



# U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

WASHINGTON, DC 20410-8000

ASSISTANT SECRETARY FOR HOUSING-  
FEDERAL HOUSING COMMISSIONER

## U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

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### Special Attention of:

Multifamily Hub Directors  
Multifamily Program Center Directors  
Supervisory Housing Project Managers  
Rural Housing Services (RHS) Directors  
Project Managers  
Contract Administrators  
Owners and Management Agents Administering  
Multifamily Housing Assistance Programs

### NOTICE: H09-03

Issued: May 27, 2009

Expires: May 31, 2010

Cross References:

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### Subject: **Exclusion of Deferred Department of Veterans Affairs Disability Benefits from Annual Income**

#### **I. Purpose**

This notice informs administrators of project-based Section 8 programs of the passage of the Housing and Economic Recovery Act of 2008 (HERA). As a result of HERA, any deferred Department of Veterans Affairs disability benefits that are received in a lump sum or in prospective monthly amounts by the tenant shall be excluded as annual income.

#### **II. Background**

The Housing and Economic Recovery Act of 2008 (Public Law - 110-289, 122 Stat. 2654, approved July 30, 2008) (HERA) made a number of changes to the U.S. Housing Act of 1937 (42 U.S.C. 1437 et seq.) (1937 Act) including changes to the definition of annual income, which affects the Office of Housing's project-based assistance programs. Section 2608 of Title VI of Division B of HERA amends the definition of "annual income" in section 3(b)(4) of the 1937 Act to exclude any deferred Department of Veterans Affairs (VA) disability benefits that are received in a lump sum amount or in prospective monthly amounts from the definition of income.

#### **III. Applicability**

This Notice applies to administrators of the following programs:

A. Project-based Section 8

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1. New Construction
  2. State Agency Financed
  3. Substantial Rehabilitation
  4. Section 202/8
  5. Rural Housing Services Section 515/8
  6. Loan Management Set-Aside (LMSA)
  7. Property Disposition Set-Aside (PDSA)

#### **IV. Implementation**

As of July 30, 2008, the effective date of HERA, deferred Department of Veterans Affairs (VA) disability benefits that are received in a lump sum amount or in prospective monthly amounts are not to be included for purposes of determining the annual income of an applicant for or recipient of benefits under the 1937 Act. This income exclusion is similar to the existing exclusion for deferred periodic amounts from supplemental security income and Social Security benefits under 24 CFR 5.609(c)(14). Although the full amount of periodic Social Security payments is included in annual income pursuant to 24 CFR 5.609(b)(4), the deferred amount resulting from the delayed start of the periodic payment is not included in annual income. In the same way, the full amount of periodic VA disability benefit payments will continue to be included in annual income pursuant to 24 CFR 5.609(b)(4), but the deferred amount resulting from the delayed start of the disability payments will not be included in annual income.

A payment qualifies as a VA disability benefit if it is identified as a disability benefit in the VA benefit award letter, regardless of whether or not the family member that is the beneficiary of the award would qualify as a person with disabilities under HUD's regulations. For existing tenants, the new exclusion for deferred payments will be made applicable at the time of annual or interim recertification of income. This provision is self implementing without further regulatory action by HUD. HUD will later publish a conforming rule to include this item with the exclusion from income for deferred Social Security benefits at 24 CFR 5.609(c)(14).

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Federal Housing Commissioner