



U.S. Department of Housing and
Urban Development

Office of Public and Indian

Housing

Special Attention:
Directors, Offices of
Public Housing;
Administrators, Offices of
Native American
Programs; Section 8
Public Housing Agencies
and Indian Housing
Authorities

Notice PIH 96-7 (HA)

Issued: February 13, 1996

Expires: September 30, 1996

Cross References:

**Subject: January 26, 1996 Continuing Resolution Statutory
Changes Affecting the Administration of the Section 8
Certificate, Voucher, and Moderate Rehabilitation Programs**

1. **Purpose:** This notice alerts public housing agencies and Indian housing authorities (HAs) of significant statutory changes in the Section 8 certificate, voucher, and moderate rehabilitation programs for the duration of fiscal year 1996 and provides HA implementing instructions. These changes were made in the Continuing Resolution entitled "Making Appropriations for FY 1996 to Make a Downpayment toward a Balanced Budget, and for Other Purposes" that became law on January 26, 1996 (Public law No. 104-99).

This notice covers the following statutory changes -- (1) Delay of reissuance of turnover certificates and vouchers; (2) Suspension of federal preferences; (3) Administrative fees; and (4) Minimum tenant rents.

2. **Summary of January 26, 1996 Continuing Resolution
Statutory Changes Affecting the Section 8 Certificate,
Voucher, and Moderate Rehabilitation Programs :**

(A) DELAY OF REISSUANCE OF TURNOVER CERTIFICATES AND VOUCHERS

(1) Description: Section 403(c) of the Continuing Resolution provides that notwithstanding any other provision of law, an HA administering a certificate or voucher program must delay for three months the reissuance of any certificate or voucher representing amounts made available by the termination of tenant-based assistance to any family for any reason. This provision is effective for fiscal year 1996 and reflects Congressional efforts to reduce program

outlays as part of the overall strategy to decrease the size of the Federal budget deficit.

- (2) Result: The HA must delay issuing any turnover certificate or voucher resulting from termination of assistance to a participating family for the lesser of three months or until October 1, 1996.
- (3) HA Action: As soon as practicable, but no later than February 25, 1996 (30 days after the enactment date of the Continuing Resolution), the HA must delay reissuance of all turnover certificates and vouchers resulting from termination of assistance to a participating family for three months or, if the three month delay would extend beyond September 30, 1996, until October 1, 1996.

This statutory requirement applies to all turnover certificates and vouchers that become available because rental assistance to participants is terminated for any reason. For example, this would include any certificate or voucher that becomes available because the family dropped out of the program; was terminated for violating family obligations; or the HAP payment was zero for the applicable period of time for termination from the program (6 months under the new HAP contract or 12 months under the old HAP contract).

The delay of reissuance does not apply to: (a) certificates or vouchers with unexpired terms issued to applicants before February 25, 1996 (or earlier HA implementation date); (b) certificates or vouchers that expire because applicants fail to locate suitable housing within the term of the certificate or voucher; (c) certificate and voucher funds that have not yet resulted in a HAP contract; (d) any certificate that is to be used for a project-based certificate unit pursuant to an HA plan to implement a project-based certificate program approved by HUD prior to February 25, 1996 (or earlier HA implementation date); (e) certificates and vouchers issued to participating families who wish to move; and (f) certificates and vouchers that become available after September 30, 1996.

If a certificate or voucher becomes available because a receiving HA absorbs the family into its own program under the portability procedures, the initial HA must delay reissuance of the certificate or voucher if the family was a participant (i.e., the initial HA made HAP payments on behalf of the family) prior to being absorbed by the receiving HA. The three month delay does not apply if the family was not admitted to the rental voucher or certificate program (i.e., the initial HA never made HAP payments on behalf of the family either in its own jurisdiction or through the billing procedure) prior to being absorbed by the receiving HA.

Effective immediately, HUD field offices must not approve (1) HA budget revisions that increase the total number of budgeted units unless the increase is due to the approval of new incremental units, or (2) revised or new HA payment schedules that contain any monthly payment amount in excess of one-twelfth of the annual budget amount approved by HUD on line 26 of the latest Form HUD-52673. Any exceptions to this policy must be authorized by the field office contact person in the Finance Division of the Office of Rental Assistance in Headquarters.

HAs must record the date the certificate or voucher became available and the date it was reissued to a family in order to document compliance with the law. The HA must record this information until October 1, 1996, and must maintain these records to document the reduction of the annual contributions during the year end settlement process. HAs must make these records available to HUD or the independent auditor upon request.

(B) FEDERAL PREFERENCES SUSPENSION

- (1) Description: Sections 402(d)(2) and (3) of the Continuing Resolution eliminates federal preferences for the certificate, voucher, and moderate rehabilitation programs for fiscal year 1996 by amending Section 8(d)(1)(A) and 8(o)(3)(B) of the U.S. Housing Act of 1937. This amendment therefore also eliminates the right of public housing residents to retain federal preference status on the Section 8 tenant-based waiting lists during fiscal year 1996.
- (2) Result: For purposes of selecting families to be assisted under the certificate, voucher, and moderate rehabilitation programs during fiscal year 1996, the HA may establish, after public notice and an opportunity for public comment, a written system of preferences for selection that is not inconsistent with the comprehensive housing affordability strategy (CHAS) of either the State or the local general government for the HA jurisdiction. The 10 percent (tenant-based) and 30 percent (project-based) limits on local preference admissions are inapplicable for fiscal year 1996 since these requirements are part of the suspended statutory federal preference system.
- (3) HA Action: Effective January 26, 1996 (the enactment date of the Continuing Resolution), HAs are no longer required to issue tenant-based certificates and vouchers or refer families to vacant moderate rehabilitation and PBC units based on the federal preference system. In addition, HAs are no longer required to provide public or Indian housing residents a selection preference based on their prior federal preference status.

HAs should make a determination of what, if any, changes in HA selection preferences should be implemented.

The HA's participant selection policies must be consistent with the following:

- o Section 982.204(d) is still applicable. For admission to the tenant-based programs, the order of admission from the waiting list must not be based on family size or on the family unit size for which the family qualifies under the HA subsidy standards.
- o Any residency preference must be approved by the Department in accordance with §982.208. If the HA has already received HUD approval for a residency preference it wishes to continue using, it is not necessary for HUD to reapprove the residency preference.
- o The suspension of the federal preferences does not affect the statutory admissions preference of the elderly, disabled, or displaced over other singles set forth in §982.207(d) of the program regulations. The HA must give preference to a family (a) whose sole member is a displaced person or (b) whose head or spouse or sole member is an elderly person or a disabled person over a single person that is not elderly, disabled, or displaced.
- o The suspension of the federal preferences does not affect the prohibited admissions criteria set forth in §982.202(b) of the program regulations.

If the HA wishes to change its current preference system, the HA must give notice and opportunity for public comment before issuing certificates and vouchers under the new participant selection system. This requirement is applicable even if the new system is simply based on the date and time of application or random selection. Public notice and opportunity to comment is not necessary for HAs to continue their current participant selection system (including the federal preferences). However, if the HA wishes to drop the former federal preferences and just retain the current local preferences, or wishes to lower the percentage of federal preference admissions, the HA is required to give notice and opportunity for public comment.

The suspension of the federal preferences for FY 1996 results in the removal of the statutory prohibition against granting preferences to applicants who have been evicted from housing assisted under a 1937 Housing Act program during the past three years because of drug-related criminal activity (§982.207(f)). Although no longer required under the statute, HUD urges HAs to either continue this preference denial or adopt a policy of rejecting an application from a family because of

drug-related criminal activity or violent criminal activity, as authorized under §982.552 and §982.553 of the regulations.

The administrative plan must be revised and adopted by the HA Board of Commissioners or other authorized HA officials before a new participant selection system is implemented. The HA should provide appropriate notification to applicants and other interested persons of the implementation of a new participant selection system. The HA may exercise reasonable judgement in determining who should be notified and the form of notification (e.g., newspaper publication or notice to applicants).

Families that were issued certificates or vouchers based on their status as federal preference holders who are in the process of their search are not affected by this change. The Department does not intend for these families to lose their certificates or vouchers because of the federal preferences changes described in this notice.

Unless the federal preference suspension is extended by additional legislation, federal preferences will be required for admissions beginning on October 1, 1996.

Indian housing authorities are authorized to continue to follow the guidance contained in Notice PIH 96-1, "Reissuance of Notice PIH 94-25 (IHA), Native American Preference in Admissions to Assisted Housing Programs," issued January 22, 1996.

(C) **ADMINISTRATIVE FEES**

- (1) Description: Section 403(b) of the Continuing Resolution provides that the fee for each month for which a dwelling unit is covered by a HAP contract under the certificate, voucher or moderate rehabilitation programs shall be equal to the monthly fee payable for FY 1995.
- (2) Result: The law effectively freezes the amount of the administrative fee that the HA may receive under the certificate, voucher, and moderate rehabilitation programs for FY 1996 at FY 1995 levels.
- (3) HA Action: During federal FY 1996 (October 1, 1995 through September 30, 1996), HAs will earn an administrative fee for certificates and vouchers based on the procedures and per unit amounts in the administrative fee notice published in the Federal Register on January 24, 1995. The monthly fee for HA-owned units will be three percent of the 2-bedroom Fair Market Rents published on September 28, 1994. The monthly fee for moderate rehabilitation units shall be 7.65 percent of

the 2-bedroom Fair Market Rents published in the Federal Register on September 28, 1994. Any administrative fee overadvances or underpayments will be accommodated through the year-end settlement process.

Note that the administrative fee calculation is not affected by the subsequent FY 1995 Fair Market Rent Schedule that was published in the Federal Register on August 15, 1995, or the Final FY 1996 Fair Market Rents that were published in the Federal Register on September 18, 1995.

(D) **MINIMUM TENANT RENTS**

(1) Description: Section 402(a)(1) and (2) of the Continuing Resolution requires that families assisted under the certificate, voucher, and moderate rehabilitation programs pay a monthly "minimum rent" of not less than \$25 for fiscal year 1996. The law further provides HA discretion to increase the monthly "minimum rent" to up to \$50.

(2) Result: The total tenant payment (TTP) for families participating in the certificate and moderate rehabilitation programs must be at least \$25. The HA may opt to set this minimum TTP amount anywhere from \$25 to \$50. Accordingly, the TTP in the certificate and moderate rehabilitation programs must be the greatest of:

- o 30 percent of family monthly adjusted income;
- o 10 percent of family monthly income;
- o welfare rent in as-paid states; or
- o \$25 or a higher minimum amount set by the HA up to \$50.

It is possible for certificate and moderate rehabilitation families to still qualify for a utility reimbursement despite the change in the law. For instance, if a certificate family's TTP is the minimum \$25 and the HA's utility allowance for the size and type unit the family has selected is \$60, the family would receive a utility reimbursement of \$35 for tenant-purchased utilities. Basing the minimum rent on TTP and using this kind of calculation is necessary to assure equal treatment of all participants, irrespective of whether utilities costs are paid by the owner or paid separately by the family.

For the voucher program, the minimum amount of the family contribution must be at least \$25. The HA may set this minimum amount anywhere from \$25 to \$50. Voucher families will pay the owner the difference between the monthly rent to owner and the housing assistance payment.

Voucher families will also pay the cost of tenant-furnished utilities under the lease. A worksheet for calculating voucher housing assistance payments and tenant rent is attached.

- (3) HA Action: The HA must decide whether to increase the minimum certificate and moderate rehabilitation total tenant payment and minimum voucher family contribution above \$25, up to \$50. If the HA chooses to increase the minimum rent over \$25, the administrative plan must be revised and adopted by the HA Board of Commissioners or other authorized HA officials. The administrative plan revision must include a statement that the change is only effective through September 30, 1996, unless the minimum rent authorization is extended through subsequent legislative action. The HA must notify the HUD field office immediately if they elect to implement a minimum rent over \$25. The Department urges HAs to carefully consider the potential impact on their families when deciding whether to increase the minimum rent above \$25.

The HA must immediately charge the minimum rent for all applicants. As soon as practicable, but no later than April 1, 1996, the HA must charge the minimum rent prospectively for all other participants. The HA must provide adequate notice to the owner and the tenant advising them of any changes in the housing assistance payment amount and the tenant's rent. The notice must state that the minimum rents are only effective through September 30, 1995, unless the minimum rent authorization is extended through subsequent legislative action.

Until otherwise notified, the amount on line j(3) of the attached voucher worksheet should be inserted on line 22j of Form HUD-50058 and the higher of (1) any welfare rent or (2) the \$25 minimum rent or higher amount set by HA up to \$50 should be inserted on line 13 of Form HUD-50058.

3. **Authorizing Legislative Changes**: The January 26, 1996 Continuing Resolution provisions discussed in this notice also are being considered by the authorizing committees in both houses of Congress. Therefore, it is likely that some or all of these temporary statutory changes will be made permanent when new housing legislation is enacted.

Kevin Emanuel Marchman, Deputy Assistant
Secretary for Distressed and Troubled
Housing Recovery

Attachment

SECTION 8 VOUCHER PROGRAM MINIMUM RENT CALCULATION WORKSHEET

- a. Payment Standard
- b. 30% of Adjusted Monthly Income (i.e., Adjusted Annual Income divided by 40)
- c. Maximum Subsidy: a minus b
- d. (Sec. 236 & FmHA Sec. 515 Only) Market Rent
- e. (Sec. 236 & FmHA Sec. 515 Only) Basic Rent
- f. Utility Allowance, if any
- g. Rent to Owner. *If Sec. 236 or FmHA Sec. 515, take lower of a or d, but not less than e.*
- h. Gross Rent of unit: f plus g
- i. Gross Rent less Maximum Subsidy: h minus c
- j(1) 10% of Total Monthly Income (i.e., Total Annual Income divided by 120)
- j(2) \$25 or higher amount set by HA up to \$50
- j(3) Minimum Family Contribution: higher of j(1) or j(2)
- k. Total Family Contribution: higher of i or j(3)
- l. Gross Rent less Family Contribution: h minus k
- m. Total Voucher Subsidy: lower of c or l
- n. HAP to Owner: lower of g or m
- o. Family Rent to Owner: g minus n
- p. Utility Reimbursement to Family: m minus n

Note: Until otherwise notified, the amount on line j(3) above should be inserted on line 22j of Form HUD-50058.