

To: Council of the City of New York

From: Alan E. Epstein
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Date: October 29, 2003 File No.: 52304.001

Subject: Memo on Enhanced Vouchers in Support of Intro 523; Offered as
Testimony at Hearing of the Committee on Housing and Buildings

This memo is submitted to the Council of the City of New York (the “Council”) in support of Intro 523 (the “Intro”). Briefly, the Intro requires owners of Mitchell-Lama developments subject to New York City (the “City”) supervision who wish to remove their developments from the regulation of the Mitchell-Lama Program, to (i) prove the development’s compliance with the Mitchell-Lama regulations and pay penalties for non-compliance; (ii) pay a fee to the City to complete a impact study of the effects of the removal of the development from the Mitchell-Lama Program; and (iii) pay for mitigation of the major adverse impacts of the removal.

Other testimony offered to the Council will provide ample political and legal justification for the Intro. This testimony is limited to an analysis of the efficacy of enhanced rental subsidy vouchers (“Enhanced Vouchers”) which may be provided to certain residents of Mitchell-Lama developments whose owners opt out of the Mitchell-Lama Program. As is discussed in greater detail below, Enhanced Vouchers are no substitute to the affordable housing protections provided by the Mitchell-Lama Program, which the Intro seeks to preserve. Enhanced Vouchers are available only to limited sets of tenants, expire upon the occurrence of numerous conditions and are in constant danger of being underfunded by the federal government. For these reasons and others, the Council should not be swayed by the argument that the Intro is unnecessary because of the protections offered by Enhanced Vouchers.

The Scope of the Opt-out Problem in the City and the Limited Applicability of Enhanced Vouchers

There are approximately 54,000 Mitchell-Lama rental units in New York City. Of these, roughly 28,000 are supervised by DHCR and 26,000 are supervised by HPD.¹ The HPD-supervised developments include approximately 12,000 units built before 1974 and 14,000 in developments built after 1973. This distinction is important because the developments completed after 1973 are not subject to any rent regulation after such developments opt-out of the Mitchell-Lama Program. Accordingly, the Intro applies only to post-1973 developments. Of these post-1973

¹ See New York City Independent Budget Office Newsfax Number 113, “The Cost of Keeping Mitchell-Lama Housing Affordable,” April 7, 2003.

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developments, 20 developments containing roughly 11,000 units receive Section 236 subsidies.² Roughly 3,000 units are in Mitchell-Lama developments which do not receive Section 236 subsidies. ***Only tenants in developments covered by Section 236 Subsidies are eligible to apply for Enhanced Vouchers.*** For example, if and when their owner opts-out of the Mitchell-Lama Program, the tenants of West Village Houses will not be covered by rent regulation nor will such tenants be eligible for Enhanced Vouchers.

Enhanced Vouchers: The Basics

- 1. What are they?** Enhanced Vouchers are federally funded rental assistance vouchers which were created by Congress in 1996 and are similar to Section 8 vouchers. The vouchers are known as “enhanced” vouchers because the rental benefit provided can be greater than that provided by standard Section 8 rent vouchers. Enhanced Vouchers are also called “sticky” vouchers because the vouchers can be used by tenants who move, thus “sticking” to the tenants. Enhanced Vouchers are administered on national level by HUD, and in the City by the Department of Housing Preservation and Development (“HPD”).
- 2. How do they work?** Tenants who ultimately receive Enhanced Vouchers pay 30% of their “adjusted gross income” or the rent they were previously paying under the Mitchell-Lama Program-- whichever is higher—to the landlord. The federal government pays the difference between the tenant’s rent payment and the amount charged by the landlord, as long as the government decides that the rent charged by the landlord is a “reasonable rent”.
- 3. Who is eligible?** City tenants whose family income is less than 95% of the area median income are eligible for Enhanced Vouchers, subject to further qualifications discussed below.³ That translates into a household income of less than \$41,000 for a single person household and less than \$60,000 for a four-person household.⁴

Many tenants who meet the income requirements do not get Enhanced Vouchers.

In addition to the income qualifications, a number of hurdles can stand in the way of tenants receiving and using the Enhanced Vouchers. These include the following:

² A list of the HPD supervised Mitchell-Lama rentals with their annual 236 subsidy amount (as reported by DHCR) is attached to the end of the memo as Appendix A. Section 236 subsidies reduce the owner’s mortgage interest payments to 1% -- the federal government pays the rest.

³ U.S. Department of Housing and Urban Development Directive No. 01-41, “Section 8 Tenant-Based Assistance (Enhanced and Regular Housing Choice Vouchers) For Housing Conversion Actions – Policy and Processing Guidance” (referred to herein as the “HUD Policy Guidance”). The HUD Policy Guidance is available at <http://www.hudclips.org> as of October 10, 2003.

⁴ U.S. Department of Housing and Urban Development, “Enhanced Voucher Fact Sheet”.

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- ***Family size and apartment size*** must conform to federal standards. Thus, a single person living in a two-bedroom apartment will be required to move. If the landlord cannot provide an appropriate sized apartment and the tenant cannot find appropriate sized housing outside the development, the tenant will receive Enhanced voucher rent assistance for only one-year in the oversized apartment. After one year she must move or pay an additional amount of rent under the standard Section 8 program.⁵
- ***The new rent charged by the landlord must be “reasonable”*** which is defined as no more than rent charged for (1) comparable units in the private market; or (2) comparable unassisted units in the housing development.⁶ ***If the new rent is found not reasonable, either the owner must lower the rent or the tenant must find another unit in order to benefit from the voucher.***
- ***Each Tenant*** must pass an ***income eligibility*** determination conducted by HPD. HPD ***may*** rely upon re-certification papers filed with the landlord within six months. Even if recent re-certification documents are available, however, the HPD may in its discretion require tenants to undergo a new certification process.
- ***Each apartment*** where a voucher-eligible family resides must pass a ***“quality standards”*** inspection. Landlords have been known to purposefully fail these inspections.
- ***If any household member*** has been convicted of a felony in the previous 5 years, the household is ineligible for the Enhanced Vouchers.

Receipt of an Enhanced Voucher does not ensure a Tenant’s Right to Remain in the Development.

The federal law that established Enhanced Vouchers promises tenants a right to remain in their apartments, or at least in the housing development. HUD has stated in an official publication, however, that if a landlord refuses to accept the Vouchers the federal government will not act on the tenants’ behalf.⁷ Instead, the tenants must go to court to defend their “right to remain” under state and local law. Moreover, a voucher-eligible tenant can find herself out of her home if the landlord decides to transform the building into a market rate co-op or condo. The Vouchers will be rescinded and voucher recipients will have the “choice” of buying into the development or seeking affordable housing elsewhere.

⁵ See HUD Policy Guidance.

⁶ See 24 CFR § 982.4.

⁷ See HUD Policy Guidance.

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Enhanced Vouchers are a one-time opportunity.

The only tenants who are eligible for Enhanced Vouchers are those determined to be eligible on the date the development converts from the Mitchell-Lama Program. Therefore, tenants whose income exceeds 95% of the area median income on the date of conversion cannot become eligible for the vouchers later if their family income is reduced through changes in family size, job loss or retirement.⁸

Enhanced Vouchers are Subject to Annual Appropriations.

Enhanced Vouchers are supposed to last for as long as the tenant stays in a “size appropriate, rent reasonable unit” in the housing development which was converted. However, Congress provides funding for the Section 8 voucher program, including Enhanced Vouchers, on an annual basis. Under the current budget proposed by the House of Representatives for 2004, up to 63,000 existing Section 8 vouchers would not be funded. Furthermore, President Bush and some congressional leaders have proposed transforming the Section 8 voucher money into “block grants” given to the states.⁹ The exact effects of this proposal are uncertain, but many experts expect that it will reduce the amount of money available for vouchers. Finally, it should be noted that at least two prior federal programs enacted to protect tenants in conversion situations were simply defunded in 1998.¹⁰ Therefore, the long-term viability of Enhanced Vouchers is questionable at best.

Conclusion

In summary, it is unclear how many tenants will actually receive Enhanced Vouchers. Further, even those who are able to receive the vouchers are dependent on the owner agreeing to accept them. And even those who persuade their landlord to accept the voucher may be forced to move or limited to only one year of assistance because they live in “over-sized” apartments. Those who surmount all of these eligibility and utilization barriers and are able to receive and use an Enhanced Voucher will pay *at least* the dollar amount of the gross rent they were paying at the time of the conversion. The ultimate comfort is that the Enhanced Vouchers will last only until Congress decides not to fund the program.

⁸ See HUD Policy Guidance.

⁹ See Amy Goldstein, “Shift in Housing Aid Proposed”, Washington Post, Tuesday, April 29, 2003, Page A 1.

¹⁰ This was the Emergency Low-Income Housing Preservation Act of 1987 and the Low-Income Housing Preservation and Resident Home-Ownership Act of 1990. See Emily Achtenberg, “Stemming the Tide: A Handbook on Preserving Subsidized Multifamily Housing, (Local Initiatives Support Coalition (LISC) and the Fannie Mae Foundation”, September 2002, at § 5. Available online at www.liscnet.org/resources

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Thus, Enhanced Vouchers provide illusory protection for some tenants and only temporary protection for others.¹¹ They are in stark contrast to the long-term protection provided to tenants by the Mitchell-Lama program where rents change in accordance with changes in family income. The Intro seeks to persuade owners to stay in the Mitchell-Lama Program or to enter into negotiations with tenants to preserve the long-term affordability of the development.

Those in the Council interested in preserving the long-term affordability of the Mitchell-Lama developments should not rely on Enhanced Vouchers. The Intro is clearly a better route.

¹¹ See Emily Achtenberg, “Stemming the Tide: A Handbook on Preserving Subsidized Multifamily Housing, (Local Initiatives Support Coalition (LISC) and the Fannie Mae Foundation”, September 2002, at § 5. Available online at www.liscnet.org/resources.

Attachment A¹²

Mitchell-Lama Rental Units supervised by HPD which receive Section 236 subsidies, including the annual amount of the subsidy for each one.

Name	County	Occ Date	# Units	236 Subsidy
Mins Plaza	Bronx	May-77	83	191,000
Tracy Towers	Bronx	Jan-74	869	411,000
Heywood Towers*	Manhattan	Jul-75	187	500,000
University Riverview	Bronx	Apr-75	226	520,000
Lands End 1	Manhattan	Mar-78	251	716,000
Glenn Gdns*	Manhattan	Sep-75	265	743,000
Keith Plaza	Bronx	Sep-75	310	883,000
O.U.B. Houses	Bronx	Feb-77	360	920,000
Clinton Towers	Manhattan	Nov-74	395	1,000,000
Hudsonview Terrace*	Manhattan	Jan-76	395	1,000,000
Arlington Terrace	Staten Is.	Aug-76	534	1,300,000
Seaview Towers	Queens	Apr-76	461	1,400,000
Bedford Gardens	Brooklyn	Oct-75	639	1,600,000
Knickerbocker Plaza	Manhattan	Aug-74	576	1,800,000
Stevenson Towers	Bronx	Apr-74	121	2,300,000
Stevenson Commons	Bronx	Apr-74	947	2,500,000
Roberto Clemente Plaza	Brooklyn	Oct-76	532	2,800,000
Riverside Park Community	Manhattan	Apr-76	1190	3,100,000
Independence Plaza*	Manhattan	Sep-74	1329	3,400,000
Kelly Towers	Bronx	Jan-75	301	6,000,000
Boulevard Towers 2	Bronx	Mar-75	354	8,600,000

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¹² The numbers of units and developments reported in this section are all culled by the authors from the DHCR Mitchell-Lama Annual Report of 2002, available on DHCR's website. The figures reported are consistent with the figures reported by in the New York City Independent Budget Office report cited in footnote number 1.