



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

Special Attention of: Section 8 Public
Housing Agencies; HUD Office of
Public Housing Directors; Section 8
Financial Management Center ;
HUD Office of Multifamily Housing
Directors

Notice PIH 2013-27 (HA)

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superseded, or rescinded

Cross References: Notice PIH 2001-41;
Notice PIH 2011-49 ; Notice H 2012-3

Subject: Voluntary Relinquishment of Enhanced Voucher Assistance or Regular
Housing Choice Voucher Assistance in Exchange for Project-Based Voucher Assistance
in Multifamily Housing Conversion Actions

1. PURPOSE

The purpose of this Notice is to provide procedures Public Housing Authorities (PHAs) must follow when the recipient of an enhanced voucher (or regular housing choice voucher - see paragraph 4 below) voluntarily agrees to relinquish such assistance in exchange for the provision of Project-Based Voucher (PBV) assistance.

2. BACKGROUND

Section 8(t) of the United States Housing Act of 1937 (the Act) authorizes enhanced voucher assistance as tenant-based assistance. Absent Congressional authorization, HUD does not have the authority on its own to convert enhanced voucher assistance to project-based assistance or to require recipients of enhanced voucher assistance to relinquish such assistance and accept PBV assistance.¹ However, many owners, PHAs and other interested parties have sought HUD's assistance in utilizing tenant protection funding provided for enhanced voucher assistance as project-based voucher assistance. If a PHA decides to request that families relinquish enhanced voucher assistance in exchange for the provision of

¹ The Rental Assistance Demonstration (RAD) is authorized by the Consolidated and Further Continuing Appropriations Act of 2012 (Public Law 112-55, approved November 18, 2011) and allows for the conversion, in certain circumstances, of assistance provided under Section 8(o) of the Act to project-based voucher assistance under Section 8(o)(13) of the Act. This Notice is not applicable to owners or projects that are eligible and applying to convert assistance to a PBV contract under the RAD program. Owners eligible for conversion of voucher assistance under the RAD program, must request conversion in accordance with RAD program requirements. For more information on the RAD program, see PIH Notice 2012-32 and PIH Notice 2012-32 Rev. 1.

project-based voucher assistance, procedures outlined in this Notice must be followed.

3. ENHANCED VOUCHERS

Section 8(t) of the U. S. Housing Act of 1937 (1937 Act) (42 U.S.C. 1437f(t)) provides for enhanced voucher assistance for families living in certain multifamily projects upon the occurrence of an eligibility event. An eligibility event is a specified event related to a project that makes a family eligible to receive such a voucher. Under the statute, eligibility events are: owner decisions to opt out of or not renew certain Section 8 project-based contracts; owner prepayment of certain mortgages on the project; voluntary termination of mortgage insurance; or a transaction for preservation of a project that, under certain sections of the Multifamily Housing Reform and Affordability Act (42 U.S.C. 1437f note) (MAHRA), results in the tenants of the project being eligible for enhanced vouchers. The Department collectively refers to eligibility events as Housing conversion actions.

Enhanced voucher assistance differs from regular housing choice voucher assistance under section 8(o) of the 1937 Act (42 U.S.C. 1437f (o)) in two major respects. First, a family eligible to receive an enhanced voucher may elect to remain in the project with tenant-based assistance, and, if the family does so, a higher “enhanced” payment standard is used to determine the amount of rental subsidy HUD pays to the owner on behalf of assisted families when the gross rent exceeds the normally applicable PHA payment standard. Second, the family must continue to contribute towards rent at an amount that is at least equal to the amount the family was paying for rent at the time of the eligibility event.²

4. HOUSING CONVERSION ACTIONS AND REGULAR HOUSING CHOICE VOUCHERS

In certain Housing conversion actions, eligible families receive regular housing choice voucher assistance rather than enhanced voucher assistance (see PIH Notice 2001-41 and Housing Notice 2012-3 for Housing conversion actions where regular housing choice vouchers are provided). In such cases, and where the owner and PHA are interested in project-basing such assistance, procedures outlined in this Notice apply with the exception of those provisions only relevant to enhanced voucher assistance (e.g. an enhanced voucher holders statutory right to remain).³

² See the Special Purpose Voucher and Moving to Work Questions and Answers for information on MTW flexibilities as they relate to project-basing enhanced or tenant protection vouchers. The Q&A can be found at the following link:
http://portal.hud.gov/hudportal/documents/huddoc?id=special_purpose_vouchers.pdf

³ See Footnote above

5. PROJECT-BASED VOUCHER PROGRAM

The PBV program is administered by a PHA that already administers the tenant-based voucher program under an annual contributions contract (ACC) with HUD in accordance with program regulations at 24 CFR Part 983 and other program directives relative to the PBV program. A PHA has discretion whether or not to operate a PBV program.

In general, a PHA may use amounts provided under its tenant-based ACC to enter into a housing assistance payment contract (HAP) to attach assistance to an existing, newly constructed, or rehabilitated structure, subject to certain limitations and requirements (including owner and site selection requirements). Not more than 20 percent of the funding available for tenant-based assistance under a PHA's ACC may be attached to structures as PBV assistance.

A PHA may enter into a HAP contract with an owner only if the contract is consistent with (i) the approved public housing agency plan for the agency; and (ii) the goal of deconcentrating poverty and expanding housing and economic opportunities.

In general, not more than 25 percent of the dwelling units in any project may be assisted under a HAP contract for PBV assistance except in the case of assistance under a HAP contract for housing consisting of single family properties or for dwelling units that are specifically made available for households comprised of elderly and/or disabled families and families receiving supportive services.

The PHA selects owner proposals in accordance with program requirements (see 24 CFR Part 983) and enters into a HAP contract with an owner for units in existing housing or in newly constructed or rehabilitated housing. In the case of newly constructed or rehabilitated housing, the housing is developed under an Agreement to Enter into a Housing Assistance Payments (AHAP) contract between the owner and the PHA. Under the AHAP, the owner agrees to develop or rehabilitate the project pursuant to its terms and the PHA agrees to execute a HAP contract after the owner completes the construction or rehabilitation of the units, and the units are accepted by the PHA.

During the term of the HAP contract, the PHA makes housing assistance payments to the owner for units leased and occupied by eligible families.

6. PBV ASSISTANCE AND HOUSING CONVERSION ACTIONS

If a PHA decides to solicit or select proposals for PBV assistance in accordance with 24 CFR §983.51(b) and an owner submits a proposal for a project that recently underwent a Housing conversion action, neither the PHA nor the owner can force or require families to relinquish enhanced vouchers already received by eligible families or enhanced vouchers that have not yet been issued but will be

received by eligible families pursuant to the Housing conversion action. Families that are entitled to enhanced voucher assistance have a statutory right to such assistance and if a family elects to remain in a unit with their enhanced voucher, the unit is not eligible for PBV assistance. An owner cannot refuse to accept the family's enhanced voucher if the family elects to remain in the property with enhanced voucher assistance.

Units subsidized with certain governmental assistance, including Section 236 rental assistance payments, are not eligible for PBV assistance (See 24 CFR §983.54). In addition, units in a project occupied by ineligible families are not eligible for selection under the PBV program (see §983.53(d)). Therefore, PHAs must ensure that the timing of the selection of such projects and attachment of PBV assistance does not violate these program regulations.

PHAs that select projects for PBV assistance that have undergone or will undergo a Housing conversion action, must assure compliance with all PBV program requirements (see 24 CFR §983)⁴ including:

- owner selection (24 CFR §983.51),
- twenty-percent limitation on the amount of tenant-based budget authority allocated to the PHA that may be project-based (24 CFR §983.6),
- income mixing requirements (no more than 25% of the units in a multi-family project may be project-based with certain exceptions for excepted units) (24 CFR §983.56),
- equal opportunity requirements (24 CFR §983.8)
- site selection requirements (24 CFR §983.57),
- environmental review requirements (24 CFR §983.58),
- subsidy layering requirements (24 CFR §983.55).

The PHA must assure that selection of the project is consistent with the PHA's PHA Plan and Section 8 administrative plan, and the PHA must select families to receive PBV assistance from its waiting list in accordance with 24 CFR §983.251.

7. FUNDING PROCESS FOR ENHANCED VOUCHER ASSISTANCE

The procedures for processing tenant protection funding for enhanced voucher assistance in connection with Housing conversion actions are outlined in PIH Notice 2001-41. The funding process is not affected in any way by a PHA's decision to select a project for PBV assistance that has undergone or will undergo a Housing conversion action.

⁴Flexibilities for MTW agencies as they relate to PBV program requirements exist in accordance with the Standard MTW Agreement and each agency's Annual MTW Plan.

8. VOLUNTARY RELINQUISHMENT OF ENHANCED VOUCHERS FOR PROJECT-BASED VOUCHER ASSISTANCE

If a PBV proposal has been selected for a project that has undergone a Housing conversion action and families have elected to remain in the project with enhanced voucher assistance or if a project will undergo a Housing conversion action prior to a PHA's selection of the project for PBV assistance, such assistance may only be attached to units in the project occupied by assisted families if the following are satisfied:

A. Family Briefing – PHAs must schedule a family briefing for all families potentially impacted by the proposed attachment of PBV assistance. A representative from the HUD Field Office of Public Housing must be invited and must attend the briefing either in person, or by teleconference. In selecting the proper venue for the briefing, PHA's must give priority to methods that provide physical access to individuals with disabilities, i.e., holding the briefing in an accessible location, in accordance with the regulations implementing Section 504 of the Rehabilitation Act of 1973 and Titles II and III of the Americans with Disabilities Act of 1990, as applicable. If accessibility is not achievable, PHAs must give priority to alternative methods of product delivery that allow persons with disabilities to access the family briefing in the most integrated setting appropriate. The briefing must include:

- i. Information on families' statutory right to an enhanced voucher;
- ii. Information on the significant differences between PBV assistance and enhanced voucher assistance including income limits and the family's total tenant payment (see paragraph 8.C);
- iii. An opportunity for families to ask questions;
- iv. Written material available for families concerning PBV assistance and enhanced voucher assistance, including mobility options, rent levels, rent payments, provision of supportive services, etc.;
- v. Provision of a written consent form explaining that a family's decision to consent to relinquish its right to enhanced voucher assistance is completely voluntary (see paragraph 8.B);
- vi. Information on the anticipated date of the conversion action and the execution of the PBV contract between the owner and the PHA.

PHAs must ensure that persons with disabilities have an equal opportunity to participate in the family briefing. PHAs must provide appropriate auxiliary aids where necessary to afford persons with disabilities an equal opportunity to participate in the family briefing (see 24 CFR §8.6). Additionally, the PHA must take reasonable steps to provide meaningful access to the family briefing for persons with Limited English Proficiency (LEP). This may include the provision of translated notices of the date, time and location of the family briefing and

qualified interpreters at the family briefing. The PHA should also make available any written materials that are provided at the family briefing in the appropriate languages for persons with LEP⁵. PHAs must keep records of their efforts to comply with these requirements.

B. Written Consent⁶ – The family must be given at least 30 days from the date of the family briefing to make their decision. The consent form provided to each family at the briefing must explicitly acknowledge a family’s consent or non-consent. The consent form must indicate that it must be signed by the head of household and include the name and telephone number of a PHA employee that families can contact directly if they should have any questions or need additional information. If a family does not respond, informs the PHA that they wish to retain or receive enhanced voucher assistance, or affirmatively withholds consent, the PHA shall not include that unit under a PBV HAP contract. The consent form must be provided in an accessible format for persons with disabilities and must include a TDD/TTY number or other equally effective communication system for persons with disabilities to use if they wish to contact the PHA with any questions or request for additional information (see 24 CFR §8.6). Additionally, the consent form should be translated into the appropriate language for persons with Limited English Proficiency (LEP) and must include information on how persons with LEP can access language assistance if they wish to contact the PHA with any questions or requests for additional information.

C. Income Requirements - In order to be eligible for the PBV program, families must be low-income in accordance with 24 CFR §982.201. The special income limits for certain moderate income families allowed pursuant to a preservation pre-payment do not apply to the PBV program. A moderate-income family (annual income above 80% of but not more than 95% of the median income for the area) who is elderly or disabled or is residing in a low-vacancy area (3 percent or less vacancy rate, as determined by the HUD local office economist) is income-eligible for an enhanced voucher, but is over-income for PBV assistance. Units occupied by such families shall not be included in a PBV contract.

9. PAPERWORK REDUCTION ACT

The information collection requirements contained in this Notice have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520) and assigned OMB control numbers 2577-0169 and 2577-0083. In accordance with the Paperwork Reduction

⁵ see HUD’s Final Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, published in the Federal Register on January 22, 2007 (72 FR 2732)

⁶While the tenant consent process described in paragraph 8.B. is a basic HUD standard, Congress could of course establish conversion standards where a lesser standard is used or even no consultation is required.

Act, HUD may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid OMB control number.

10. FURTHER INFORMATION

Inquiries about this notice should be directed to Diane Thompson-Bouknight in the Office of Public Housing and Voucher Programs, Housing Voucher Management and Operations Division, via email at diane.a.thompson@hud.gov.

/s/

Sandra B. Henriquez, Assistant Secretary for
Public and Indian Housing