



U.S. Department of Housing and  
Urban Development

Office of Public and Indian

Housing

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

**Notice PIH 96-23 (HA)**

Issued: May 1, 1996

Expires: September 30, 1996

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Cross References:

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**Subject: Omnibus Consolidated Rescissions and Appropriations Act of 1996 Statutory Changes Affecting the Administration of the Section 8 Certificate, Voucher, and Moderate Rehabilitation Programs**

**1. Purpose and Applicability of Notice PIH 96-7 (HA) :** This notice provides implementing guidance for three statutory changes to the Section 8 certificate, voucher, and moderate rehabilitation programs resulting from the Omnibus Consolidated Rescissions and Appropriations Act of 1996, P.L. 104-134, 110 Stat. 1321, approved April 26, 1996.

Please note that the FY 1996 Appropriations Act does not modify or negate the January 26, 1996 Continuing Resolution provisions concerning the mandatory delay in reissuing turnover certificates and vouchers, optional suspension of the federal preferences, and FY 1996 administrative fees. Notice PIH 96-7 (HA) issued on February 13, 1996 is still applicable for these three areas. The FY 1996 Appropriations Act does, however, modify the January 26, 1996 Continuing Resolution provisions concerning mandatory minimum rents. Specifically, the FY 1996 Appropriations Act provides that HUD or an HA may waive the minimum rent requirement to provide for a transitional period up to three months for any family. Additional information on this subject will be provided in a subsequent HUD notice.

2. **Summary of the Omnibus Consolidated Rescissions and Appropriations Act of 1996 Statutory Changes Affecting the Section 8 Certificate, Voucher, and Moderate Rehabilitation Programs:**

(A) **"TAKE-ONE, TAKE-ALL" SUSPENSION**

- (1) Description: Section 203(a) of the Appropriations Act suspends Section 8(t) of the U.S. Housing Act of 1937 for federal FY 1996. Section 8(t) 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.
- (2) Result: The Section 8(t) "take-one, take-all" statutory provision is suspended for federal FY 1996 (October 1, 1995 through September 30, 1996).
- (3) HA Action: The HA should review HA outreach to owners and HA informational packets for owners to ensure any statements about the Section 8(t) "take-one, take-all" requirement are revised to reflect the suspension of Section 8(t) for FY 1996. The HA should make a concerted effort to inform the prospective owner community of this change, particularly in marketing the programs to owners with units in low-poverty areas.

(B) **"ENDLESS LEASE" ELIMINATION**

- (1) Description: Section 203(c) of the Appropriations Act amends Sections 8(d)(1)(B)(ii) and (iii) of the U.S. Housing Act of 1937 for federal FY 1996. Section 8(d)(1)(B)(ii) provides that the owner may not terminate a Section 8 tenancy except for serious or repeated lease violations, for violation of applicable Federal, State, or local law, or for other good cause. Section 8(d)(1)(B)(iii) provides that certain criminal activity is grounds for the tenancy termination. The Appropriations Act amends the law to confirm that the above cited statutory requirements for termination of tenancy only apply to a termination that occurs "during the term of the lease."
- (2) Result for the tenant-based certificate and voucher programs: This amendment eliminates the "endless lease" disincentive to owner participation. In accordance with the law, 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.

Section 982.309 of the conforming rule (effective October 2, 1995) for the tenant-based certificate and voucher programs provides that the initial term of the lease must be for at least one year and the lease must provide for automatic renewal after the initial term of the lease. The lease may provide either for automatic renewal for successive definite terms (e.g., month-to-month or year-to-year) or for an automatic indefinite extension of the lease term. The conforming rule also provides that the statutory grounds for termination of tenancy apply to a termination of tenancy "during the term of the lease" (§982.310(a)). Consistent with the legislative direction contained in the Appropriations Act, HUD is eliminating the "endless lease" for all tenant-based certificate and voucher units. The conforming rule provides the regulatory authority for this action.

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.

If the owner's lease provides for an automatic indefinite extension of the lease after the initial term (e.g., does not provide for a month-to-month or year-to-year extension), the owner may only terminate the tenancy after the initial term for cause. If an owner with a lease with a successive indefinite term wants to switch to a lease for successive definite terms, the owner may offer the family a new or revised lease in accordance with §982.309(e). The tenant's refusal to accept the new or revised lease may be other good cause for eviction.

Result for the project-based certificate (PBC) and moderate rehabilitation programs: There are no plans to revise the regulatory termination of tenancy provisions for the PBC and moderate rehabilitation programs.

- (3) HA Action: HAs are required to use the revised tenant-based certificate and voucher lease addenda (dated March 1996) attached to this notice for leases executed after receipt of this notice. Section 9.a of the old rental certificate lease addendum and Section 10.a of the old rental voucher lease addendum were revised to clarify that the required owner grounds for termination of tenancy only refer to terminations that occur during the term of the lease.

HAs should advise owners currently participating in the tenant-based certificate and voucher programs that the "endless lease" requirement has been eliminated and, unless prohibited by State or local law, owners may terminate tenancy without cause at the end of the initial lease term or at the end of a successive definite term as provided by the lease (e.g., year-to-year or month-to-month). It is noted that elimination of the "endless lease" is not dependent on execution of the attached lease addenda.

The HA should review HA owner outreach efforts and HA owner informational packets to ensure any materials pertaining to the "endless lease" are eliminated.

**(C) SUSPENSION OF OWNER TERMINATION NOTICES TO HUD**

- (1) Description: Section 203(b) of the Appropriations Act amends Section 8(c)(9) of the 1937 U.S. Housing Act so that the provisions do not apply to HAP contracts under the certificate and voucher program for federal FY 1996. In order to comply with the law, an owner was required to provide written notice to the HUD field office and the family not less than 90 calendar days before the termination of a tenant-based HAP contract (or one year before termination of a project-based HAP contract) because of an opt-out or expiration. (Program regulations also required that a copy of this notice be provided to the HA.)
- (2) Result: For federal FY 1996 (October 1, 1995 through September 30, 1996), Sections 8(c)(9) and (10) do not apply to the tenant-based certificate and voucher programs or the PBC program. Owners participating in these three programs are not required to provide the statutory 90 day or one year written termination notice to HUD, the family, and the HA before terminating tenancy for a business or economic reason or because the HAP contract has expired.

Section 982.455(b) of the certificate and voucher regulations explicitly implements the notice requirements of Sections 8(c)(9) and (10). By virtue of the Appropriations Act, these notice requirements are not applicable in federal FY 96. Therefore, the regulations at §982.455(b) are not applicable for federal FY 96. In the certificate and voucher lease addenda attached to this notice, Section 10.c of the old rental certificate lease addendum and Section 11.c of the old rental voucher lease addendum were deleted.

Suspension of these statutory owner termination notice requirements for the certificate and voucher programs do not affect other termination notices required by the lease or State or local law.

The statutory one year owner termination notice requirement still applies to owners participating in the moderate rehabilitation program.

- (3) HA Action: HAs are required to use the revised tenant-based certificate and voucher lease addenda (dated March 1996) attached to this notice for leases executed after receipt of this notice.

HAs should ensure that potential owners concerned about the subject 90 day and one year owner termination notices are made aware that the requirement has been suspended. The HA should review HA owner outreach efforts and HA owner informational packets to ensure any materials pertaining to the statutory owner termination notice are revised to reflect the suspension of this requirement for federal FY 1996.

HAs should also advise participating owners in the certificate and voucher programs that they are not required to give the subject 90 day and one year owner termination notices to HUD, the family, and the HA for the remainder of federal FY 1996 (through September 30, 1996) to terminate tenancy for a business or economic reason. The suspension of the statutory termination notice applies to all participating owners, regardless of whether a new lease with the revised lease addendum attached to this notice is executed.

HAs advising owners regarding the owner notice termination suspension should emphasize that it is only applicable for terminations that occur in federal FY 1996. Therefore, if an owner participating in the tenant-based programs anticipates terminating a tenancy within the first 90 days of FY 1997 (between October 1 and December 31, 1996) for a reason that would trigger the statutory owner termination notice, the owner should decide whether it is advisable to provide the 90 day notice during federal FY 1996, notwithstanding the suspension of the owner notice requirement during federal FY 1996. PBC owners should be advised of the similar complication regarding the timing of the one year owner termination notice.

3. **Authorizing Legislative Changes:** The Omnibus Consolidated Rescissions and Appropriations Act of 1996 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 the temporary statutory changes will be made permanent when new housing legislation is enacted.

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