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New England

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Memorandum to: All Massachusetts Executive Directors

From: Donna J. Ayala, Director, Office of Public Housing, New England

Subject: Jurisdiction of Massachusetts Public Housing Authorities that Administer the Housing Choice Voucher Program

This updates the attached memorandum dated October 6, 1993, which describes the judgment of the Federal District Court in Williams, et al. v. Hanover Housing Authority, et al., 871 F. Supp. 527 (D. Mass. 1994), and its ramifications for Massachusetts HAs that maintain an Annual Contributions Contract (ACC) with HUD to administer the Housing Choice Voucher (HCV) Program.

Since the court ruling in Williams, the Department has consolidated and conformed the Section 8 program regulations into a single tenant-based program now known as the HCVP. While the attached memorandum refers to citations in the previous regulations in 24 CFR 882 and 887, the fundamental principles described in the 1993 memorandum are still applicable.

Highlights of the Court's ruling and applicable HUD regulations are as follows:

- A Massachusetts HA's jurisdiction to administer the Section 8 tenant-based program is statewide. Any family issued a HCV from a Massachusetts HA has the right to lease an apartment anywhere within the Commonwealth of Massachusetts.
- The HA that issues the HCV must administer the HCV on behalf of a family submitting a request for tenancy approval or it must make other arrangements for the proper administration of the HCV without regard to where the family chooses to lease a unit, if the unit is in Massachusetts. The HA has the discretion to choose any private or public entity to assist in administering the voucher assistance, but remains responsible for compliance with all program requirements for administration of the HCV program.
- Because HA Section 8 jurisdiction is statewide, HUD's portability regulations found at 24 CFR 982.355 are not applicable to families issued vouchers initially

who utilize the HCV within Massachusetts, or to families moving within the boundaries of Massachusetts. A family wishing to utilize the assistance outside the Commonwealth is afforded the opportunity to lease a unit anywhere in the United States, in the jurisdiction of a HA that administers the voucher program. 24 C.F.R. 982.355(b).

- Under portability, absorption "is the point at which a receiving HA stops billing the initial HA for assistance on behalf of a portability family." 24 C.F.R. §982.4. Under portability rules a receiving HA may decide to absorb the family into its own program. 24 C.F.R. §982.355(c)(5). However, the right of absorption is not applicable for a family issued a voucher by a Massachusetts HA if the family moves within the Commonwealth of Massachusetts. Portability rules do not apply. The issuing Massachusetts HA may voluntarily agree to allow another HA to absorb a family, but absent such agreement, the issuing HA maintains control of, and responsibility for administering, the HCV.

We understand that statewide jurisdiction continues to burden administrators of federal tenant-based subsidies in Massachusetts, especially now since the Section 8 Management Assessment Program (SEMAP) is active and is being carefully monitored by our office.

While this office recognizes the administrative difficulties that statewide jurisdiction present, we require, and have required, your compliance with all Section 8 program regulations. In that regard, it has recently come to our attention that some HAs may have in the past absorbed Section 8 families without the consent of the issuing HA, and without authority to do so under HUD regulations. If that is the case in your community, we urge you to voluntarily reconcile any disagreements that remain between HAs. There are a number of options available to remedy the absorption of an HCV family that was absorbed without the consent of the issuing HA: for example, 1) the issuing HA may decide to consent to the absorption, 2) HCV families may be swapped, 3) the HCV may be returned to the issuing HA and the issuing PHA may then enter into an agreement with another entity, including the local HA, to administer the HCV, or 4) the HCV may be returned and the issuing HA may administer it directly. In any case, we urge HAs to cooperate and to attempt a good faith resolution of any disputes they may have in connection with absorbed families. If you have any questions about past absorption practices, please call your Public Housing Revitalization Specialist.

In an effort to bridge some of the difficulties that HAs may encounter with program administration outside the geographical boundaries of their municipality, we urge Massachusetts HAs to establish mutually convenient and acceptable contracting arrangements for continued high quality service to the families we assist through the HCVP. To that end, we suggest that industry organizations could be used as a vehicle to develop and coordinate a form of agreement among HAs that would provide for the administration of HCVs throughout the Commonwealth.

Enclosure