

It is important to emphasize that once the funding process begins, very few conversion actions fail to actually happen.

(d) 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 that follows this section. In brief, HUD will automatically include funding for the special fee under a separate funding code as part of the ACC funding increment for the tenant-based assistance. The special fee funding is set at \$250 for each occupied unit covered by the Housing conversion action, which is the maximum amount of funding available

for the fee. The PHA 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.

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

In the case of Housing conversion actions, the greatest challenge to a successful transition to housing choice voucher assistance is time. 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:

FMC - Section 8 Financial Management Center staff
FO - HUD Field Office
HQ - HUD Headquarters (Program area follows)
OMH - Office of Multifamily Housing staff (Field Office unless otherwise noted)
OPH - Office of Public Housing staff (Field Office unless otherwise noted)
PAHD - PIH Office of Public and Assisted Housing Delivery
PHA - Public Housing Agency staff
TD - Target Date (the date when a family may suffer a rent increase or displacement unless the Housing conversion action is completed and the eligible families are under Section 8 tenant-based HAP contracts).

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

- Preservation prepayment -- The date the owner can first increase the rent after the prepayment (in many cases the effective date of the prepayment).

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. (OPH-1)
3. If PHA accepts invitation, Field OPH then provides unit size distribution of the covered action, copies of the Form HUD-50059s and/or tenant profiles to the PHA. For enhanced vouchers, requests that the PHA submit an application with the unit distribution based on the actual bedroom size of the units affected by action. (OPH-2)
4. The PHA submits the application (Form HUD-52515) to Field OPH. (PHA-1)
5. Field OPH determines budget authority requirements for tenant-based funding in consultation with Field OMH. For a preservation prepayment or a project-based contract opt-out, use the Enhanced Funding Worksheet. For a PD sale and for most HUD enforcement actions, use the New Increment Funding Worksheet. (See discussion on applicability of enhanced or regular vouchers with respect to HUD enforcement contract terminations in Part II). Worksheets will be provided to PH directors by electronic mail. Field OPH 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 the appropriate Funding Worksheet(s). (OMH-2)
7. As necessary, Headquarters OMH reallots budget authority to Headquarters OPH through Budget Office. (HQMF-1)
8. PHA should review owner income certifications to determine if acceptable. PHA is encouraged to begin income examination and verification process as necessary. (PHA-2)
9. Headquarters OMH authorizes HQ OPH to assign Section 8 voucher funds to Field OPH. Sends Funding Worksheet to Headquarters OPH. (HQMH-2)
10. Headquarters OPH reviews Funding Worksheet. Contacts Field OPH to obtain corrections if necessary. (HQPH-1)
11. Headquarters OPH assigns budget authority for the tenant-based assistance to FMC (form 185 Fund Assignment, HUDCAPS record). (HQPH-2)
12. PHA must submit funding application if they have not done so already (Form HUD-52515 and certifications). (PHA-3)

13. Field OPH reviews and approves the PHA application; transmits the application approval letter to the PHA with a copy to FMC. (OPH-4)
14. Upon receiving approval letter from Field OPH and budget authority from HQ (HUDCAPS), FMC reserves/contracts the tenant-based funds. (FMC-1)
15. FMC prepares the ACC documents and the ACC transmittal letter, forwards transmittal letter and ACC documents to PHA with copy of letter to Field OPH. (FMC-2)
16. PHA issues vouchers to eligible families based on the PHA subsidy standards. **If at all possible, issue vouchers no later than 60 days before TD.** (PHA-4)
17. PHA prepares and submits Budget Revision to FMC. (PHA-5)
18. FMC processes Budget Revision. (FMC-3)
19. Family decides whether to stay in place or move. Family submits request for tenancy 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)
20. 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)
21. FMC reconciles approved fee amount during year-end settlement process. (FMC-4)

PART II Enhanced Vouchers

A. Covered conversion actions.

Subject to the availability of appropriations, enhanced voucher assistance will be offered to eligible residents under the following categories of Housing Conversion actions that occur in FY 2000.

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

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

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

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

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

(iv) the rent supplement program under Section 101 of the Housing and Urban Development Act of 1965;

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

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

(vii) Section 23 of the United States Housing Act of 1937 (as in effect before January 1, 1975).

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

In addition, although families affected by Section 23 and Section 8 moderate rehabilitation opt-outs are eligible for enhanced vouchers which are subject to the policies described by this notice, these opt-outs are not considered a *Housing* conversion action because the expiring contract is between the owner and the PHA. The PHA is not eligible to receive the special fee for extraordinary administrative costs and the specific funding process instructions

contained in Part I of this notice are not applicable for Section 23 or moderate rehabilitation opt-outs.

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

(i) a low-income family (including a very low income family); and

(ii) residing in a unit covered by the expiring contract on the date of expiration.

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

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

(i) reside in a unit covered by the expiring contract on the date of expiration;

(ii) have resided in the property on the effective date of the prepayment; and

(iii) meets the income requirements for enhanced voucher eligibility for residents affected by a preservation prepayment, described below.

In determining family eligibility in such a circumstance, the PHA will first determine income eligibility based on the normal eligibility rules for an opt-out family. The vast majority of

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

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

(2) Preservation eligible projects.

(a) Owner prepays the mortgage or voluntarily terminates the mortgage insurance (preservation prepayments). 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.

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

- o Section 221(d)(3) market rate limited distribution projects receiving Section 8 payments converted from Rent Supplement whose project number series is 35001-36599;
- o all Section 221(d)(3) below market interest rate projects whose project number series are 55001-55999 and 57501-57999, unless a Rent Supplement Contract remains in effect between HUD and the mortgagor;
- o all Section 236 projects whose project number series are 44001-44799; 44801-44899; 45001-45999; and 58501-58999, unless a Rent Supplement Contract remains in effect between HUD and the mortgagor;

- o a purchase money mortgage formerly insured under Section 221(d)(3) or 236;
- o a mortgage held by a state agency as a result of a sale by HUD without insurance, which immediately before the sale would have been eligible low-income housing under LIHPRHA; which mortgage (1) for LIHPRHA projects is, or is within 2 years of being, eligible for prepayment by contract or regulation in effect before February 5, 1988 without HUD's prior approval; or (2) for ELIHPA projects is, or is within 1 year of being, eligible for prepayment under regulation or contract in effect before February 5, 1988; or
- o all State-assisted projects that are eligible for preservation assistance under LIHPRHA or ELIHPA.

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

(b) Family Eligibility for Enhanced Voucher Assistance in preservation eligible projects.

The resident family must be residing in the preservation eligible property on the effective date of prepayment (or the transaction in the case of covered flexible subsidy projects), and must be income-eligible on the effective date of the prepayment. Beginning in FY 2000, family eligibility for an enhanced voucher as the result of a preservation prepayment is no longer conditioned on an owner rent increase occurring no later than one year

after the effective date of the prepayment, as it has been in past years. Both assisted and unassisted residents may be eligible for preservation tenant-based assistance.

(1) Income Eligibility. In order to be eligible for the enhanced voucher, the resident must be either:

- o a low-income family (including a very low-income family);
- o a moderate-income elderly or disabled family;
or
- o a moderate-income family residing in a low vacancy area (3 percent or less vacancy rate). 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, and a very low-income family is a family whose annual income does not exceed 50 percent of the median income for the area as determined by HUD.

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

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

(2) Unassisted and Assisted Families. Both unassisted and assisted residents may be eligible for the special voucher assistance made available for preservation prepayments or flexible subsidy transactions (hereafter referred to collectively as the eligibility event) that occur in FY 2000. Assisted residents are families receiving Section 8 tenant-based certificate and voucher assistance on the date of the eligibility event.

A Section 8 certificate or voucher participant who is residing in the project at the time of the eligibility event may be covered by the special provisions of the enhanced 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 eligibility event are discussed on page 32 of this notice.

Families assisted under a project-based contract at the project will now receive enhanced voucher assistance as a result of the expiration or non-renewal of the project-based contract, not the prepayment. Any family receiving project-based assistance on the effective date of the prepayment will continue to receive this assistance until the project-based contract expires or terminates.

(c) Eligibility event and existing leases. Note that the eligibility event (e.g., the prepayment of the mortgage or the approval of the voluntary termination of a mortgage insurance contract for a preservation eligible project or the flexible subsidy transaction) 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 PHA may not enter into a HAP contract that commences prior to the effective date of the eligibility event.

(d) Voluntary termination of mortgage insurance or prepayment of mortgage on Section 236 projects WHERE Section 236 rent rules remain applicable. Where an owner voluntarily terminates the mortgage insurance or prepays the Section 236 mortgage in a preservation eligible Section 236 project AND the rent setting requirements of the Section 236 program are still applicable to the project, the enhanced voucher rent would be no greater than the Basic Rent or Market Rent depending on the eligibility of the family occupying the unit. This means that in the case of previously unassisted low income families who receive enhanced vouchers, the owner's rent after the eligibility event may still not exceed the greater of 30 percent of the family adjusted monthly income or the basic rent (including the PHA allowance for tenant-furnished utilities) for the property. In the case of eligible moderate income families, the owner's

rent will continue to be the lesser of 30 percent of the family adjusted monthly income or the Market Rent for the property.

It is also important to note that the rent reasonableness requirements of the Section 8 voucher program must be met in order for the family to receive tenant-based assistance at the project, regardless of the rents established under the Section 236 rent formula.

(3) Section 8 Project-based Contract Terminations and Enhanced Voucher Eligibility.

As noted earlier, in most circumstances when HUD terminates a Section 8 project-based contract (or does not permit the owner to renew an expiring Section 8 project-based contract) through a HUD enforcement action, eligible families assisted under the terminating contract will receive regular voucher assistance since they will not be able to remain at the property and receive tenant-based assistance. For instance, in many cases the owner is being suspended, debarred, or a limited denial of participation has been issued. Such action will preclude the PHA from entering into Section 8 housing assistance payment contracts with the owner. Where HUD is terminating the contract due to physical deficiencies at the property, there is little or no likelihood that the units will meet the housing quality standards of the housing choice voucher program. In addition, the housing choice voucher regulations provide that the PHA may deny approval to lease a unit from an owner in cases where the owner has violated obligations under a housing assistance payments contract under Section 8 of the 1937 Act, as well as where the owner has a history of practice of non-compliance with the HQS for units leased under the tenant-based programs, or with applicable housing standards for units leased with project-based Section 8 assistance or leased under any other federal housing program. In most enforcement actions, HUD would strongly encourage and expect the administering PHA to exercise its right to disapprove the owner for these reasons.

There may, however, be a few occasions when the families will be able to remain at the property after the contract termination and receive tenant-based assistance. For instance, if the property is in good shape and the owner decides to turn the property over to new ownership, it may be possible for the eligible families assisted under the terminating contract to receive Section 8 voucher assistance at the property. In such cases, the families would be eligible for enhanced vouchers as the result of the Section 8 project-based contract termination.

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

B. Special Conditions of Enhanced Voucher Assistance.

Enhanced vouchers have several special requirements but in all other respects the vouchers are subject to normal program rules. For example, the PHA may not make payments to the owner until after execution of the HAP contract on behalf of an individual family, and the HAP contract may not be effective prior to the date the PHA determines that the unit meets the housing quality standards of the program. The unique requirements of enhanced tenant-based assistance are discussed below.

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

(a) Special payment standard. For a family that stays in the same unit and receives enhanced voucher assistance, the payment standard used to calculate the voucher housing assistance payment is the gross rent (rent to owner plus the applicable PHA utility allowance for any tenant-supplied utilities) of the family's unit, provided the proposed gross rent is reasonable and exceeds the applicable PHA payment standard. (Note, however, the effect of the family unit size limitation discussed below.)

If the gross rent is less than or equal to the normally applicable PHA payment standard, the regular payment standard rules apply.

(b) 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 enhanced vouchers. If a family wishes to stay in its present unit and receive enhanced voucher assistance, the PHA must ensure that the proposed rent for the family's unit is reasonable. The PHA determines whether the proposed new rents for the property are reasonable just as it does for any other potential units under the tenant-based assistance programs.

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

The special payment standard for enhanced tenant-based assistance sometimes results in the PHA 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 for a family with regular voucher. However, it is very important for the PHA to ensure the owner's new rent is reasonable and to properly document this determination. In the case of enhanced vouchers, HUD specifically requires that the PHA document the rent reasonableness of the owner's rent in the family's file by including the rents and addresses of the comparable units used to make the determination.

(c) Effect of family unit size limitation. The PHA issues the eligible family an enhanced voucher based on the PHA subsidy standards, not on the actual size of the unit the family is presently occupying. If a family wishes to stay in the project but (1) qualifies under the PHA subsidy standards for a smaller family unit size than the actual size of their current unit and (2) the gross rent exceeds the applicable PHA 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 PHA 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 PHA payment standard. (In this case only, the enhanced voucher minimum rent discussed below is the rent the family would have been paying on the date of the eligibility event 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 PHA may require the family to submit a list of potential units the family visited. The PHA should also take its knowledge of the market area into consideration, as well as the number of referrals to potential appropriate sized units it may have provided to the family over the course of the family's search.

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

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

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

The HAP contract will automatically terminate after the initial year of assistance in the oversized unit and the PHA 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.

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

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

(3) Enhanced Voucher Minimum Rent Requirement for Stayers.

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

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

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

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

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

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

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

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

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

In cases where there is a significant decline in family income, the minimum family contribution required of the family shall be reduced so that the percentage of income for rent does not exceed the greater of 30 percent or the percentage of monthly adjusted income actually paid by the family 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 the eligibility event.

The PHA normally uses the specific dollar amount the family was paying for rent on the effective date of the eligibility event in determining the family's enhanced voucher minimum rent. However, in cases where the family subsequently suffers a significant decline in family income, the PHA changes the method

for calculating the family's enhanced voucher minimum rent. The enhanced voucher minimum rent changes from an actual dollar amount to a specific percentage of income.

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

The new enhanced voucher minimum rent for these families changes to a percentage of income as opposed to a specific dollar amount. Once this change in the enhanced voucher minimum rent calculation becomes effective for a family, the enhanced voucher 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 enhanced voucher assistance for ten months, the family suffered a 50 percent decrease in monthly gross income. The PHA now calculates the enhanced voucher minimum rent for the family as the percentage of monthly adjusted income the family paid for rent on the prepayment date (35 percent) instead of the actual dollar amount (\$500). The enhanced voucher family in this example must now pay at least 35 percent of the family monthly adjusted income for rent, regardless of any further changes in family income.

When a family reports a significant decrease in family income, the PHA conducts an interim redetermination and verifies the change in income as soon as possible to prevent hardship on the family,

preferably by the first of the month following the date the family reports the change and provides the necessary documentation. The PHA may implement 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 enhanced voucher minimum rent only applies if a family suffers a significant loss of income (at least a 15 percent decrease in the gross family income on the effective date of prepayment). Otherwise, the enhanced voucher minimum rent remains the specific dollar amount.

It is important to remember that regardless of which method is used to calculate the enhanced voucher minimum rent, the minimum rent represents the lowest amount the family may pay as their family contribution. A family may pay no less than the enhanced voucher minimum rent. Depending on the circumstances, the family may have to pay more than the enhanced voucher minimum rent.

(4) Calculating HAP for Stayers -- Enhanced Voucher Assistance.

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

- (i) 30 percent of the adjusted family income;
- (ii) 10 percent of the family monthly income (gross monthly income);
- (iii) the applicable "rent" that the family was paying on the date of the prepayment or voluntary termination; or
- (iv) such other minimum rent established by the PHA as authorized by Federal law.

(5) Movers - All Regular Housing Choice Voucher Rules Apply.

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

C. Applicability of the Special Conditions 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 a preservation prepayment may also be covered by the special conditions afforded to stayers by enhanced vouchers. A resident currently assisted under the voucher or certificate program on the effective date of the prepayment may choose not to be covered by the special provisions.

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

- (i) the family must meet the income requirements on the date of the eligibility event;
- (ii) the subsequent 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;
- (iii) the new gross rent must be reasonable; and
- (iv) 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, the family is not covered by these special provisions.

An owner may only receive the special "enhanced" subsidy for residents already receiving Section 8 tenant-based certificate assistance by terminating the existing lease and housing assistance payments contract. The PHA will execute a voucher HAP contract with the owner on behalf of the family. In such cases, the PHA may not give approval for tenancy and 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 certificate assistance in the same unit. Therefore, the PHA 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 by the program regulations to terminate the existing lease and HAP contract for current voucher participants to receive the special "enhanced" subsidy.

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

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

D. Continuation of the Enhanced Voucher Special Conditions.

(1) Enhanced voucher minimum rent. The enhanced voucher minimum rent continues after the initial year of assistance for all families who receive enhanced voucher assistance and remain at the property. These families must continue to pay at minimum the applicable enhanced voucher minimum rent the family was paying on the effective date of the eligibility event as the family

share. (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 enhanced voucher 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 enhanced voucher assistance.

In any case where a family who received an enhanced voucher subsequently moves from the project, the PHA uses the normal voucher rules when calculating the family share.

(2) Special Payment Standard. The new unified voucher authority under section 8(t) of the United States Housing Act of 1937 provides that subject to availability of appropriations, during any period that the family continues to reside in the same project, the payment standard used to calculate the family subsidy will be enhanced to match the gross rent for the unit if the gross rent exceeds the normally applicable payment standard and the PHA determines the rent is reasonable in comparison to comparable unassisted units.

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

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

Again, it is important to emphasize the PHA always uses the normally applicable payment standard if the family subsequently moves from the project.

PART III -- Applicability of subsequent enhancements and voucher housing subsidy calculations for preservation vouchers and certificates provided in FY 1997, 1998, and 1999.

Section 538(a) of Title V of the FY 2000 Act provides that notwithstanding any other provision of law, any preservation voucher assistance provided under the FY 1997, 1998, and 1999 Appropriations Acts shall be treated and subject to the same requirements as enhanced voucher authority provided under Section 8(t).

The major difference from this new statutory authority for enhanced vouchers and the previous statutory authority governing preservation vouchers concerns the issue of subsequent enhancements of the payment standard after the owner's initial rent increase and calculation of the housing assistance payments.

Preservation voucher assistance that was made available under the FY 1997, 1998, and 1999 Appropriations Acts was only enhanced to cover the owner's initial rent increase following the prepayment or the voluntary termination. Under the rental voucher program, the preservation payment standard was not readjusted to cover any future rent increases. Instead, the family had to decide whether to move to a less expensive unit or pay for the increase in rent out of pocket. The PHA always applied the regular payment standard if the family subsequently moved from the unit.

As of October 20, 1999, the law now provides that subject to the availability of appropriations, the enhanced payment standard for preservation vouchers may be increased to cover subsequent rent increases. In order to implement this provision and conform preservation voucher practices to the new enhanced voucher rules, PHAs must make the following changes to a preservation voucher family's subsidy calculation effective on the effective date of the first regular reexamination on or after October 20, 1999:

For preservation voucher families who remained at the project (did not move), the PHA will use the current gross rent for the unit as the new payment standard, provided the rent is reasonable and exceeds the normally applicable payment standard.

For preservation voucher families who moved from the project, the PHA will follow the normal voucher program requirements when calculating the housing assistance payment and family share.

This change in the subsidy calculation for preservation vouchers is prospective from the first regular reexamination on or after October 20, 1999. No retroactive enhancements to the payment standard and resulting retroactive adjustments to

the housing assistance payment and family share are permissible for any time prior to the effective date of the first regular reexamination for the family on or after October 20, 1999. Two illustrative examples on the application of this policy are found in the second attachment to this notice.

After the preservation voucher family's first regular examination on or after October 20, 1999, the PHA should administer the preservation voucher in accordance with the enhanced voucher rules covered by this notice and in any subsequent HUD directives.

It is important to note that any subsequent enhancement of the payment standard is based on the current gross rent of the unit (rent to owner plus the PHA utility allowance for any tenant-supplied utilities) and will not cover any increased costs in amenities or services not included in the rent to owner.

With respect to a preservation certificate family, the new law does not provide for any corresponding change concerning subsequent enhancements to the amount of certificate subsidy paid on behalf of the "stayer" family. Annual rent increases in the certificate program continue to be limited by the annual adjustment factor. In order for the family to benefit from the change in the law, the owner and the family will have to terminate the lease agreement (thereby terminating the housing assistance payment contract) in order to convert to the housing choice voucher program. The family and the owner must execute a new lease and the PHA and the owner must execute a new voucher contract for the unit in question.

In such cases where the gross rent of the family unit exceeds the normally applicable payment standard, the initial payment standard for the former preservation certificate family is the gross rent for the unit (assuming the family remains at the prepayment project). Please note that in any case where the preservation certificate family is in an oversized unit, the family and owner may not choose to convert the preservation certificate to an enhanced voucher because the family may only receive enhanced tenant-based assistance for one year in the oversized unit.

If the owner and the stayer family do not convert to the housing choice voucher program until the mandatory conversion date (the second examination date following October 1, 1999), the family's new voucher will become an enhanced voucher at the time of conversion, provided the family stayed at the preservation prepayment property and is not residing in an oversized unit. If the family is in an oversized unit, the family will receive a regular housing choice voucher.

HUD amends the existing ACC. In general, the enhanced portion of the housing assistance payment will be covered by the initial funding allocation and subsequently through the normal renewal process for housing choice vouchers in accordance with the regulations at §982.102. However, in order to cover the unanticipated increase in preservation voucher housing assistance payments in FY 2000, HUD will amend the PHA's consolidated annual contributions contract (CACC) to reflect this unexpected cost and avoid any shortfall of funds.

PHAs administering preservation vouchers as the result of preservation prepayments that occurred in FY 1997, 1998, and 1999 will complete a preservation amendment worksheet and submit it the Office of Public Housing in the local HUD field office. The local HUD Office of Public Housing will submit the worksheet to the Funding and Financial Management Division, Office of Public and Assisted Housing, PIH HUD Headquarters. This preservation amendment worksheet will be sent to PH directors by electronic mail shortly.

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

/s/

Harold Lucas
Assistant Secretary for
Public and Indian Housing

/s/

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Assistant Secretary for
Housing - Federal
Housing Commissioner

Attachment

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

**Housing Assistance Payments Contract, ADDENDUM
Section 8 Tenant-Based Assistance
Housing Choice Voucher Program**

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

The family receives an enhanced voucher and the family qualifies under the public housing agency (PHA) 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 eligibility event for the Housing conversion action.

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 housing choice voucher. Therefore, the PHA 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 PHA 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 the Housing Assistance Payments Contract (form HUD-52641 (10/99)).

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 housing choice 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 tenancy addendum).

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

Housing Agency

Owner

ATTACHMENT

Preservation Vouchers - Application of Subsequent Enhancements

In both examples, the owner's rent increase results in a rent that is reasonable and the increase is in accordance with the voucher program regulations, the terms of the lease agreement, and State and local law.

Example 1

The owner prepaid the mortgage on April 1, 1999 and increased the rent effective June 1, 1999. The PHA and the owner entered into a housing assistance payment contract on behalf of the preservation voucher family commencing on June 1, 1999. The new gross rent of \$600 exceeded the PHA's normally applicable payment standard. The PHA determined that the owner's rent was reasonable and the PHA therefore used \$600 as the payment standard to calculate the family's housing assistance payment.

The effective date of the family's first regular reexamination on or after October 20, 1999, is June 1, 2000. On June 1, 2000, the owner is raising the rent to \$625. The PHA determined that the rent is reasonable. Effective June 1, 2000, the PHA will use \$625 as the payment standard to determine the family's housing assistance payment.

Example 2

The owner prepaid the mortgage on November 10, 1997, and increased the rent effective February 1, 1998. The PHA and the owner entered into a housing assistance payment contract on behalf of the preservation voucher family commencing on February 1, 1998. The new gross rent of \$500 exceeded the PHA's normally applicable payment standard. The PHA therefore used \$500 as the payment standard to calculate the family's housing assistance payment.

At the family's following annual income examination, \$500 still exceeded the normally applicable payment standard. Effective February 1, 1999, the owner raised the rent to \$530. The family chose to remain in the unit and pay the difference between the rent and the payment standard (\$30) out-of-pocket.

February 1, 2000, was the effective date of the family's regular income reexamination the following year. Again, \$500 continued to exceed the normally applicable payment standard. The owner chose to raise the rent to \$550 effective February 1, 2000. The family elected to remain in the unit and paid the difference between the new gross rent (\$550) and the payment standard (\$500) out-of-pocket.

In order to conform the preservation voucher to the new enhanced voucher rules, the PHA would use the gross rent (\$550) as the payment standard to calculate the family subsidy retroactive to February 1, 2000. In this example the PHA makes an adjustment to reflect the fact the family paid the \$50 difference from February 1, 2000, until the time the PHA effectuates the change. Note, however, the PHA does not go back any further than the effective date of the first regular income reexamination following October 20, 1999 (the effective date of Section 538(a) of Title V of the FY 2000 Act).