

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

24 CFR Parts 882, 887, 982, and 983

[Docket No. R-95-1628; FR-2294-F-02]

RIN 2577-AB14

Section 8 Certificate and Voucher Programs Conforming Rule

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Final rule.

SUMMARY: This rule combines and conforms rules for tenant-based rental assistance under the rental certificate and the rental voucher programs. This rule also amends requirements for project-based assistance under the rental certificate program.

EFFECTIVE DATE: Information collections in this rule must be reviewed by the Office of Management and Budget under the Paperwork Reduction Act of 1980. Upon OMB approval of the information collections, HUD will publish a notice in the **Federal Register** announcing the effective date of the rule and adding the OMB approved control numbers. It is anticipated that this OMB approval process will be concluded, and that the rule will be made effective, by 60 days after the date of publication of this rule.

FOR FURTHER INFORMATION CONTACT: Madeline Hastings, Director, Rental Assistance Division, Room 4204. Telephone numbers (202) 708-2841 (voice); (202) 708-0850 (TDD). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The information collection requirements contained in this rule have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501-3520). See the Notice of Information Collections published elsewhere in today's issue of the **Federal Register**, inviting public comment on the estimated burden on the public associated with the rule. (Of course, as part of this process, it is possible that there will be changes made to the information collections.) No person may be subjected to a penalty for failure to comply with these information collection requirements until they have been approved and assigned an OMB control number, to be announced by separate notice in the **Federal Register**.

Discussion

History and Scope of Rule

On February 24, 1993 HUD published a comprehensive proposed rule to combine and conform the rules for tenant-based Section 8 rental assistance under the certificate and voucher programs. (58 FR 11292) The proposed rule would also have amended requirements for project-based assistance under the Section 8 certificate program.

HUD received approximately 400 comments on the proposed rule that generally approve the broad purpose of the rule. Comments object to particular features of the rule. Many of the objections pertain to provisions implementing statutory requirements, particularly the requirement that an owner notify HUD when terminating tenancy for a business or economic reason, and the prohibition of discrimination by multifamily owners against certificate or voucher holders.

On July 18, 1994 HUD published the first portion of the comprehensive rule for the tenant-based program: The final rule on unified admission procedures. (59 FR 36662) At that time, part 982, subparts A and E were added. Today's final rule covers other aspects of the comprehensive rule for the tenant-based programs, adding 8 subparts and reserving 3 other subparts. The rule also contains the regulations for the project-based certificate program, included in part 983.

Today's final rule does not include requirements concerning:

- Calculation of the rent and housing assistance payment for the tenant or project-based programs.
- “Special housing types”: program variants to meet special housing needs, such as congregate housing, shared housing, single room occupancy housing and independent group residences.

HUD will issue a final rule on these subjects. Until the final rule is issued, these subjects will be governed by requirements in the existing program rules. The final rule may also include further revisions of program admission procedures, or subjects in today's final rule.

I. Requirements and Plans for HA Administration of Program

A. Demonstrating HA Authority and Jurisdiction

The rule provides that an HA must furnish HUD a legal opinion on the HA's jurisdiction and authority to administer the tenant-based programs. (§ 982.51) A comment suggests that

agencies already participating in the program should be exempt from this requirement.

The new rule does not add a new requirement. Since the beginning of the tenant-based programs, agencies have had to provide evidence of the HA authority and of the area where the HA was authorized to operate the programs under State and local law. A correct determination of the HA jurisdiction has important consequences for day to day administration of the program by the HA. Families may move anywhere in the HA jurisdiction, and outside the HA jurisdiction, under portability procedures. The new rule does not automatically require any new submission by the HA if the HA legal opinion is already on file with HUD, and gives HUD the necessary evidence of the HA jurisdiction and operating area. Of course, the HA must furnish new information if there is a change in State law or legal authority, such as a court decision determining the HA jurisdiction.

Under the old program regulations and handbook, the HA was required to show the governmental jurisdiction in which the HA was “not legally barred” by State law from entering and administering assistance contracts for program participants. This formulation emphasized the freedom of the participant to lease a unit anywhere the HA was not legally prohibited from administering assistance. Since the beginning of portability, a participant family could move outside the jurisdiction of the original HA (for non-resident applicants, portability applies after the first year in the program). In the final rule, the term “jurisdiction” is defined as the area where the HA is authorized to administer the program under State or local law. (§ 982.4)

B. HA Local Policies

The HA must adopt a plan that states HA local policies for running the tenant-based program. Under the proposed rule, the HA adopted local policies governing all major aspects of HA program administration. In accordance with past practice, the HA would have been required to adopt both an “administrative plan” for general program administration, and a separate “equal opportunity plan” for compliance with fair housing requirements. The proposed rule provided that the HA administrative plan and equal opportunity plan be approved in advance by HUD.

Comments largely commend HUD for allowing HAs broad discretion to adopt local policies for operation of the tenant-based program. HUD should