



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

---

**Special Attention of:**  
Section 8 Public Housing Agencies;  
Public Housing Office Directors, and  
Senior Community Builders.

**Notice PIH 98-64(HA)**

Issued: December 18, 1998

Expires: September 30, 1999

---

Cross References:

---

**Subject: HUD's FY 1999 Appropriations Act -  
Section 8 Tenant-based Assistance Program  
Statutory Provisions**

1. **Purpose.** This notice provides information on several significant statutory changes in the Section 8 certificate, voucher, and moderate rehabilitation programs resulting from enactment of the Department's FY 1999 Appropriations Act (P.L. 105-276), which was signed into law on October 21, 1998.

Title V of the Appropriations Act authorizes a new voucher program. This notice confirms that until HUD implements the legislation that authorizes the new voucher program (the merged tenant-based program), all Section 8 tenant-based assistance remains subject to current regulatory requirements.

2. **Background.** Title V of the FY 1999 Appropriations Act for the Department of Housing and Urban Development contains the Quality Housing and Work Responsibility Act of 1998 (the QHWR Act). Both the Appropriations Act and the QHWR Act contain significant changes for HA administered Section 8 programs (including the creation of a new voucher program that will eventually replace the existing certificate and voucher programs). Some of these changes are effective and self-implementing upon the date of enactment, others are effective and self-implementing 60 days from that date, and many others must be implemented by rulemaking or other HUD notice.

The law also makes significant changes affecting the public housing program and other HUD programs. The Department is preparing a Federal Register notice that comprehensively identifies all of the major changes in the Act that are effective and provides initial

implementation guidance for each provision. The Department is issuing this notice in advance of the Federal Register notice to provide information on the most immediate and pressing Section 8 tenant-based program issues.

This notice covers the following Section 8 tenant-based topics - (1) the authorization of the new voucher program and the immediate impact on the current certificate and voucher programs; (2) the discontinuation of the three month reissuance delay for turnover certificates and vouchers; (3) the permanent repeal of the Federal preferences; (4) the elimination of the "shopping incentive" for certain voucher families in FY 1999; and (5) the continuation of several provisions mandated in the FY 1996, 1997, and 1998 Appropriations Acts.

**3. Summary of Covered Section 8 Tenant-based Topics.**

1. Merger of the existing certificate and voucher programs into a single Section 8 tenant-based program -- no immediate effect on current certificates and vouchers.

The most significant change resulting from the new law for the Section 8 programs is that Section 8(o) of the United States Housing Act of 1937 is amended to create a new tenant-based assistance program. This "new" voucher program will eventually replace the present certificate and voucher programs. The merger of the existing certificate and voucher programs into a single tenant-based program will ultimately simplify and facilitate program administration.

The new voucher program will be implemented after HUD seeks recommendations from organizations representing HAs, owners and management agents, Section 8 participants and legal services. Eventually the assistance currently under the old voucher and certificate programs will be folded into the new voucher program.

In the meantime, HAs are to continue to administer their existing certificate and voucher programs in accordance with current program regulations and requirements until otherwise notified by HUD. At this time, HAs are not authorized to implement new program requirements under the new Section 8(o) program. This includes assistance for both families currently under lease and families about to be issued certificates and vouchers for the first time through turnover or the allocation of special purpose vouchers or certificates.

2. End of the three-month delay on reissuance of turnover certificates and vouchers. The FY 1999 appropriations law does not continue the mandatory three-month delay on reissuing turnover certificates and vouchers. This statutory requirement originated in FY 1996 and was subsequently continued through FY 1997 and FY 1998 by HUD's Appropriations Acts. Since the FY 1999 Appropriations Act drops the three-month delay provision, HAs may immediately reissue all authorized turnover certificates and vouchers if the HA has sufficient annual budget authority. Neither turnover certificates and vouchers currently being held nor any future turnover certificates and vouchers are subject to any statutory reissuance delay.
  
3. Repeal of Federal Preferences. Effective upon the date of enactment (October 21, 1998), Section 514 of the QHWR Act amends subparagraph (A) of section 8(d)(1) of the U.S. Housing Act of 1937 to permanently repeal the requirement to use federal preferences in the selection of families in the Section 8 certificate, voucher, and moderate rehabilitation programs. The use of the federal selection preference requirement had been temporarily suspended since FY 1996.

Sections 514 and 545 of the QHWR Act provides that the HA may establish local preferences, consistent with the public housing agency plan that is submitted by the public housing agency under 5(A) of the United States Housing Act of 1937, as amended by Section 511 of the Quality Housing and Work Responsibility Act of 1998. This plan is a new statutory requirement under which the HA must submit a local plan that includes a statement of HA admission policies, including any preferences. Since HUD has not yet implemented the HA plan requirement, at this time HAs are not required to adopt admissions policies in accordance with this plan. Therefore, HAs may continue to follow their existing preference system in the HA administrative plan without taking any immediate action.

Since the suspension of the federal preferences was first put into effect in FY 1996, HAs have been permitted to establish, after public notice and an opportunity for public comment, a written system of preferences for selecting families to be assisted under the certificate, voucher, and moderate rehabilitation programs. Public notice and comment are no longer required by law. HAs may continue to amend or change their local preference system for the Section 8 tenant-based and moderate rehabilitation programs. The HA 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.

HAs are reminded other regulatory and statutory requirements still apply to the admission of families to the Section 8 tenant-based programs, including 24 CFR §982.202(b), which covers prohibited admission criteria; and 24 CFR §982.204(d), which prohibits the order of admission from the waiting list on family and unit size. HAs should also keep in mind that the HA selection policy resulting from their local preference system must be consistent with the 5(A) plan developed by the agency once those requirements are implemented. HUD will issue detailed guidance on the public housing plan requirements at a later date.

The Act establishes new income targeting requirements for the Section 8 tenant-based programs beginning in FY 1999. The law provides that not less than 75 percent of new admissions to the HA's tenant-based program must have incomes at or below 30 percent of the area median income. All admissions must continue to comply with the income eligibility requirements at §982.201(b). The Department will provide detailed guidance on this new requirement shortly.

4. Elimination of the Shopping Incentive for Voucher Families who Remain in the same unit upon initial receipt of assistance. Effective December 20, 1998, Section 209 amends Section 8(o) of the United States Housing Act of 1937 (42 U.S.C. 1437f(o)) to eliminate the shopping incentive for any newly admitted family who decides to use the voucher in the unit or the same complex in which they are presently living. (The shopping incentive is the benefit the voucher family receives if the gross rent of the unit is less than the HA payment standard.) The change in the law provides that in cases where families being admitted to the voucher program (i.e., not current participants) remain in the same unit or complex and the gross rent does not exceed the payment standard, the monthly assistance payment shall be the amount by which the gross rent exceeds the greater of 30 percent of adjusted monthly income, 10 percent of the family's monthly income, or any other minimum rent under Federal law. The Department will issue further implementation guidance on this subject in the near future.
5. Enactment of other Section 8 Tenant-based Administrative Provisions found in FY 96, 97, and 98 Appropriations Acts.
  - (A) Permanent Repeal of the "take one, take all" provision. Section 554 of the Act strikes Section 8(t) of the Housing Act of 1937 and permanently eliminates the so called "take-one, take all" provision in the Section 8 tenant-based programs. Section 8(t) had required that an owner who entered into a Section 8 housing assistance payments

contract on behalf of any tenant in a multifamily housing project could not refuse to lease certain units in all multifamily projects of the owner, if the proximate cause of the refusal was that the family was a certificate or voucher holder. This provision had been temporarily suspended since FY 1996 and requires no HA action.

- (B) Permanent Elimination of the "endless lease" term. Section 549 makes the elimination of the "endless lease" term permanent for the Section 8 tenant-based programs. The legislation that explicitly eliminates the endless lease term has been applicable in the Section 8 tenant-based programs on a temporary basis since FY 1996 and is now permanent law. The current program regulation is consistent with the permanent law.

The permanent enactment of the current lease term policy means that all current and future tenant-based leases may be terminated without cause at the end of the initial term and at the end of any term extension. Except as required by State or local law, an owner participating in the tenant-based programs may terminate tenancy without cause at the end of the initial lease term or at the end of a successive definite term. For instance, if the lease provides for automatic renewal on a month-to-month basis, the owner may terminate tenancy without cause at the end of each month. During the course of each month, however, the owner may only terminate the tenancy if the owner has cause under the grounds for termination of tenancy stated in the lease addendum.

- (C) Permanent Elimination of the Owner Termination Notice to HUD in the Section 8 tenant-based programs. Section 549 of the Act also permanently eliminates the old requirement that the owner notify HUD and the family not less than 90 calendar days before the termination of a tenant-based HAP contract because of an opt-out or expiration. This notification requirement had been temporarily suspended since FY 1996 and does not require any additional HA action.

In the current regulations, §982.455(b) is no longer in effect. The regulation explicitly states it is intended to implement the now non-existent statutory requirement and is therefore inapplicable.

4. **Subsequent Guidance on other Section 8 topics.** The Department will issue separate guidance on other Section 8 topics including the new income targeting requirements for the tenant-based programs, the Section 8 homeownership option for HAs, and the FY 99 increase in administrative fees in the near future.
  
5. **Further Information.** Any questions regarding this notice should be addressed to the Real Estate and Housing Performance Division, Office of Public and Assisted Housing Delivery, at (202) 708-0477.

/s/

---

Harold Lucas  
Assistant Secretary for  
Public and Indian Housing