



U.S. Department of Housing and Urban Development  
Boston Regional Office, Region 1  
Thomas P. O'Neill, Jr. Federal Building  
10 Causeway Street  
Boston, Massachusetts 02222-1092

OFFICE OF REGIONAL COUNSEL

(617) 565-5126 FAX: 565-7337

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MEMORANDUM FOR: Executive Director, Public Housing Agency

FROM: Casimir Kolaski, Acting Deputy Regional Administrator

SUBJECT: Jurisdictions of Public Housing Agencies in  
Massachusetts for Administration of Section 8  
Certificate and Voucher Programs

### Introduction

This Notice informs public housing agencies (PHAs) in Massachusetts of a recent ruling by the Federal District Court for Massachusetts. The court determined that PHAs in Massachusetts have the power under State law to contract directly with landlords anywhere in the Commonwealth of Massachusetts. The effect of the ruling under HUD regulations is that Section 8 families issued a voucher or certificate by a Massachusetts PHA may search for housing and live with assistance in any community in the PHA's jurisdiction, that is, the Commonwealth of Massachusetts.

### Background

Under HUD regulations, a PHA's "jurisdiction" is the geographic area where it is not legally barred from entering into Section 8 HAP contracts with landlords. (See 24 CFR § 887.7; 24 CFR § 887.57; 24 CFR § 882.103(a).) The rules provide that the holder of a certificate or voucher may select a dwelling unit anywhere in the PHA jurisdiction.

In 1978, the Chief Counsel of the Massachusetts Executive Office of Communities and Development (EOCD) concluded that,

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<sup>1</sup> Williams v. Hanover Housing Authority, C.A. 93-10964-Y (D. Mass. Sept. 9, 1993). The Court's ruling was issued orally from the bench and a written decision is expected. The Federal District Court has decided to certify this State law question to the Massachusetts Supreme Judicial Court for a final ruling.

under state law, a PHA cannot contract with the owner of a unit outside the PHA municipality, except where the PHA has entered into a contractual arrangement (such as a cooperative agreement) with another PHA. Under the EOCD opinion, a PHA's "jurisdiction" to enter into Section 8 contracts was limited to its own municipality.

On September 9, 1993, the Federal District Court for Massachusetts issued an oral ruling that, under Massachusetts law, PHAs have the power to contract for housing anywhere in the Commonwealth. In effect, the Court ruled that, for purposes of tenant-based assistance under the Section 8 certificate and voucher programs, Massachusetts PHAs have statewide jurisdiction.

#### Geographic Use of Certificates and Vouchers in Massachusetts

Since the Federal District Court has determined that Massachusetts PHAs have statewide jurisdiction, a Section 8 family assisted by a Massachusetts PHA may use its certificate or voucher anywhere in the Commonwealth of Massachusetts.

Massachusetts PHAs may now directly enter into and administer HAP contracts with owners in areas of Massachusetts inside or outside their municipal borders. The PHA may enter and administer a HAP contract for a unit located outside of the PHA municipality even if the housing is in a municipality that has a PHA operating a Section 8 certificate or voucher program. Accordingly, when a PHA is presented with a Request for Lease Approval, the PHA (1) may directly administer assistance for the family, and deal directly with the owner, or (2) it may develop other arrangements to administer the certificate or voucher. Since PHAs have State-wide jurisdiction, portability procedures are not applicable to within State moves by a family.

In briefing certificate and voucher holders, Massachusetts PHAs must inform each family that the family may lease a unit anywhere in the Commonwealth of Massachusetts. In addition, if a certificate or voucher holder was previously told that the family could only lease a unit in the PHA municipality, the PHA is urged 1) to issue a new certificate or voucher to the family, or 2) to extend the term of the certificate or voucher in accordance with 24 CFR § 882.209(d)(2) or 24 CFR § 887.165(b).

In briefing certificate and voucher holders, Massachusetts PHAs must also inform Massachusetts Section 8 families that they may receive assistance under portability procedures in any area out-of-state that is in an MSA of which part is located in Massachusetts, or in an MSA that is contiguous to an MSA of which part or all is located in Massachusetts. (See 42 U.S.C. § 1437f(r)(1)).

The law on portability in the Section 8 certificate and

voucher programs was amended in 1992. Section 147 of the HCD Act of 1992, amended 42 U.S.C. 1437f(r)(1). Under this law, a family not living in the PHA jurisdiction at the time of application must rent a unit in the PHA jurisdiction for at least 12 months. However, the 12 month restriction on portability moves applies only to a family that did not live in Massachusetts at the time of application to a Massachusetts PHA.

If you have any questions concerning this Notice, please contact your Housing Management Specialist.