

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

[Docket No. FR-4434-N-01]

**Quality Housing and Work Responsibility Act of 1998; Initial Guidance**

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

**ACTION:** Notice.

**SUMMARY:** On October 21, 1998, President Clinton signed into law the Quality Housing and Work Responsibility Act of 1998. This new statute, part of HUD's fiscal year 1999 HUD Appropriations Act, embodies many of the reforms of the HUD 2020 Management Reform Plan that are directed at revitalizing and improving HUD's public housing and Section 8 assistance programs. The purpose of this Notice is to advise the public of those public and assisted housing statutory provisions that are effective immediately and action that may or should be taken now. This Notice also provides guidance on certain other provisions in the FY 1999 HUD Appropriations Act that impact public housing programs and Section 8 assistance.

**FOR FURTHER INFORMATION CONTACT:** For further information regarding public housing and the Section 8 certificate, voucher and moderate rehabilitation programs contact Rod Solomon, Senior Director for Policy and Legislation, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW, Room 4116, Washington, DC, 20410; telephone (202) 708-0713 (this is not a toll-free number). For further information regarding other Section 8 programs contact Willie Spearmon, Director, Office of Multifamily Business Products; telephone (202) 708-3000. Persons with hearing or speech impairments may access that number via TTY by calling the Federal Information Relay Service at (800) 877-8339. Program specialists for more specific HUD program areas are listed on the HUD web page at <http://hudweb.hud.gov/offices.html>.

**SUPPLEMENTARY INFORMATION:**

**Introduction**

On October 21, 1998, President Clinton signed into law HUD's fiscal year (FY) 1999 Appropriations Act, which includes the Quality Housing and Work Responsibility Act of 1998 (title V of the FY 1999 HUD Appropriations Act) (QHWRA). The FY 1999 HUD

Appropriations Act and the QHWRA (Pub.L. 105-276, 112 Stat. 2461), together, enact landmark measures that include transforming public housing, deconcentrating poverty, creating additional housing assistance vouchers, merging the Section 8 certificate and voucher programs, and enabling more families to obtain FHA mortgages to become homeowners. Of particular importance to HUD and its public housing and Section 8 program partners are the reforms made by the QHWRA. The QHWRA makes significant and numerous amendments to the United States Housing Act of 1937 (USHA). It is important to note, however, that the USHA remains in effect except as amended by the QHWRA.

The QHWRA constitutes a substantial overhaul of HUD's public housing and Section 8 assistance programs. The QHWRA enacts into law many of the reforms originally proposed in Secretary Andrew Cuomo's HUD 2020 Management Reform Plan, HUD's public housing bill and Congressional bills that are directed at revitalizing and improving HUD's public housing and Section 8 tenant-based programs. For public housing, the HUD 2020 Management Reform Plan provides for consolidation of public housing programs, decreased regulation of well-managed public housing agencies (PHAs), higher performance standards for all PHAs, and specific action to address PHAs with troubled management. The QHWRA adopts these reforms, and enacts additional measures to protect access to housing assistance for the poorest families, deconcentrate poverty in public housing, support families making the transition from welfare to work, and transform the public housing stock and the Section 8 tenant-based assistance programs.

The purposes of the QHWRA, as stated in section 502(b) of the QHWRA, are as follows:

The purpose of this [the QHWRA] is to promote homes that are affordable to low-income families in safe and healthy environments, and thereby contribute to the supply of affordable housing, by—

- (1) Deregulating and decontrolling public housing agencies, thereby enabling them to perform as property and asset managers;
- (2) Providing for more flexible use of Federal assistance to public housing agencies, allowing the authorities to leverage and combine assistance amounts with amounts obtained from other sources;
- (3) Facilitating mixed income communities and decreasing concentrations of poverty in public housing;
- (4) Increasing accountability and rewarding effective management of public housing agencies;

(5) Creating incentives and economic opportunities for residents of dwelling units assisted by public housing agencies to work, become self-sufficient, and transition out of public housing and federally assisted dwelling units;

(6) Consolidating the voucher and certificate programs for rental assistance under section 8 of the United States Housing Act of 1937 into a single market-driven program that will assist in making tenant-based rental assistance under such section more successful at helping low-income families obtain affordable housing and will increase housing choice for low-income families; and

(7) Remediating the problems of troubled public housing agencies and replacing or revitalizing severely distressed public housing projects.

**Implementation of the QHWRA**

The QHWRA makes several of its provisions effective upon enactment (October 21, 1998). Other provisions of the QHWRA will take effect on various dates between October 21, 1998, the enactment date of the QHWRA, and October 1, 1999, the beginning of Federal fiscal year 2000. (A Federal fiscal year runs from October 1st to September 30th). The majority of the provisions of the QHWRA, however, will take effect on October 1, 1999. Provisions of the QHWRA which are effective upon enactment and which conflict with existing regulations prevail over the regulations unless HUD has specifically stated otherwise, in this Notice or elsewhere. In addition to specifying the dates by which various statutory sections will take effect, the QHWRA also specifies the method of implementation for many of its provisions. These methods include notice and comment rulemaking (proposed rulemaking), interim rulemaking, negotiated rulemaking, or issuance by direct notice or **Federal Register** notice.

The purpose of this Notice is to advise HUD's public housing and Section 8 program partners, as well as members of the public, of certain provisions of the QHWRA and the FY 1999 HUD Appropriations Act that are effective immediately and to provide guidance with respect to actions that may now be taken or should be taken by PHAs and owners of Section 8 assisted projects. This Notice does not provide a section-by-section analysis of the QHWRA, nor does it provide guidance on all sections. In this Notice, however, HUD has attempted to address those key statutory sections that are effective now, and which HUD believed would be helpful to PHAs and others to have early guidance. The statutory sections that are effective now and for which HUD is issuing initial guidance are covered in

Section I of this Notice. The majority of the statutory sections of the QHWRA that are not addressed in this Notice (1) require rulemaking by the QHWRA, (2) have been determined by HUD to be not immediately effective, or (3) need elaboration or interpretation, and therefore require rulemaking on the part of HUD or issuance of separate guidance that addresses in detail the subject matter of a particular statutory section. Section II of this Notice provides a list of those statutory provisions for which the QHWRA requires rulemaking for implementation or HUD has determined that rulemaking is necessary for implementation.

The guidance provided in this Notice, read together with reference to the statutory language, will better assist the reader in understanding (1) the changes that are being implemented in HUD's public housing and Section 8 programs, (2) the prompt action that HUD recommends be taken now or in the very near future, and (3) the reasons for any deferred action with respect to certain statutory provisions. Accordingly, the guidance in this Notice is complete only when read in conjunction with the statutory language. The contents of the QHWRA are available on the Internet by Thomas Legislative Information Service at <http://thomas.loc.gov> or by contacting HUD's Office of Public and Indian Housing or HUD's Office of Housing.

In addition to the guidance provided by this Notice, HUD staff, and specifically the staff in the Office of Public and Indian Housing at Headquarters and in the Field Offices, are ready to assist PHAs in understanding the provisions of the QHWRA and with carrying out their responsibilities under new provisions of the QHWRA. The Office of Public and Indian Housing has established a section of its web site that is devoted to providing additional information about the QHWRA and includes a detailed summary of the new law (please see <http://www.hud.gov/pih/legis/titlev.html>). HUD is committed to working closely with its public housing and Section 8 partners to see that the changes made by the QHWRA to HUD's public housing and Section 8 programs are successfully implemented and these programs are significantly improved with respect to the services and assistance they provide to low-income families.

#### **Other QHWRA Publications in Today's Federal Register**

Elsewhere in today's **Federal Register**, HUD is publishing:

(1) One of the most significant rules required by the QHWRA—the interim rule that would implement the Public Housing Agency Plan. This rulemaking is required by section 511 of the QHWRA.

(2) An Advance Notice of Proposed Rulemaking on HUD's public housing drug elimination program that solicits comments in advance of rulemaking on HUD's proposal to provide for formula funding of HUD's drug elimination grant funds.

(3) A notice on Section 8 renewals. Section 556 of the QHWRA added a new provision, section 8(dd) to the U.S. Housing Act of 1937. Section 8(dd) specifies the method for calculating the amount of assistance to be provided for renewal of all expiring tenant-based annual contributions contracts. PHAs were advised of this methodology for fiscal year 1999, by direct notice issued on December 31, 1998. Today's **Federal Register** on Section 8 renewals publishes this notice for the benefit of the public. The policy for Section 8 renewals for future years will be the subject of negotiated rulemaking for the development of final regulations.

#### **Nondiscrimination Requirements**

HUD's responsibilities and the responsibilities of its program partners, in implementing new programs and program changes covered by the QHWRA include (1) ensuring compliance with applicable nondiscrimination requirements, such as the Fair Housing Act, title VI of the Civil Rights Act of 1964, section 504 of the Rehabilitation Act of 1973, and Title II of the Americans with Disabilities Act, and (2) affirmatively furthering fair housing. These responsibilities are reiterated and reemphasized by amendments made by the QHWRA to the U.S. Housing Act of 1937 or to HUD's programs, generally.

#### **Section I. Statutory Provisions That Are Immediately Effective and Accompanying Guidance**

This section of the Notice lists those statutory provisions of both the FY 1999 HUD Appropriations Act and the QHWRA that are immediately effective and may require prompt action on the part of HUD's program partners now or in the very near future. HUD notes that in many cases the statutory provisions listed in this Section I may require conforming rulemaking at a later date; that is, rulemaking that updates HUD's regulations so that the regulations conform to statutory changes to the programs.

#### **A. FY 1999 HUD Appropriations Act**

*Elimination of Three-Month Delay on Reissuance of Section 8 Certificates and Vouchers.* The FY 1999 HUD Appropriations Act does not extend or continue the previous three month delay that was imposed on the reissuance of certificates and vouchers.

Action Guidance for the Section 8 Certificate and Voucher Program: Effective October 1, 1998, neither Section 8 certificates and vouchers currently being held nor any further turnover of Section 8 certificates and vouchers are subject to any statutory delay period on reissuance.

*Elimination of the Shopping Incentive for Voucher Families Who Remain in the Same Unit upon Initial Receipt of Assistance.* Section 209 of the FY 1999 HUD Appropriations Act eliminates the "shopping incentive" in the following situation involving admission to the Section 8 voucher program by a family:

(1) Who is admitted to the voucher program after December 20, 1998;

(2) Who remains in the same unit or complex; and

(3) Where the applicable payment standard exceeds the gross rent for the unit. (The applicable payment standards is the lower of the payment standard for the "family unit size" or the payment standard for the unit actually rented by the family.)

Therefore, the voucher program housing assistance payment for a "stayer admission" family who leases a unit with a gross rent (rent to owner plus the utility allowance) below the applicable payment standard for the family would be the amount by which the gross rent exceeds the greater of 30% of the family's monthly adjusted income, 10% of its monthly gross income, or the minimum rent.

Action Guidance for the Section 8 Voucher Program: This statutory provision is effective for all voucher Housing Assistance Payment (HAP) contracts for "stayer admissions" effective on or after December 20, 1998. HUD's Office of Public and Indian Housing (PIH) issued a notice of December 18, 1998, Notice PIH 98-64, which provides additional information on the statutory changes to the Section 8 voucher program. Additionally, at PIH's website, PIH provides information about HUD's Multifamily Tenant Characteristics System (MTCS). The January 1999 "MTCS News Flash" provides information on calculating the rent for voucher admissions and completing form HUD-50058. (Please see HUD's website at <http://www.hud.gov/pih/systems/mtcs/pihmtdcs.html>.) The payment standard

on line 12(j) of form HUD-50058 for these stayer admissions is the *lower* of (1) the PHA's payment standard for the family unit size, (2) the PHA's payment standard for the unit actually rented by the family, or (3) the unit's gross rent at the time of admission to the program.

Finally, it is noted that the section 209 amendment only applies until HUD issues regulations that make effective the voucher and certificate program merger legislation at section 545 of the QHWRA. These changes will eliminate the shopping incentive for all voucher families, not just for stayer admissions.

*Rent Payments of Families with Enhanced Tenant-Based Assistance in Conjunction with the Prepayment of Certain 236 and 221(d)(3) FHA Mortgages.* The FY 1999 HUD Appropriations Act, under the Housing Certificate Fund heading, provides that during Federal fiscal year 1999 (October 1, 1998 through September 30, 1999), the minimum rent of families who receive (or will receive) "enhanced" vouchers and whose income "declines to a significant extent" must not exceed the greater of:

- (1) 30% of monthly adjusted income; or
- (2) The percentage of monthly adjusted income paid by the family for rent at the time of the mortgage prepayment.

This statutory rent limitation only applies to enhanced tenant-based assistance that is provided to families located in projects where owners prepaid certain federally assisted mortgages. HUD construes the words "significant extent" to mean a decrease in income of fifteen percent (15%) or more.

Action Guidance for the Section 8 Voucher Program. No action required by the PHA at this time. HUD will issue further implementation instructions on this statutory section.

*Ineligibility of Individuals Convicted of Manufacturing or Producing Methamphetamine (commonly referred to as "speed") for Certain Housing Assistance.* Section 428 of the FY 1999 HUD Appropriations Act amends section 16 of the USHA to add a new subsection (f) that makes individuals convicted of manufacturing or producing methamphetamine (speed) ineligible for certain housing assistance.

New subsection (f) applies to public housing and the certificate, voucher and moderate rehabilitation programs. PHAs must have standards to:

- (1) Permanently deny admission to public housing units and the Section 8 certificate, voucher and moderate rehabilitation programs; and
  - (2) Immediately and permanently terminate tenancy in public housing or terminate Section 8 assistance, of persons convicted of manufacturing or producing methamphetamine on the premises of the assisted housing project in violation of any Federal or State law.
- "Premises" is defined as the building or complex in which the dwelling unit is located, including common areas and grounds. Although the statute does not define the term "premises," HUD is defining the term in this Notice to provide PHAs with guidance on what are the parameters of "premises."
- Action Guidance for the Public Housing Program. PHAs must revise applicable occupancy policies and practices to reflect these standards. Except to the extent this is already covered by lease provisions that authorize eviction for drug-related criminal activity, public housing leases must be modified to provide for eviction on these grounds.

Action Guidance for the Section 8 Certificate, Voucher and Moderate Rehabilitation Programs. PHAs must revise their occupancy policies to implement these admission and subsidy termination provisions.

#### *B. Quality Housing and Work Responsibility Act of 1998 (QHWRA)*

This notice does not address all sections of the QHWRA but strives to provide as much guidance for as many sections of the QHWRA as possible. The following lists the sections of the QHWRA that are addressed in this Notice. The sections are either addressed in this Section I or in Section II of this Notice.

- Sec. 506. Definitions
- Sec. 507. Minimum Rent.
- Sec. 508. Determination of Adjusted Income and Median Income.
- Sec. 509. Family Self-Sufficiency Program.
- Sec. 511. PHA Plan.
- Sec. 512. Community Service and Family Self-Sufficiency Requirements.
- Sec. 513. Income Targeting.
- Sec. 514. Repeal of Federal Preferences.

- Sec. 515. Joint Ventures and Consortia of Public Housing Agencies.
- Sec. 519. Public Housing Capital and Operating Funds.
- Sec. 520. Total Development Costs.
- Sec. 522. Repeal of Modernization Fund.
- Sec. 523. Family choice of rental payment.
- Sec. 524. Occupancy by Police Officers and Over-Income Families.
- Sec. 526. Pet Ownership in Public Housing.
- Sec. 530. Housing Quality Requirements.
- Sec. 531. Demolition and Disposition of Public Housing.
- Sec. 533. Conversion of Public Housing to Vouchers; Repeal of Family Investment Centers.
- Sec. 535. Demolition, Site Revitalization, Replacement Housing, and Tenant-Based Assistance grants for Projects.
- Sec. 537. Required Conversion of Distressed Public Housing to Tenant-Based Assistance.
- Sec. 539. Mixed Finance Public Housing.
- Sec. 545. Merger of Certificate and Voucher Programs.
- Sec. 547. Administrative Fees.
- Sec. 548. Law Enforcement and Security Personnel in Assisted Housing.
- Sec. 549. Advance Notice to Tenants of Expiration, Termination, or Owner Nonrenewal of Assistance Contract.
- Sec. 551. Funding and Allocation.
- Sec. 554. Leasing to Voucher Holders.
- Sec. 555. Homeownership (voucher) Option.
- Sec. 556. Section 8 Renewals for Tenant-Based Certificate and Vouchers Funds.
- Sec. 559. Rulemaking and Implementation.
- Sec. 561. Home rule flexible grant demonstration program.
- Sec. 565. Expansion of powers for dealing with public housing agencies in substantial default.
- Sec. 575. Provisions applicable only to public housing and section 8 assistance.
- Sec. 584. Use of American Products.
- Sec. 586. Amendments to Public and Assisted Housing Drug Elimination Act of 1990.
- Sec. 592. Use of Assisted Housing by Aliens.
- Sec. 597. Moderate rehabilitation program.
- Sec. 599. Tenant participation in multifamily housing projects.

The following chart provides an overview of the above-listed sections of the QHWRA, which have been designated by Congress as immediately effective, and shows their applicability to HUD's public housing program, Section 8 certificate and voucher program, Section 8 project-based certificate and moderate rehabilitation program, and other Section 8 programs.

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**APPLICABILITY OF THE QHWA TO VARIOUS ASSISTED HOUSING PROGRAMS**  
**[Provisions Designated by Congress or this Notice as Immediately Effective]**

Statutory Section	Applies to public housing?	Applies to Section 8 certificates & vouchers?	Applies to Section 8 PBC & moderate rehabilitation?	Applies to other Section 8 programs?
Sec. 506 Definitions	yes	yes	yes	yes
Sec. 507 Minimum Rent	yes	yes	yes	yes
Sec. 509 FSS Program	yes	yes	yes for PBC no for Mod Rehab	no
Sec. 512(d) Welfare Decreases Due to Family Noncompliance	yes	yes	no	no
Sec. 513 a. Decon- centration  b. Income Targeting	a. yes  b. yes	a. no  b. yes	a. no  b. yes	a. no  b. yes
Sec. 514 Repeal of Federal Preferences	yes	yes	yes	yes
Sec. 519 Capital & Operating Funds [only specified subsections take effect immediately]	yes	no  [except that funds from emergency reserve may be used for tenant- based assistance]	no	no
Sec. 520 Total Development Costs	yes	no	no	no
Sec. 522 Repeal of Mod Fund	yes	no	no	no
Sec. 524 Renting to Police Officers & Other Over Income Families	yes	no	no (but a comparable provision in Sec. 548 applies)	no (but a comparable provision in Sec. 548 applies)

Statutory Section	Applies to public housing?	Applies to Section 8 certificates & vouchers?	Applies to Section 8 PBC & moderate rehabilitation?	Applies to other Section 8 programs?
Sec. 531 Public Housing Demo/Dispo	yes	no	no	no
Sec. 535 HOPE VI	yes	no	no	no
Sec. 537 Conversion of Distressed Public Housing	yes	yes	no	no
Sec. 547 Admin Fees	no	yes	yes	no
Sec. 548 Renting to Police Officers	no	no	yes	yes
Sec. 549(a) a. Repeal of Endless Lease & 90 Day Owner Termination Notice  b. 1-Year Owner Termination Notice  c. Repeal of 90 Day Rent Increase Notice	a. no  b. no  c. no	a. yes  b. no  c. no	a. no  b. yes  c. no - PBC; yes- mod rehab	a. no  b. yes  c. yes
Sec. 551 Funding and Allocation	yes	yes	yes	yes
Sec. 554 Repeal of "Take-1, Take All"	no	yes	no	no
Secs. 555 & 545- (\$8(o)(15) Homeownership Vouchers	no	yes	no	no
Sec. 561 Home Rule Demo	yes	yes	no	no

Statutory Section	Applies to public housing?	Applies to Section 8 certificates & vouchers?	Applies to Section 8 PBC & moderate rehabilitation?	Applies to other Section 8 programs?
Sec. 565 PHAs in Default	yes	yes	yes	no
Sec. 575(e) Drug Center Records	yes	no	no	no
Sec. 592  Aliens [only applicable to PHA administered programs]	yes	yes	yes	yes
Sec. 597 Mod Rehab Rents for Renewed HAP Contracts	no	no	yes, applicable to mod rehab	no
Sec. 599 Tenant Participation	no	no  (except for enhanced vouchers)	yes	yes

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**Subtitle A of the QHWRA**

*Section 507—Minimum Rent for Public Housing and Section 8 Assistance.* Section 507 amends section 3(a) of the USHA and follows the previous statutory authority of requiring minimum rents of up to \$50 for public housing and the Section 8 programs. In the public housing program and the Section 8 programs other than vouchers, "minimum rent" refers to minimum total tenant payment (TTP) and not a minimum tenant rent (TR). For families subject to a utility allowance in these programs, the families will be subject to a minimum total tenant payment but could still be entitled to a utility reimbursement if the utility allowance is greater than the TTP.

Action Guidance for Public Housing and Section 8 Certificate, Voucher and Moderate Rehabilitation Programs. PHAs are not required to take any action to maintain any current minimum rents of up to \$50 for the public housing, Section 8 certificate, voucher and moderate rehabilitation programs.

Action Guidance for Other Section 8 Programs. The minimum rent of \$25 which HUD has imposed for other Section 8 project-based assistance remains in place.

*Exceptions to Minimum Rent.* The QHWRA also establishes certain exceptions to the minimum rent requirements for hardship circumstances. Section 3(a)(3)(B) of the USHA generally states that financial hardship includes the following situations (1) the family has lost eligibility for is awaiting an eligibility determination for a Federal, State, or local assistance program; (2) the family would be evicted as a result of the imposition of the minimum rent requirement; (3) the income of the family has decreased because of changed circumstance, including loss of employment; (4) a death in the family has occurred; and (5) other circumstances determined by the PHA or HUD.

The QHWRA provides that an exemption may not be provided if the hardship is determined temporary. The QHWRA also provides, however, that the PHA or owner may not evict the family for nonpayment of rent on the basis of hardship if the hardship is determined by the PHA or HUD to be temporary during the 90-day period beginning upon the date of the family's request for the exemption. During this 90-day period, the family must demonstrate that the financial hardship

is of a long-term basis. If the family demonstrates that the financial hardship is of a long-term basis, the PHA or HUD shall retroactively exempt the family from the applicability of the minimum rent requirement for the 90-day period. (HUD's responsibilities will be carried out by owners as appropriate.)

Action Guidance for the Public Housing Program. PHAs must revise operating procedures to immediately carry out the new statutory minimum rent hardship exception policies, and must immediately grant such exceptions for families who qualify. The PHA can request reasonable documentation of hardship under the circumstances. While HUD may issue further guidance, HUD provides the following immediate guidance.

(1) As soon as practicable, the PHA must notify all families of right to request a minimum rent hardship exemption under the law, and that determinations are subject to the grievance procedure;

(2) If the family requests a hardship exemption, the minimum rent requirement is immediately suspended.

(3) Suspension may be handled as follows: the minimum rent is suspended until a determination is made whether:

(a) There is a hardship covered by the statute; and

(b) The hardship is temporary or long-term.

If the PHA determines that there is no hardship covered by the statute, minimum rent is imposed (including backpayment for minimum rent from time of suspension).

If the PHA determines that the hardship is temporary, the minimum rent also is imposed (including backpayment for minimum rent from the time of suspension) but the family cannot be evicted for nonpayment during the 90-day period commencing on the date of the family's request for exemption of minimum rent in excess of the tenant rent otherwise payable. A reasonable repayment agreement must be offered for any such rent not paid during that period. If the family thereafter demonstrates that the financial hardship is of long-term duration, the PHA shall retroactively exempt the family from the minimum rent requirement.

The new minimum rent policies are retroactive to the effective date of the QHWRA, October 21, 1998. If a tenant in occupancy has qualified for one of the mandatory hardship between October 21, 1998 and the date of this Notice and was charged minimum rent, the PHA must make arrangements to reimburse the tenant the overpayment by providing a cash refund or otherwise offsetting future rent payments in an equitable manner.

Action Guidance for Section 8 Certificate, Voucher and Moderate Rehabilitation Programs. The entity responsible for determining rent (the PHA or owner) must revise operating procedures to immediately carry out the new statutory minimum rent hardship exception policies. As soon as practicable, the entity responsible for determining rent (the PHA or owner) must notify all families of the right to request minimum rent hardship exceptions, and that the hardship determinations are subject to applicable PHA informal hearing procedures. The entity responsible for determining rent (the PHA or owner) can request reasonable documentation of hardship under the circumstances. While HUD may issue further guidance, HUD provides the following immediate guidance.

If a family requests a minimum rent hardship exception, the entity responsible for determining rent (the PHA or owner) must suspend payment of the minimum rent beginning the month following the family's hardship request. "Suspension" means that the entity responsible for determining rent

(the PHA or owner) must not charge the family a minimum rent or, if applicable, discontinue charging the family a minimum rent. During the minimum rent suspension period, the family will not be required to pay a minimum rent and the housing assistance payment will be increased accordingly.

The entity responsible for determining rent (the PHA or owner) must determine promptly whether the hardship under the statute exists and whether it is temporary or long term.

If the entity responsible for determining rent (the PHA or owner) determines that there is no hardship covered by the statute, a minimum rent is imposed retroactively to the time of suspension.

If the entity responsible for determining rent (the PHA or owner) determines that the hardship is temporary, a minimum rent may not be imposed for a period of 90 days from the date of the family's request. At the end of the 90 day suspension period, a minimum rent is imposed retroactively to the time of suspension. A reasonable repayment agreement must be offered for any minimum rent backpayment by the family. (Note that the statutory eviction prohibition is not applicable since the entity responsible for determining rent (the PHA or owner) will not charge a minimum rent for 90 days, and receipt of the contract rent will not be impacted by the family's inability to pay the minimum rent during the 90 day period.)

If the entity responsible for determining rent (the PHA or owner) determines that the hardship is of long-term duration, the entity responsible for determining rent (the PHA or owner) must exempt (retroactively to the date of the family's request for a minimum rent exception) the family from the payment of the minimum rent until the hardship no longer exists.

The new minimum rent policies are retroactive to the effective date of the QHWRA, October 21, 1998. If a tenant in occupancy has qualified for one of the mandatory exceptions between October 21, 1998 and the date of this Notice and was charged a minimum rent, the entity responsible for determining rent (the PHA or owner) must make arrangements to reimburse the tenant the overpayment by providing a cash refund or otherwise offsetting future rent payment in an equitable manner.

*Section 508—Determination of Adjusted Income and Median Income in the Public Housing and Section 8 Programs.* Section 508 amends section 3(b)(5) of the USHA and as amended provides the manner in which adjusted

income and median income will be determined, and provides certain mandatory exclusions.

Action Guidance for the Public Housing Program. Section 508 generally is not yet effective, except that the establishment of separate public housing and Section 8 income units in Rockland County, New York, is effective immediately. HUD's Notice PD&R 98-04, issued November 23, 1998, implemented this provision for Rockland County, New York, and provided the relevant income limits. (This information may also be found under "income limits" at <http://www.huduser.org/data/factors.html>.)

HUD will provide implementation instructions for the QHWRA's revised mandatory earned income disregard for public housing residents, effective October 1, 1999, at a later date. The current 18-month disregard for earned income of public housing residents in training programs (see 24 CFR 5.607(c)(8)(i) and (v) and (c)(13)) continues in effect for families who:

(1) Enroll in such programs before October 1, 1999; and

(2) Continue to meet the requirements for receiving the income disregard.

Action Guidance for Section 8 programs. The income limits referenced in the Action Guidance for Public Housing for Rockland County, New York, are applicable to the Section 8 programs.

*Section 509—Family Self-Sufficiency (FSS) Program in the Public Housing and Tenant-Based Section 8 Programs.* Section 509 amends section 23 of the USHA and, as amended, allows PHAs to reduce their family self-sufficiency obligation (mandatory minimum program size, prior to any reductions previously approved by HUD) by one family for each FSS graduate fulfilling the family's contract of participation obligations on or after October 21, 1998. Additionally, the QHWRA provides that the minimum FSS program size will not increase when a PHA receives incremental Section 8 funding and public housing units on or after October 21, 1998. The QHWRA continues the PHA's option to operate programs larger than the minimum FSS program size. The QHWRA also continues HUD's ability to authorize a reduced minimum program size. HUD is currently authorized to permit a PHA to operate a public housing or Section 8 FSS program that is smaller than the minimum program size if the PHA provides to HUD a certification that the operation of an FSS program of the minimum size is not feasible because of local circumstances (see 24 CFR 984.105(d)).

These provisions are effective upon enactment of the QHWRA (October 21, 1998).

Action Guidance for the Public Housing Program. The FSS provisions are effective upon enactment of the QHWRA (October 21, 1998). For purposes of the FSS minimum program size, "receipt of incremental public housing units" means reservation of funds to acquire or construct additional public housing units on or after October 21, 1998. The HUD Field Office will advise PHAs of these reservation dates.

Action Guidance for the Section 8 Certificate and Voucher Programs. The FSS provisions are effective upon enactment of the QHWRA (October 21, 1998). For purposes of the FSS minimum program size, "receipt of incremental Section 8 funding" means reservation of funds for the Section 8 certificate or voucher program (other than renewal funding and other funding excluded by HUD Notice PIH 97-45, issued September 3, 1997) on or after October 21, 1998. The HUD Field Office will advise PHAs of these reservation dates.

*Section 512—Public Housing Community Service and Public Housing and Tenant-Based Section 8 Family Self-Sufficiency Requirements. Public Housing Community Service Requirements.* Section 512 amends section 12 of the USHA and adds new subsections (c) through (g). Subsection (c) of section 12 of the U.S. Housing Act of 1937 (USHA) imposes a requirement on adult public housing residents, with important exceptions, to participate for at least 8 hours per month in community service or economic self-sufficiency program. In some circumstances, PHAs must refuse to renew a resident's 12-month lease for failure to satisfy this requirement.

Action Guidance for the Public Housing Program. Subsection (c) is not yet effective, but will be effective October 1, 1999. HUD will issue implementing instructions and guidance before October 1, 1999. PHAs should begin considering how community service requirements may be fulfilled by residents, including the potential use of qualified resident councils or other qualified entities either as agents for program administration or providers of opportunities for fulfilling the community service requirement. The provision requiring 1-year public housing leases, automatically renewable except for failure to comply with community service requirements, also is not yet effective. HUD notes, however, that such leases may be self-renewing without an annual signing process, as long as the leases are terminable for

failure to meet the community service obligation under the circumstances defined in the statute. Again, HUD will issue additional guidance at a later date, as well as amend HUD's applicable regulations.

*Treatment of Income Changes Resulting from Welfare Program Requirements.* New subsection 12(d), Treatment of Income Changes Resulting From Welfare Program Requirements, is effective immediately, for public housing residents and tenant-based Section 8 certificate and voucher families whose welfare assistance is reduced specifically because of fraud or failure to participate in an economic self-sufficiency program or comply with a work activities requirement. Such families must not have their public housing rent or Section 8 contribution to rent reduced based on the benefit reduction. The prohibition on reduction of public housing rent or Section 8 tenant-based assistance contribution is applicable only if the welfare reduction is neither the result of the expiration of a lifetime time limit on receiving benefits, nor a situation where the family has complied with welfare program requirements but cannot obtain employment (e.g., the family has complied, but loses welfare because of a durational time limit such as a cap on welfare benefits for a period of no more than two years in a five year period). Any PHA receiving a request for income reexamination and rent reduction predicated on a reduction in tenant income from welfare may deny the request only after obtaining written verification from the welfare agency that the family's benefits have been reduced because of noncompliance with economic self-sufficiency program or work activities requirements or because of fraud.

Action Guidance for the Public Housing Program. Although this subsection (d) is effective immediately, PHAs should note that this subsection is subject to some procedural limitations. PHAs must first take the necessary procedural steps so that this rent policy change will be binding on affected families, and PHAs must take these steps expeditiously. Section 12(e) requires incorporation into leases of the provisions of this subsection (d). The PHA also must notify affected residents that they have the right to administrative review through the PHA's grievance procedure.

PHAs are to make best efforts to enter into cooperation agreements with local welfare agencies, both to obtain the necessary information regarding welfare sanctions and to target economic self-sufficiency and other appropriate

services to public housing residents and Section 8 tenant-based certificate and voucher families. PHAs are encouraged to pursue the targeting of such services aggressively in these cooperation agreements, and are reminded that the QHWRA amends the public housing management assessment program to include the extent to which the public housing agency coordinates, promotes or provides effective programs and activities to promote the economic self-sufficiency of public housing residents (effective in fiscal year 2000).

Action Guidance for Section 8 Tenant-Based Certificate and Voucher Programs. The guidance provided in the Action Guidance for Public Housing pertaining to the policies on cooperation agreements is applicable to the Section 8 tenant-based certificate and voucher programs. Rather than incorporating the provisions of subsection (d) into leases, PHAs must revise operating procedures as needed to effectuate this provision. The PHA also must notify affected families that they may use the informal hearing procedure under 24 CFR 982.555(a)(i).

*Section 513—Public Housing and Section 8 Income Targeting.* Section 513 amends section 16 of the USHA to establish, among other things, public housing deconcentration requirements, annual requirements for admitting families with incomes below thirty percent (30%) of area median income, and related income targeting requirements.

*Prohibition of Concentration of Low-Income Families in Public Housing (Deconcentration of Poverty).* The QHWRA requires PHAs to submit with their annual public housing agency plans an admissions policy designed to provide for deconcentration of poverty and income mixing, by bringing higher income tenants into lower income public housing projects and bringing lower income tenants into higher income public housing projects.

Action Guidance for the Public Housing Program. Through this Notice and consistent with the immediate effective date of this section of the USHA, HUD is requiring PHAs to begin implementing this public housing deconcentration policy. PHAs must immediately develop this policy. Within 120 days of this Notice or a longer time period if HUD grants an extension for good cause, the PHA's Board of Commissioners must pass a resolution indicating that any necessary changes have been made in the PHA's admissions policy. PHAs must keep this Board resolution on file for possible HUD review. While PHAs must take any necessary actions now to have an



appropriate policy in place, the admissions policy to promote deconcentration of poverty also will be part of the PHA plan process from its inception. Material describing the deconcentration requirements more fully is included in the PHA plan interim rule published elsewhere in today's **Federal Register**.

### Income Targeting Requirements

(1) *Public housing.* With respect to income targeting, the general rule is that in each fiscal year, at least 40 percent of families admitted to public housing by a PHA must have incomes that do not exceed 30 percent of area median. The "fungibility" provisions allow a PHA to admit less than 40 percent of families with incomes below 30 percent of median ("very poor families") in a fiscal year, to the extent the PHA has provided more than seventy-five (75) percent of newly available vouchers and certificates (including those resulting from turnover) to very poor families. Thus, the provision is called "fungibility" because to a limited extent, it makes the targeting requirements in public housing and tenant-based assistance interchangeable or fungible. There are three further limitations on a PHA's use of fungibility. Fungibility "credits" only can be used to drop the annual requirement for housing very poor families below 40 percent of newly available units in public housing, by the lowest of the following amounts:

- (a) The number of units equivalent to ten (10) percent of the number of newly available vouchers and certificates in that fiscal year; or
- (b) The number of units that (i) are in projects located in census tracts having a poverty rate of 30% or more, and (ii) are made available for occupancy by and actually occupied in that year by very poor families; or
- (c) The number of units that cause the PHA's overall requirement for housing very poor families to drop to 30% of its newly available units.

Action Guidance for the Public Housing Program. PHAs should promptly make any needed adjustments in admissions policies, subject to the usual procedures, to ensure compliance.

The administration of income targeting should be facilitated if the requirements are applied on the same annual basis as the fiscal year of the PHA's public housing or tenant-based assistance program. To allow application of the requirements in this manner, the income targeting requirements will be applied on a pro rata basis to the remainder of the PHA's current fiscal year starting with April 1,

1999 to the end of the current fiscal year, and thereafter by applicable fiscal year. Alternatively, a PHA may apply the targeting initially to the period starting April 1, 1999 and ending at the conclusion of the next PHA fiscal year.

(2) *Section 8 tenant-based assistance.* With respect to Section 8 tenant-based assistance, for a PHA in each fiscal year, not less than 75% of its new admissions to the program must have incomes at or below 30% of the area median income. The income limits based on 30 percent of median are listed in HUD's 1999 income limits publication which is posted on the internet at <http://www.huduser.org/data/factors.html>. Other admissions must comply with eligibility limits under the current regulations (24 CFR 982.201(b)) and law.

Action Guidance for the Section 8 Tenant-Based Certificate and Voucher Programs. The income targeting applies to admissions in each PHA fiscal year. PHAs may set the initial period in the same manner as is provided above for public housing.

If an award of vouchers to prevent or ameliorate the effects of displacement (for instance, tenant-based assistance provided for a preservation prepayment or when an owner opts out of the Section 8 program) would interfere with a PHA's compliance with the income targeting requirements, the PHA may request that HUD approve a different targeting requirement (which may take effect upon issuance of the tenant-based assistance in question) and the PHA then may include the HUD approved requirement in the PHA's next annual plan.

(3) *Section 8 project-based assistance.* For Section 8 project-based assistance (including moderate rehabilitation and project-based certificates), not less than 40% of new admissions to a specific project must have incomes at or below 30% of the area median income. Other admissions to a specific project must be at or below 80% of the area median, with any HUD-instituted modifications for relatively low income or high income areas as discussed above. In addition, the previously existing nationwide targeting requirements for families with incomes at or below 50% of area median income in pre-1981 and post-1981 projects continue to be applicable (see regulatory citation below). Income targeting requirements do not apply to project-based assistance made available to prevent or ameliorate the effects of displacement.

Initial Guidance for Section 8 Project-Based Assistance. The following regulations will continue to apply:

(1) Income limits for admission (24 CFR 5.607);

(2) Anti-skipping for the purpose of selecting a relatively higher-income family (24 CFR 5.410(e)(2)); and

(3) Ability to use worker preferences subject to the antiskipping requirement (24 CFR 5.415(b)(1)); provisions of 24 CFR 5.415(b)(1) that reference to federal preferences may be disregarded since federal preferences have been repealed).

In addition, owners (other than project-based certificate and moderate rehabilitation owners) will have to modify their tenant selection plans to conform to statutory and program requirements. Owners' tenant selection plans should include how they will apply the new income targeting requirements to ensure that not less than 40 percent of the units which become available each year will be leased to families with income that does not exceed 30 percent of the median income at the time they commence their lease.

HUD will be issuing additional guidance in a notice in the near future.

*Section 514—Repeal of Federal Preferences in the Public Housing and Section 8 Programs.* With respect to preferences, the QHWRRA provides:

- (1) Permanent repeal of Federal preferences;
- (2) Permanent repeal of the right of certain public housing residents to retain federal preference status on the Section 8 certificate and voucher waiting list;
- (3) Authorization for local preferences; and
- (4) Elimination of the previous statutory preference for the admission of elderly, disabled and displaced persons before other single persons in the public housing and Section 8 programs (accomplished by section 506 rather than section 514).

Action Guidance for Public Housing, Section 8 Certificate and Voucher and Moderate Rehabilitation Programs. The QHWRRA permanently repeals federal preference requirements for the public housing and Section 8 programs. PHAs are no longer required to select families from their waiting lists using the federal preferences or provide the singles preference. (PHAs may opt to continue the singles preference and one or more of the former federal preferences.) HUD urges PHAs to consider adopting admission preferences for victims of domestic violence.

PHAs should promptly make any needed adjustments in admissions policies, subject to the usual procedures to ensure that the preferences they use will result in compliance with public housing deconcentration and public

housing and Section 8 income targeting requirements.

Section 514 also provides that local preferences may be established taking into account generally accepted data sources, including any information obtained during the opportunity for public comment on the PHA plan and in the development of the local comprehensive housing affordability strategy (consolidated plan). Since to date there has not been a PHA plan process, full compliance with this statutory section is not possible with respect to local preferences that currently exist in these programs. Because there is no indication in the QHWRRA that Congress intended to disrupt existing local preferences, existing local preferences may remain without further immediate PHA action or may be altered in the manner authorized before enactment of the QHWRRA. Both existing and proposed local preferences, however, must comply with the new requirements for establishing preferences and the PHA plan process that will commence in 1999. The QHWRRA permanently eliminated in the public housing and the Section 8 programs, the previous statutory preference for the admission of elderly, disabled and displaced persons before other single persons. PHAs may revise occupancy policies to reflect this change.

Irrespective of these statutory changes, other public housing selection preference regulations which are unrelated to these changes continue to apply. In addition, the following regulations remain applicable to tenant-based assistance: 24 CFR 982.204(d) prohibiting the order of admission from the tenant-based waiting list based on family or unit size; the prohibited admissions criteria in 24 CFR 982.202(b); and approval of any residency preferences in accordance with 24 CFR 982.208 and 24 CFR 5.410(h). The nondiscrimination requirement for public housing residents with respect to admissions to tenant-based assistance also continues to apply (Section 8(s) of the USHA).

Action Guidance for Other Section 8 Project-Based Programs. The QHWRRA permanently repeals federal preference requirements for Section 8 newly constructed or substantially rehabilitated housing and other project-based Section 8 programs. Owners are no longer required to select families from their waiting lists using the federal preferences or provide the singles preference. Owners should make any changes needed to comply with income targeting requirements. Any changes in an owner's tenant selection system must

be consistent with the Affirmative Fair Housing Marketing Plan approved by HUD. HUD's multifamily housing occupancy handbook, 4350.3, specifies that the tenant selection system must consist of a written plan, be equitable and guard against discrimination. Where an owner elects to make changes in the tenant selection system, HUD strongly encourages the owner to provide appropriate notification of implementation to applicants on the waiting lists and other interested persons (e.g., by newspaper publication or notice to applicants).

#### **Subtitle B of the QHWRRA—Public Housing**

*Section 519—Public Housing Capital and Operating Funds.* Section 519 amends section 9 of the USHA to provide for the establishment of capital and operating funds with new formulas. Only a few parts of this statutory section are effective immediately. They are as follows:

*Use of capital or operating funds by small PHAs.* New subsection 9(g)(2) of the USHA, added by section 519 of the QHWRRA, allows a PHA with less than 250 dwelling units (small PHAs), to use capital or operating funds for any eligible capital or operating expense if: (1) the PHA is not designated troubled; and (2) the PHA operates its public housing in a safe, clean and healthy condition, as determined by HUD. Until enactment of the QHWRRA, these PHAs have been receiving capital funds for specific purposes under the competitive Comprehensive Improvement Assistance Program (CIAP). New subsection 9(a) of the USHA, however, provides for a merger of remaining CIAP funds into the Capital Fund on October 1, 1999.

With the enactment of new subsection 9(g)(2) and the pending merger of funds, HUD construes Congressional intent to be that small, non-troubled PHAs may immediately use any CIAP or operating funds for capital or operating purposes. Because CIAP funds were obtained competitively based on representations of need, HUD would expect PHAs' current use of CIAP funds for operating purposes to be judicious; for example, to address an emergency need.

HUD reserves the right to determine, through its independent inspections or other monitoring, that a PHA is ineligible for the flexible use of capital and operating funds of subsection 9(g)(2) of the USHA because the PHA is not operating and maintaining its public housing in a safe, clean and healthy condition. HUD may notify a PHA of this determination. If a small PHA does not receive this notification from HUD,

the PHA may use the flexibility of subsection 9(g)(2) unless the PHA's last public housing management assistance program (PHMAP) assessment contained a grade lower than "E" on Indicator #5, Component #1.

*Action Guidance.* PHAs using this flexible funding authority must retain the necessary accounting to indicate the sources and uses of all funds, including their origination as capital (CIAP) or operating funds (i.e., their accounting for capital funds must indicate any amount of funds used for operating expenses). PHAs would continue to draw down CIAP funds under the LOCCS against the program grant authorized by the applicable annual contributions contract (ACC) amendment. PHAs also may draw down capital funds only under the current federal rules that require projected expenditure of the funds within three days. PHAs, therefore, cannot draw down capital funds directly to establish or augment reserves, or indirectly for this purpose by retaining larger than a reasonably sized operating reserve.

*Penalties for slow obligation or expenditure of capital funds.* New subsection 9(j) of the USHA provides for penalties for slow obligation or expenditure of capital funds. While this subsection is generally not yet effective, the QHWRRA states that capital funds made available to a PHA for fiscal year 1997 or prior fiscal years must be obligated by the PHA not later than September 30, 1999.

The QHWRRA also states that a PHA shall spend any assistance received under section 9 of the USHA not later than 4 years (plus the period of any extension approved by the Secretary in accordance with new section 9(j)(2)) after the date on which funds become available to the agency for obligation.

Action Guidance. PHAs must take all necessary steps to meet the September 30, 1999 deadline.

*Authority to NYCHA to Expend Funds for Asthma Reduction.* New subsection 9(n)(2) and (3) of the USHA allow the New York City Housing Authority to expend, from funds otherwise available to it, up to \$500,000 annually for asthma reduction and \$600,000 annually for a comprehensive plan to address the need for services for elderly residents, commencing in FY 1999.

*Ceiling Rents.* Subsection 519(d) of the QHWRRA provides transitional authority to implement ceiling rents, before the implementation of the new funding formulas.

Action Guidance. During this transition period, PHAs may establish or retain ceiling rents allowed under all preexisting laws, including annual

appropriations laws and the Balanced Budget Downpayment Act, I. In addition, PHAs may adopt and apply ceiling rents that reflect the reasonable market value of the housing, but are not less than 75% of the monthly cost to operate the PHA's housing (100% for housing predominantly for elderly or disabled families, or both) and may include the costs of monthly deposit for a replacement reserve. HUD will define "predominantly" as at least 80 percent occupancy by such families. The latter authorization may be used immediately and without HUD approval, provided that PHAs keep reasonable documentation that the ceiling rents reflect reasonable market value and are not lower than the statutorily-required floors.

*Transitional Funding Before Implementation of New Capital and Operating Formulas.* Subsection 519(e) provides requirements for transitional funding until the new capital and operating formulas are implemented. For FY 1999, HUD will provide funds to PHAs in accordance with prior law (unless HUD provides further notification regarding the distribution of capital funds). With respect to operating subsidy, this subsection specifically provides that ceiling rents and the optional earned income disregards authorized by the past several appropriations acts continue to be treated as provided under prior law.

Action Guidance. In summary, prior law holds PHAs financially harmless for adoption of authorized ceiling rents, but allows the optional earned income disregards at PHAs' initial financial risk. This treatment will be continued until a new formula is adopted.

*Adoption of Rental Amount Other than Ceiling Rent or Optional Earned Income Disregard.* Subsection 519(e) also states that during the transition period, if a PHA adopts a rental amount other than a ceiling rent or an optional earned income disregard authorized by the prior appropriations laws, which is less than the amount otherwise required to be charged (typically 30% of a family's adjusted income), the formula shall not be adjusted to compensate the PHA for this rent reduction.

Action Guidance. HUD interprets this provision to authorize PHAs to begin immediately, subject to appropriate local process, to charge lower amounts than those otherwise required (or allowed under ceiling rent or previously existing optional earned income disregard authority; see the immediately preceding paragraph), as authorized by section 523 of the QHWRRA (typically, "up to" 30% of a family's adjusted income; new section 3(a)(2)(B)(ii) of the

USHA). PHAs may take this step, prior to adoption of a new formula, for purposes PHAs deem appropriate such as promotion of resident self-sufficiency, even though the rest of section 523 is not yet effective. This would be done, however, at a PHA's financial risk. A PHA that chooses to implement this policy would need to submit rent rolls for the purpose of FY 1999 subsidy calculations that do not reflect the newly imposed rent decrease or disregard. Instead, such rent rolls must presume that the PHA is charging the rent otherwise required or allowed by law.

*Section 520—Total Development Costs.* Section 520 amends the definition of "development cost" in section 3(c)(1) of the USHA to exclude from this definition the costs associated with demolition or remediation of environmental hazards associated with public housing units that will not be replaced on the project site, or other extraordinary site costs as determined by HUD.

Section 520 also amends 6(b) of the USHA to add a new subsection 6(b)(3) which provides that in calculating the total development cost of a project under section 6(b)(2), HUD shall consider only capital assistance provided by HUD to a PHA that are authorized for use in connection with the development of public housing and shall exclude all other amounts, including amounts provided under: (1) The HOME Investment Partnerships Program; or (2) the CDBG Program.

Action Guidance. HUD will issue a separate notice in the near future to impose total development cost requirements that are consistent with the changes made by this section.

*Section 522—Repeal of Public Housing Modernization Fund.* Section 522 repeals section 14 of the USHA, but makes clear that before the implementation of the new capital formula, PHAs may utilize any authority under section 14(q) of the USHA, as amended. Section 14(q) of the USHA allows PHAs to use capital funds for public housing development and HOPE VI uses and allows mixed-finance public housing developments. (Section 201 of the FY 1999 HUD Appropriations Act clarified that such broader uses, but not operating expenses, are permissible uses of FY 1998 and 1999 funds. The ability for PHAs other than small PHAs to use capital funds partly for operating expenses does not become effective until Federal fiscal year 2000.) In addition, section 208 of the FY 1999 HUD Appropriations Act amended section 14(q) of the USHA to provide that such assistance may involve the

drawdown of funds on a schedule commensurate with construction draws, for deposit into an interest-bearing escrow account to serve as collateral or credit enhancement for construction or rehabilitation bonds issued by a public agency.

*Section 523—Public Housing Family Choice of Rental Payment.* Section 523 amends section 3(a) of the USHA, and provides that each family can elect annually whether the rent payment is a flat rate or income based. Flat rents are set by a PHA at a rate based on the rental value of the unit. Income based rents are calculated on the level of a tenant's income, the basic calculation was not changed from the current law calculation of the higher of 10% of income, 30% of adjusted income, or the housing portion of welfare, where applicable. The current law amounts for income-based rents, however, were changed from required amounts to maximum amounts a PHA can charge.

Action Guidance. Although this section is not effective now except as indicated in the discussion above of section 519(e), PHAs should begin the process of setting flat rents as required by new section 3(a)(2)(B)(i) of the USHA. These flat rents are to be based on the rental value of the unit, which HUD interprets to be the same as the reasonable market value of the unit authorized for ceiling rents. HUD will provide further guidance, but PHAs should anticipate that the rent choice authorized by section 523 would have to be offered to families admitted or subject to recertification after October 1, 1999.

*Section 524—Occupancy by Police Officers and Over-Income Families in Public Housing.* Section 524 amends section 3(a) of the USHA to provide that PHAs may allow police officers to reside in public housing. Under this section, small PHAs may also rent units to over-income families on a month-to-month basis, in accordance with statutory requirements, if there are no eligible families applying for assistance for that month, provided that the over-income family agrees to vacate (with at least 30 days notice) when the unit is needed for an income-eligible family.

Action Guidance. This section is effective immediately, but the provision pertaining to police officers is subject to inclusion in the PHA plan. Because current statutory provision is not repealed during this fiscal year, HUD will allow occupancy by police officers under the terms of current law until the PHA plan requirement can be implemented.

With respect to the housing of over-income families where other families

are not available to small PHAs, a PHA must publish a 30-day notice of available units in at least one newspaper of general circulation.

**Section 530—Housing Quality Requirements.** Section 530 amends section 6 of the USHA to add a new subsection (f) which requires annual contributions contracts to include a requirement that a PHA maintain its public housing units in compliance with safety and habitability standards specified by HUD. In developing these standards, HUD is to make them to the greatest extent practicable, consistent with the housing quality standards under the Section 8 voucher program. This section also requires PHAs to conduct annual inspections for each project to determine whether the units comply with the standards.

**Action Guidance.** HUD's new Public Housing Assessment System (PHAS), which was established by final rule issued on September 1, 1998 (63 FR 46596), utilizes new uniform physical condition standards that are consistent with the housing quality standards currently used in the Section 8 tenant-based assistance program. See also HUD's Uniform Physical Condition Standards final rule, published on September 1, 1998 at 63 FR 46566. PHAs are currently required by statute to conduct an annual inspection of their projects.

**Section 531—Demolition and Disposition of Public Housing.** Section 531 amends section 18 of the USHA and provides that PHAs may demolish and dispose of projects upon application to HUD when the housing is determined obsolete and modifications are not cost-effective. This statutory section completely revises public housing demolition and disposition requirements, and also repeals one-for-one replacement requirements. The immediate effective date of this statutory section raised two threshold issues for HUD to consider.

First, how should HUD treat the pipeline of demolition and disposition applications received prior to October 21, 1998, and those received after that date but prior to the effectiveness of the applicable regulations and processes?

Second, how should HUD treat the new requirement found in amended section 18 of the USHA—that the public housing agency has specifically authorized the demolition or disposition in its PHA plan and has certified that the actions contemplated in the PHA plan comply with this section?

HUD believes that it is consistent with Congressional intent not to interrupt the processing of applications.

**Action Guidance.** 1. *Pending Applications; New Applications.* In view of the Congressional intent and to expedite the processing of demolition and disposition applications during this period prior to submission and approval of PHA plans under the new law, demolition/disposition applications will be reviewed and processed in two groups. Group 1 are those applications received at HUD's Special Applications Center (SAC) on or before October 21, 1998, the date the QHWRRA was signed into law. Group 2 are those applications received at the SAC after October 21, 1998.

**A. Group 1 Applications.** Applications in Group 1 will generally be reviewed and approved in accordance with 24 CFR part 970 which was in effect at the time of the application submission. However, if the SAC staff identifies deficiencies in a Group 1 application, the PHA has the option at that time to either (a) correct the deficiencies in accordance with 24 CFR part 970 or (b) withdraw its application and resubmit it at a later date based on HUD's guidance as identified in this Notice for implementing section 531 of the QHWRRA. In addition, HUD will implement four specific provisions of the QHWRRA for all pending applications in Group 1, as follows:

- The one-for-one replacement requirement is eliminated;
- PHAs that request to demolish the lesser of 5 units or 5 percent of the units in the PHA's inventory in a 5 year period, and where the vacant space will be used for meeting the service or other needs of the public housing residents or the units to be demolished are beyond repair, may demolish without submitting an application and requesting HUD approval (see paragraph 2 below on "De Minimis Exception for Demolition");
- Waiver of payment of debt (modernization or development debt) for bonded developments;
- Elimination of the requirement to make an offer to sell the property proposed for demolition to the resident organization where the PHA is requesting to demolish property; in view of the QHWRRA's elimination of this requirement with respect to demolition, the purchase option will not be deemed "appropriate" for such property under the terms of section 18(b)(1) of the USHA before its amendment by the QHWRRA.

**B. Group 2 Applications.** Under Section 18(a)(3) of the revised USHA, in order for a demolition or disposition application to be approved, a PHA must have "specifically authorized the

demolition or disposition in the public housing agency plan, and has certified that the actions contemplated in the public housing agency plan comply with this section."

HUD's interim rule on PHA plans, published elsewhere in today's **Federal Register**, provides further guidance on the fulfillment of this requirement for demolition/disposition. In brief, HUD's rule allows the submission of interim PHA plans covering demolition or disposition, so that a PHA may receive a timely approval which otherwise may not occur because of the initial schedule for submitting PHA plans. A separate notice to be issued by HUD's Office of Public and Indian Housing will describe the procedures that govern a demolition or disposition application under section 18 of the USHA as amended by the QHWRRA, in addition to those procedures and requirements related to the PHA plan, before conforming changes are made to the applicable regulations.

**2. De Minimis Exception for Demolition.** PHAs proposing to demolish not more than the lesser of 5 dwelling units or 5 percent of the total dwelling units owned by the PHA over a 5-year period, and that plan to use the space for meeting the service or other needs of the public housing residents or are demolishing units that are beyond repair, may demolish without submitting an application. PHAs using the de minimis exception are required to complete Sections 1—5 of HUD Form 52860. HUD will use this information to track the demolition in HUD's data system for purposes such as determination of subsidy amounts; HUD will not use this information to determine whether a PHA can demolish the units. Once the demolition is completed, the PHA must report the actual date of demolition to the HUD Field Office. PHAs should note that before committing any funds for or proceeding with demolition that will be funded or reimbursed with USHA funds, the PHA must receive HUD approval of a Request for Release of Funds to the extent required in accordance with 24 CFR part 58.

**3. Uniform Relocation Act.** Section 531(g) of the QHWRRA provides that the Uniform Relocation and Real Property Acquisition Policies Act of 1970 (URA) shall not apply to activities under section 18 of the USHA. The URA, however, continues to apply to:

- (a) Any person displaced before October 21, 1998 (the date of enactment of the QHWRRA);
- (b) Any person displaced as a result of HUD's approval of a demolition before October 21, 1998;

(c) Any person displaced as a result of a demolition that is part of a HOPE VI project (demolitions under HOPE VI are subject to the URA because they are not subject to section 18 of the USHA);

(d) Any person displaced as a result of a demolition or disposition that occurs from an assessment of a project for mandatory conversion to vouchers under section 202 of the FY 1996 HUD Appropriations Act or section 537 of the QHWRRA or of voluntary conversion to vouchers out under section 533 of the QHWRRA. (Demolitions under section 202 of the FY 1996 HUD Appropriations Act are subject to the URA because they are governed by the law as in effect before enactment of the QHWRRA and because they are not subject to section 18 of the USHA. Demolitions under section 537 of the QHWRRA are subject to the URA because these demolitions are not subject to section 18 of the USHA); and

(e) Any person displaced as a result of the acquisition of the site for a project receiving Federal financial assistance.

*Section 535—Demolition, Site Revitalization, Replacement Housing, and Tenant-Based Assistance Grants for Public Housing Projects.* Section 535 amends section 24 of the USHA and provides the continued authority for the HOPE VI program, and establishes application selection and grant requirements.

Action Guidance. Because this section is effective immediately, HUD's FY 1999 HOPE VI Notice of Funding Availability will reflect the terms of this section.

*Exemption for severely distressed public housing demolished in accordance with a revitalization plan.* New section 24(g) of the USHA exempts severely distressed public housing demolished in accordance with a revitalization plan from the demolition requirements of section 18 of the USHA. However, any such housing disposed of and any housing developed to replace the demolished housing are subject to section 18 of the USHA.

Action Guidance. HOPE VI revitalization plans approved after October 21, 1998 (the date of enactment of the QHWRRA) will receive this exemption.

*Section 537—Required Conversion of Distressed Public Housing to Tenant-Based Assistance.* Section 537 adds a new section 33 to the USHA and repeals its forerunner provision in the FY 1996 HUD Appropriations Act. A component of each PHA plan is its 5-year plan for the removal of public housing units identified as distressed from the public housing inventory and the ACC. This plan for removal of units is subject to review by HUD.

Action Guidance. While this section is not yet effective, the language of this section clarifies that public housing developments identified by HUD or a PHA for conversion or for assessment of whether conversion is required under the preexisting law and regulations shall remain subject to that law and regulations (Section 202 of the VA/ HUD/Independent Agencies Appropriations Act of 1996 and implementing regulations at 24 CFR part 971).

### **Subtitle C of the QHWRRA—Section 8 Rental and Homeownership Assistance**

*Section 547—Section 8 PHA Administrative Fees for the Certificate, Voucher and Moderate Rehabilitation Programs.* Section 547 amends section 8(q) of the USHA and changes the prior administrative fee system slightly, by increasing the fee for the first 600 certificate, voucher and moderate rehabilitation units administered by a PHA from 7.5% to 7.65% of a defined base amount beginning October 1, 1998. HUD will issue a separate notice indicating how the increase in FY 1999 administrative fees is to be paid.

Action Guidance for the Section 8 Certificate, Voucher and Moderate Rehabilitation Programs. A Senate colloquy on the QHWRRA legislation indicated that HUD should allow administrative fee adjustments to cover any necessary additional expenses for serving persons with disabilities fully, such as additional counseling (housing search assistance) expenses (Congressional Record of October 8, 1998, p. S11840). PHAs that have undertaken or will undertake, such expenses may document the services provided, describe the expenses and propose administrative fee adjustments to HUD.

*Section 548—Law Enforcement and Security Personnel in Project-Based Section 8 Housing.* To increase security, Section 548 provides that Section 8 assistance may be provided to police officers and other security personnel who are not otherwise eligible for assistance.

Action Guidance for the Section 8 Project-Based Certificate, Moderate Rehabilitation and Other Section 8 Project-Based Programs. Section 548 is applicable to FY 1999 and following fiscal years, and is applicable to Section 8 moderate rehabilitation, project-based certificate, new construction, substantial rehabilitation and other project-based Section 8 projects. Owners must apply to the HUD Field Office for authorization to house over-income police officers and other security personnel in the assisted units. Until

otherwise notified, the owner application needs to include a statement demonstrating the need for increased security at the project, and a description of the proposed gross rent for the unit and any special conditions for occupancy. Processing instructions will be provided to HUD Field Offices.

*Section 549—Advance Notice to Tenants of Expiration, Termination, or Owner Nonrenewal of Section 8 Assistance Contract.* Section 549(a) of the QHWRRA amends section 8(c)(9) of the USHA to make permanent the tenant-based notice and endless lease provisions which had been effective through FY 1998 and to change the project-based contract termination notice requirement from 6 months to 1 year. Section 549(a) also eliminates the notice and rent adjustment provisions of sections 8(c)(8) and (10).

Section 549(b) amends section 8(c)(9) to require the project-based 1-year notice to include information about the possibility of nonrenewal of assistance (when the owner seeks renewal but appropriations are uncertain) and the resulting protections. Section 549(b) also requires a 6-month notice to HUD and tenants when the owner agrees to a 5-year renewal that is subject to the availability of appropriations.

Section 549(c) amends section 514(d) of the Multifamily Assisted Housing Reform and Affordability Act that addresses the mortgage restructuring, to require that the owner who is not renewing project-based assistance to give notice of the termination in addition to the 1-year notice at least 120 days before termination.

*1. Tenant-based assistance.* Subsection (a) of section 549, Permanent Applicability of Notice and Endless Lease Provisions, is effective October 21, 1999. That subsection makes permanent the suspension in recent annual appropriations acts of the 90-day owner termination notice to HUD and endless lease term with respect to the tenant-based Section 8 programs. Of course, landlords still must terminate leases and conduct evictions in accordance with other applicable laws.

Action Guidance for Section 8 Tenant-Based Certificate and Voucher Programs. PHAs should advise interested owners who are participating or who are potential participants in the tenant-based assistance programs that the 90-day owner termination and endless lease term requirements have been permanently eliminated. Additional implementation guidance was issued December 18, 1998 in Notice PIH 98-64.

*2. Project-based assistance.* Subsection (a) of section 549 also

requires owners of projects receiving project-based section 8 assistance to provide not less than one-year written notification to tenants and HUD of the expiration or termination of the contract. Note that section 8(c)(8) of the USHA which required owners to provide a 90-day notice to the tenants of any rent increase is repealed.

Action Guidance for Section 8 Project-Based Certificate, Moderate Rehabilitation and Other Project-Based Programs. Owners who gave notice prior to the enactment of the QHWRA (October 21, 1998) are covered under the 180-day notice requirement. Owners who give notice to tenants and HUD on or after October 21, 1998 must fulfill the entire one-year notification requirement. HUD's Office of Housing will issue further guidance in the near future. Guidance concerning the Section 8 Moderate Rehabilitation Program notice requirements is found in Notice PIH 98-62, issued December 15, 1998.

**Section 551—Funding and Allocation (of Public Housing and Section 8 Funds).** Section 551 amends section 213 of the Housing and Community Development Act of 1974 (42 U.S.C. 1439) which section addresses applications for housing assistance under the USHA or section 101 of the Housing and Urban Development Act of 1965. Section 551 most importantly repeals restrictions on funding allocations related to an obsolete nonmetropolitan set-aside and notification to jurisdictions and solicitation of comments regarding certain funding awards.

Action Guidance for Public Housing and Section 8 Programs. This notice makes section 551 effective immediately. Local government comments with respect to affected PHA applications for Section 8 and public housing funds are no longer required.

**Section 554—Leasing to Voucher Holders.** This section immediately repeals the so-called "take one, take all" Section 8 tenant-based provision that has been suspended in recent annual appropriations acts.

Action Guidance for the Section 8 Tenant-Based Certificate and Voucher Programs. The intent of Congress was to make the tenant-based assistance program more attractive to private landlords and encourage participation. PHAs should make a concerted effort to inform the prospective owner community of this permanent change, particularly for marketing the tenant-based assistance program to owners of units in low-poverty areas.

**Section 555 and Section 545 [§ 8(o)(15)]—Section 8 Tenant-Based Homeownership Option.** These sections

provide necessary additional flexibility for PHAs to use vouchers to increase homeownership.

Action Guidance for the Section 8 Tenant-Based Certificate and Voucher Programs. HUD will be providing further guidance in the near future.

**Subtitle D of the QHWRA—Home Rule Flexible Grant Demonstration (Public Housing and Tenant-Based Section 8 Programs)**

Subtitle D of the QHWRA adds a demonstration program in which eligible jurisdictions, typically units of general local government, could receive public housing and tenant-based assistance for up to five years to meet specified performance goals.

Action Guidance for Public Housing and Section 8 Tenant-Based Programs. While HUD may issue additional guidance later, any eligible jurisdiction wishing to participate in the demonstration may follow the statute's requirements and submit an application to the Assistant Secretary, Office of Public and Indian Housing. HUD will not approve such an application, however, unless the application presents a compelling case that the eligible jurisdiction's participation and proposal would achieve the goals of the statute (which include the underlying program management and performance goals of the public housing and tenant-based assistance programs) in a superior manner to continuation of program management with the affected PHA.

**Subtitle E of the QHWRA—Accountability and Oversight of Public Housing Agencies Administering the Public Housing and Section 8 Programs**

**Section 565—Expansion of Powers for Dealing with Public Housing Agencies in Substantial Default.** In addition to providing for an expansion of various powers to be exercised by HUD or receivers, this section requires HUD to petition for court-ordered receivership (or to implement an administrative receivership, in the case of PHAs with fewer than 1,250 public housing units) with respect to certain troubled PHAs. The troubled PHAs subject to that requirement are those that do not:

(1) Within one year of the later of the date of enactment of the Act or receiving notice of a "troubled" designation, improve their performance score by at least half of the difference between their most recent score and the score necessary to remove the troubled designation; and

(2) Within two years of the later of such dates, escape troubled designation.

Section 565(d) states that HUD may administer these amendments as

necessary to assure its efficient and effective initial administration. The initial administration of this section is affected by two ongoing processes.

First, PHAs ordinarily receive performance scores throughout the calendar year after their staggered fiscal year ends. To meet the statutory requirement for PHAs that receive notice of a troubled designation after October 21, 1998, performance assessments will be scheduled specifically for years commencing with the beginning of the first quarter after receipt of that notice. For PHAs that were designated troubled before October 21, 1998, performance assessments will be scheduled specifically for years ending October 21, 1999, and if necessary, October 21, 2000. With respect to these assessments, which in most cases will not correspond to a PHA's fiscal year, HUD may utilize year-end financial information or the most recent resident satisfaction surveys where HUD determines that such use will reasonably reflect the PHA's situation as of the assessment date.

Second, PHAs have been receiving performance scores under the Public Housing Management Assessment Program (PHMAP), but commencing with PHA fiscal years ending September 30, 1999, will receive scores under the new Public Housing Assessment System (PHAS). Thus, in some instances, during the transitional year PHAS scores will have to be compared with PHMAP scores to determine whether the 50% improvement requirement has been met. Where HUD determines that the 50% improvement has not been met, but that this failure is attributable to the transition between PHMAP and PHAS, HUD will not seek or impose court or administrative receiverships based on that requirement. (HUD will have the information needed to make that determination, largely based on the "management" component of PHAS.) The requirement to escape troubled status within two years, however, will be imposed notwithstanding the transition from PHMAP to PHAS.

**Subtitle F—Safety and Security in Public and Assisted Housing**

**Section 575—Provisions Applicable Only to Public Housing and Section 8 Assistance.** Section 575 amends several subsections of section 6 of the USHA and contains a number of provisions concerning public housing and Section 8 applicant screening and subsidy termination for criminal activity. Except for subsection (e) of section 575, the provisions of section 575 are not yet applicable.

Action Guidance for the Public Housing Program. Subsection (e) of section 575, Obtaining Information from Drug Abuse Treatment Facilities, was effective October 21, 1998 and is applicable only to public housing. Any PHA that wishes to use the authority of this subsection to obtain information whether public housing applicants are currently using illegal controlled substances from drug abuse treatment facilities must follow the specific requirements of subsection (e).

#### **Subtitle G—Repeals and Related Provisions**

*Section 584—Use of American Products.* This section reflects Congressional intent that, to the greatest extent practicable, all equipment and products purchased with funds made available under the FY 1999 HUD Appropriations Act should be American made.

Action Guidance. In providing financial assistance under the FY 1999 HUD Appropriations Act or in entering into any contract with any entity using funds made available under the FY 1999 HUD Appropriations Act, HUD, to the greatest extent practicable, is to provide a notice that describes Congressional intent in this regard. HUD is bringing this matter to the attention of the readers of this notice and urges them to take appropriate action.

*Section 592—Use of Assisted Housing by Aliens.* This section removes the option of PHAs to elect not to comply with section 214 of the Housing and Community Development Act of 1980 (Restriction on Assistance to Noncitizens). This option was provided by the Immigration Reform and Immigrant Responsibility Act of 1996 (Pub.L. 104-298, approved September 30, 1996). In its place, the QHWRA provides that PHAs, notwithstanding the requirement of section 214(h)(1), may elect not to affirmatively establish and verify eligibility before providing financial assistance to an individual or family. Section 214(h)(1) provides that "No individual or family applying for financial assistance may receive such financial assistance prior to the affirmative establishment and verification of eligibility of at least the individual or one family member under subsection (d) by the applicable Secretary or other appropriate entity."

Action Guidance for Public Housing and Section 8 Certificate, Voucher, and Moderate Rehabilitation Programs. The amendments to section 214 made by the QHWRA essentially reinstate HUD's noncitizens regulations as they were in existence before the amendments made by the Illegal Immigration Reform and

Immigrant Responsibility Act of 1996. The pre-1996 requirements did not require PHAs to affirmatively establish and verify eligibility of at least the individual or one family member before the individual or family may receive financial assistance. Additionally, the pre-1996 requirements did not provide PHAs with the option not to comply with section 214. With the amendments made by QHWRA, PHAs must comply with section 214 except that they are not required to affirmatively establish and verify eligibility of at least one family member before providing financial assistance. PHAs, however, have the option to adhere to that requirement if they so choose.

In the event a PHA elected to opt out of compliance with section 214, the PHA may, but is not required to, immediately commence verification of eligibility of families for whom eligibility status under section 214 has not yet been undertaken. A PHA must, however, verify eligibility status in accordance with the requirements of section 214 and the regulations at 24 CFR part 5, subpart E, no later than the date of the family's annual reexamination.

*Section 597—Section 8 Moderate Rehabilitation Program.* In part, Section 597 establishes rules for determining contract rent levels at which expiring moderate rehabilitation contracts will be renewed.

Action Guidance for Section 8 Moderate Rehabilitation Program. PHAs must generally extend for one year the project-based HAP contracts for non-SRO, non-mark-to-market multifamily moderate rehabilitation projects at contract rents that are the lower of (1) current rents adjusted by HUD's operating cost adjustment factor, (2) comparable rents, or (3) FMR less any amounts allowed for tenant-purchased utilities. HUD Field Offices were provided information concerning moderate rehabilitation renewals on October 23, 1998; HUD provided further implementing guidance in Notice PIH 98-62 (HA), issued December 15, 1998.

*Section 599—Tenant Participation in Multifamily Housing Projects.* Section 599 of the QHWRA amends section 202 of the Housing and Community Development Amendments of 1978 to extend the rights of tenants to organize to include all projects receiving project-based Section 8 assistance (including moderate rehabilitation and project-based certificate projects) and to tenants receiving "enhanced" vouchers under the provisions of the Emergency Low Income Housing Preservation Act of 1987, or the Low-Income Housing Preservation and Resident

Homeownership Act of 1990, or the Multifamily Assisted Housing Reform and Affordability Act of 1997.

Action Guidance for Project-Based Section 8 and Enhanced Vouchers. HUD will issue rulemaking governing tenants' rights to organize at projects receiving project-based Section 8 assistance or enhanced vouchers in connection with preservation projects or restructuring projects (ELIHPA, LIHPRA and MAHRA).

#### *Section II—Certain Statutory Provisions That Require Rulemaking*

The following additional provisions of the QHWRA either require rulemaking for implementation by statute or HUD has determined in its review of the statutory provision that rulemaking is necessary for implementation. This list does not include conforming rules that simply amend existing HUD regulations to reflect the new statute. HUD may determine that other sections need rulemaking as the implementation process progresses. These sections will be identified in HUD's Semiannual Agenda of Regulations to be published in April 1999 as part of the Federal Government's Unified Regulatory Agenda.

*Section 511—Public Housing Agency Plan (for Public Housing and Section 8 Programs).* This section establishes a comprehensive planning process for PHAs—a 5-year plan and an annual plan update. The 5 year plan describes the mission of the PHA and the PHA's long range goals and objectives for achieving its mission over the next 5 years. The annual plan provides details about the PHA's immediate operations, residents, programs and services, and the PHA's strategy for handling operational concerns, residents concerns and needs, programs and services for the upcoming fiscal year.

Implementation Method. The QHWRA requires HUD to implement this section by issuing an interim rule no later than 120 days after enactment of the QHWRA; that is, by February 18, 1999. The interim rule must provide a 60-day public comment period. The QHWRA also requires HUD to solicit recommendations from (1) State or local PHAs, (2) public housing residents, and (3) other appropriate parties. The QHWRA also requires HUD to convene at least two public forums. The final rule, which must be issued no later than by October 21, 1999, must discuss the recommendations, public comments and HUD responses to the recommendations and comments.



Please note that the interim rule is published elsewhere in today's **Federal Register**.

*Section 515—Joint Ventures and Consortia of Public Housing Agencies.* This section permits two or more PHAs to participate in a consortium to administer any or all of their housing programs. This section also permits a PHA, in accordance with its PHA plan, to form a subsidiary or joint venture to administer programs or provide supportive or social services. A consortium must operate in accordance with a consortium agreement and a joint PHA plan. The income generated by a subsidiary or joint venture must be used for low-income housing or to benefit the residents, and will not result in lower funding to the PHA unless the capital and operating fund formulas so provide.

*Implementation Method.* HUD has determined that proper implementation of at least the consortium provisions requires rulemaking.

*Section 519—Public Housing Capital and Operating Funds.* Section 519 creates two grants for funding public housing activities—the Capital Fund and Operating Fund. Assistance through these new funding mechanisms is to commence for FY 2000, except that HUD may extend the implementation of the Operating Fund allocation formula by up to six months if necessary. (Please see discussion of this statutory provision under Section I for those provisions of section 519 that are immediately effective.)

*Implementation Method.* The QHWRRA requires HUD to develop allocation formulas for these funds through the negotiated rulemaking process.

*Section 526—Pet Ownership for Public Housing.* Section 526 permits a resident of public housing, as defined in new section 31 of the USHA, to have one or more pets in the unit if the resident maintains each pet responsibly in accordance with applicable State and local laws and with the PHA's policies stated in the PHA plan.

*Implementation Method.* The QHWRRA provides that section 526 will take effect upon the effective date of regulations issued by HUD to carry out this section. The QHWRRA also provides that HUD shall issue effective regulations after notice and opportunity to comment by the public.

*Section 533—Conversion of Public Housing to Vouchers; Repeal of Family Investment Centers.* Section 533 requires PHAs to perform a "conversion assessment" of each of its public housing projects to determine the relative benefit of converting to tenant-

based assistance under the section 8 program.

*Implementation Method.* HUD has determined that proper implementation of section 533 requires rulemaking.

*Section 537—Required conversion of distressed public housing to tenant-based assistance.* Section 537 adds a new section 33 to the USHA and repeals its forerunner provision in the FY 1996 HUD Appropriations Act. A component of each PHA plan is its 5-year plan for the removal of public housing units identified as distressed from the public housing inventory. This plan for removal of units is subject to review by HUD.

*Implementation Method.* HUD has determined that proper implementation of section 537 requires rulemaking. See guidance in Section I of this Notice regarding continued applicability of prior law and regulations.

*Section 539—Mixed-Finance Public Housing.* Section 539 adds a new section 37 to the USHA authorizing development of projects financially assisted by private resources as well as public housing program funds.

*Implementation Method.* New section 37 provides that HUD shall issue such regulations as may be necessary to promote the development of mixed-finance projects.

*Section 545—Merger of Certificate and Voucher Programs.* Section 545 amends section 8(o) of the USHA to merge the Section 8 certificate and voucher programs.

*Implementation Method.* In general, the merger of certificates and vouchers is not yet effective. HUD will be issuing a rule that merges these two programs. Therefore, PHAs should continue to operate these programs as previously operated, except with respect to specific changes highlighted by this Notice or as otherwise notified by HUD. This includes assistance for families currently under lease and the provision of turnover or newly awarded assistance to new families.

*Section 556—Section 8 Renewals for Tenant-Based Certificate and Voucher Funds.* Section 556 amends section 8 of the USHA to add a new subsection (dd) and authorizes HUD to renew all expiring tenant-based contracts. New subsection (dd) directs HUD to establish an allocation baseline amount of assistance to cover the renewals, and to apply an inflation factor (based on local or regional factors) to the baseline.

*Implementation Method.* Section 556 requires HUD to issue a notice by December 31, 1998, and to develop final regulations through the negotiated rulemaking process.

Please note that elsewhere in today's **Federal Register** HUD has published for the benefit of the public the notice that was issued directly to PHAs on December 31, 1998.

*Section 559—Rulemaking and Implementation.* Section 559 provides for implementation of sections 545 through 558 and other provisions in title V that relate to the voucher program (most notably, the merger of the certificate and voucher programs) through "such interim regulations as may be necessary" and final regulations necessary to implement these provisions. This section also requires HUD to seek recommendations from various types of organizations on the implementation of sections 8(o)(6)(B), 7(B), 10(D) of the USHA and renewals of expiring tenant-based assistance. HUD is to convene not less than two public forums to seek such recommendations.

*Section 586—Amendments to Public and Assisted Housing Drug Elimination Act of 1990.* Section 586 amends the Anti-Drug Abuse Act of 1988 to include additional eligible activities and provide for more predictable fund distribution.

*Implementation Method.* The statute directs HUD to prescribe by regulation the criteria for establishing a class of PHAs that have urgent or serious crime problems, for which funds may be reserved under this program.

Please note that elsewhere in today's **Federal Register**, HUD is publishing an Advance Notice of Proposed Rulemaking to solicit public comments on HUD's proposed approach to this rulemaking.

### Section III—Future Guidance

The QHWRRA makes many significant changes to HUD's public housing and Section 8 programs. With many of the changes immediately effective, substantial responsibility is placed on PHAs and Section 8 owners to implement these changes promptly. HUD is committed to working closely with its public housing and Section 8 partners to make the changes in its public housing and Section 8 programs a success. The successful administration of the new programs created by the QHWRRA or program changes made by the QHWRRA benefits those most in need of these programs—low-income families. HUD welcomes comments from its program partners, and HUD will continue to provide additional guidance through direct notices to PHAs and Section 8 owners, additional **Federal Register** notices, or through other means that may be determined appropriate.



**Section IV—Findings**

A Finding of No Significant Impact with respect to the environment was made in accordance with HUD regulations in 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4223). The Finding is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 7th Street, SW, Washington, DC 20410.

Dated: February 10, 1999.

**Deborah Vincent,**

*General Deputy Assistant Secretary for Public and Indian Housing.*

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