MASSACHUSETTS DEPARTMENT OF HOUSING & COMMUNITY DEVELOPMENT

HOUSING CHOICE VOUCHER PROGRAM ADMINISTRATIVE PLAN

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Massachusetts
Department of Housing and Community Development
Administrative Plan
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CHAPTER 1 : OVERVIEW

1.1 INTRODUCTION

The public housing agency (PHA) receives its funding for the Housing Choice Voucher (HCV) program from the U.S. Department of Housing and Urban Development (HUD). The PHA is not a federal department or agency. A PHA is a governmental or public body, created and authorized by state law to develop and operate housing and housing programs for low-income families. The PHA enters into an Annual Contributions Contract with HUD to administer the program requirements on behalf of HUD. The PHA must ensure compliance with federal laws, regulations, and notices and must establish policy and procedures to clarify federal requirements and to ensure consistency in program operation.

> PHA Policy
>
> On June 19, 2008, the Massachusetts Department of Housing and Community Development (DHCD) entered into an Amended and Restated Moving To Work Agreement (MTW Agreement) with HUD. As a Moving To Work (MTW) agency, DHCD has the flexibility to waive certain statutory and regulatory provisions applicable to the Housing Choice Voucher Program. In cases where MTW flexibilities conflict with statutes or NOFA requirements, the statutory and NOFA requirements will take precedence over the MTW flexibility, unless otherwise approved or waived by HUD. Where Enhanced and Tenant Protection vouchers are concerned, DHCD will not use MTW flexibility to infringe on the protections applied to these families.

This Chapter contains information about the PHA and its programs with emphasis on the HCV program. It also contains information about the purpose, intent and use of the plan and guide.

There are three parts to this Chapter:

- The Public Housing Agency (PHA): This part includes a description of the PHA, its jurisdiction, its programs, and its mission and intent.
- The HCV Program: This part contains information about the Housing Choice Voucher program operation, roles and responsibilities, and partnerships.
- The HCV Administrative Plan: This part discusses the purpose and organization of the plan and its revision requirements.

1.2 THE PHA

This part explains the origin of the PHA's creation and authorization, the general structure of the organization, and the relationship between the PHA Board and staff.

1.2.1 Organization and Structure of the PHA

The Section 8 tenant-based HCV program is funded by the federal government. DHCD is one of over one hundred PHAs administering this program in the Commonwealth of Massachusetts. Approximately twenty-five percent of the vouchers allocated to Massachusetts are managed by DHCD.

> PHA Policy
>
> DHCD subcontracts the day-to-day management and operations of its HCV and Moderate Rehabilitation programs to qualified agencies and PHAs. The abbreviation, PHA, as used throughout this plan also refers to DHCD's subcontracting agencies, which may also be referred to as regional administering agencies or RAAs. The RAAs manage the day-to-day operations of the DHCD's HCV programs in accordance with their DHCD contract; HUD regulations, notices, and directives; this Administrative Plan, and directives and guidance provided by DHCD.
>
> DHCD will periodically review RAA administrative practices to ensure consistency in program administration. At any time, DHCD may require the RAAs to amend or modify their discretionary procedures.

1.2.2 PHA Mission

The purpose of a mission statement is to communicate the purpose of the agency to people inside and outside of the agency. It provides guiding direction for developing strategy, defining critical success factors, searching out key opportunities, making resource allocation choices, satisfying clients and stakeholders, and making decisions.

> PHA Policy
>
> The mission of DHCD is to strengthen cities, towns and neighborhoods to enhance the quality of life of Massachusetts residents. We provide leadership, professional assistance and financial resources to promote safe, decent affordable housing opportunities, economic vitality of communities, and sound municipal management.

1.2.3 The PHA's Section 8 Programs

The following programs are included in this Administrative Plan:

> PHA Policy
>
> This Administrative Plan is applicable to the operation of the HCV and the following HCV targeted programs. For these targeted programs, all policies described in this Administrative Plan are applicable, except under the specific circumstances detailed in CHAPTER 19.

Non-Elderly Disabled Vouchers (NEDs)

Vouchers that have been awarded under NOFAs to provide rental assistance specifically for non-elderly disabled (NED) families include vouchers issued under the Designated Housing Program and Mainstream One Housing Program. Specific policies related to each of these programs and NEDs can be found in CHAPTER 19.

Designated Housing Program

PHA Policy

The Designated Housing program (DSG) assists non-elderly families where either the head, spouse or co-head is disabled. Upon exhausting current waiting lists for these programs, turnover vouchers will be issued to eligible disabled households selected off of the regular HCV Waiting List. [MTW Plan FY 2012]

For more details on Designated Housing Program, see Section 19.2 Designated Housing and one-year Mainstream Program.

Mainstream Housing Programs

PHA Policy

There are two Mainstream Housing Programs. The Mainstream One Housing Program (MS1) assists families where either the head of household, co-head or spouse is disabled and non-elderly and is a part of the NED HCVs. The Mainstream Five Housing Program (MS5) assists families where either the head of household, co-head or spouse is disabled and elderly or non-elderly. MS5 vouchers are not part of DHCD's MTW program.

Upon exhausting current waiting lists for these programs, turnover vouchers will be issued to eligible disabled households selected from the regular HCV Waiting List. [MTW Plan FY 2012]

For more details, see Section 19.3 FIVE YEAR Mainstream Housing Program .

Family Unification Program

PHA Policy

The Family Unification Program (FUP) is a collaborative effort between the DHCD and the Department of Children and Families (DCF). The FUP targets: 1) families with children in placement who have substantially complied with all the DCF service plan tasks, but do not have permanent or adequate housing to which their children can be returned, and (2) families for whom lack of adequate housing is the primary factor in the threat of or imminent placement of the family's child, or children in out of home care, and (3) battered women with their children who have not secured permanent, standard, replacement housing, and (4) youth that are at least 18 years old and not more than 21 years old who left foster care at the age of 16 or older and who lack adequate housing. All applicants must be referred by the DCF and have an open DCF case at the time of referral, selection, and when the voucher is issued.

For more details on FUP, see Section 19.4 Family Unification Program.

Greater Plymouth Area Supportive Housing Program

PHA Policy

The Greater Plymouth Area Supportive Housing Program (GPASHP) assists homeless families with either a disabled parent or child. The GPASHP program targets those families who can live independently within the community but need case management and support services to achieve and maintain successful tenancies. The GPASHP program is a unique collaboration between the DHCD and the South Shore Housing Development Corporation (SSHDC). SSHDC administers the housing subsidy, provides case management, and coordinates the support services.

For more details, see Section 19.6 Greater Plymouth Area Supportive Housing Program.

Housing Options Program

PHA Policy

The Housing Options Program (HOP) provides rental assistance and supportive services to disabled persons in the greater Boston area who are homeless or at risk of homelessness. The HOP is a collaborative effort of the DHCD, the Department of Mental Health (DMH), the Department of Public Health (DPH), the Executive Office of Health and Human Services (EOHHS) and the Massachusetts Rehabilitation Commission (MRC). These human service commissions commit funds to support the lead service agency, JRI Health, which provides all applicant referrals and coordination of services for program participants.

For more details, see Section 19.5 Housing Options Program.

Project-Based Voucher Program

PHA Policy

The Project-Based Voucher Program (PBV) links Section 8 subsidy to specific units where the owner agrees to construct or rehabilitate the structure with funds other than subsidies from the U.S. Housing Act of 1937. The program's primary objectives are to upgrade the existing rental housing stock and make units available to low-income families at rents within the Fair Market Rent level.

For more details, see CHAPTER 18.

Tenant-Based Voucher Program for Persons with HIV/AIDS

PHA Policy

The Tenant-Based Rental Assistance Program (TBRA) assists individuals and families with HIV/AIDS by providing rental assistance and supportive services. JRI Health, as the lead service agency, provides intake, assessment, housing search and critical linkages to other service providing agencies throughout the Commonwealth. Supportive services may include: assistance finding a suitable apartment; case management; substance abuse/relapse prevention support; coordinating home health services; home-based mental health support; housekeeping assistance; and help arranging respite care, day care and transportation. All applicants must be referred by the JRI Health staff.

For more details see Section 19.8 Tenant-Based Voucher Program For Persons With HIV/AIDS.

Raising the Next Generation

PHA Policy

The Raising the Next Generation Program (RNG) assists families in the Boston metropolitan area with a head of household 50 years of age or older and who is the custodian responsible for raising young children.

Participants must be able to live independently within the community but due to their unique family composition, need special support services for both elderly persons and young children.

For more details, See Section 19.9 Raising the Next Generation.

Veterans Housing Voucher Program

PHA Policy

This program is administered in cooperation with the Department of Veterans Affairs (VA), and assists homeless veterans with disabilities and/or severe psychiatric and/or substance abuse disorders. Services may include: housing search assistance; community-based management services and outpatient health services. Not all applicants may receive services. Application is by referral only from the VA Medical Centers (VAMC), the Massachusetts Department of Veterans' Services, and the Department of Veteran's Services provider agencies.

For more details, see Section 19.10 Veterans Housing Voucher Program.

Boston Consent Decree

PHA Policy

Now referred to as the Community Choice Initiative (CCI), this Consent Decree requires appropriate actions to be taken to outreach to the under-serviced program-eligible Black population in the City of Boston.

Holyoke Consent Decree

PHA Policy

This Consent Decree requires appropriate actions to be taken to outreach to the under-serviced program-eligible Hispanic population in the City of Holyoke.

Family Self-Sufficiency Program

PHA Policy

The Family Self Sufficiency Program (FSS) helps eligible families achieve economic independence and self-sufficiency over a five year period. The goal is to eliminate the participant's need for public assistance and enhance their ability to achieve homeownership, if desired. PHAs work with the public and private sectors to create a workforce enhancement program where participants receive training and counseling such as skill building, job training and educational opportunities, and referrals to other ancillary supports such as child care and transportation providers.

A five-year "Contract of Family Participation" is tailored for each participant. This contract outlines the participant's goals and describes the various work-related activities in which the participant agrees to participate in. The participant is allowed to modify their goals as they gain both work experience and more perspective on their future.

As the participant's income and rent share increases, an escrow account is established by the PHA to set aside funds for the participant's use at the end of the program. Upon successful completion of the program, the participant can use these funds for any purpose, such as homeownership, starting a business, paying off loans, or going back to school. The participant is also able to access their escrow funds during the five year contract term as long as it is for work-related purposes, such as paying car insurance, buying a uniform or enrolling in a job-related course. Generally, midterm use of the escrow is limited, in order to ensure that funds are available for the participant when they have completed the program.

The escrow funds are available to those participants who are employed and no longer have a need for public assistance. However, successful FSS graduates are still eligible to receive housing assistance.

The FSS Program is available only to current HCV program participants in good standing. For more details, see 19.13 Family Self-Sufficiency Program.

1.2.4 The PHA's Commitment to Ethics and Service

- The PHA is committed to providing excellent service to HCV program participants – families and owners – in the community. The PHA's standards include:

- Administer applicable federal and state laws and regulations to achieve high ratings in compliance measurement indicators while maintaining efficiency in program operation to ensure fair and consistent treatment of clients served.

- Provide decent, safe, and sanitary housing – in compliance with program housing quality standards – for very low income families while ensuring that family rents are fair, reasonable, and affordable.

- Encourage self-sufficiency of participant families and assist in the expansion of family opportunities which address educational, socio-economic, recreational and other human services needs.

- Promote fair housing and the opportunity for very low-income families of all ethnic backgrounds to experience freedom of housing choice.

- Promote a housing program which maintains quality service and integrity while providing an incentive to private property owners to rent to very low-income families.

- Promote a market-driven housing program that will help qualified low-income families be successful in obtaining affordable housing and increase the supply of housing choices for such families.

- Create positive public awareness and expand the level of family, owner, and community support in accomplishing the PHA's mission.

- Attain and maintain a high level of standards and professionalism in day-to-day management of all program components.

- Administer an efficient, high-performing agency through continuous improvement of the PHA's support systems and commitment to our employees and RAAs, and their development.

The PHA will make every effort to keep program participants informed of HCV program rules and regulations, and to advise participants of how the program rules affect them.

1.3 THE HOUSING CHOICE VOUCHER (HCV) PROGRAM

1.3.1 Overview and History of the Program

The intent of this section is to provide the public and staff with information related to the overall operation of the program. There have been many changes to the program since its inception in 1974 and a brief history of the program will assist the audience in understanding the program.

<u>The United States Housing Act of 1937</u>

The "Act" is responsible for the birth of federal housing program initiatives. The Act was intended to provide financial assistance to states and cities for public works projects, slum clearance and the development of affordable housing developments for low-income residents.

<u>The Housing and Community Development (HCD) Act of 1974</u>

The Housing and Community Development (HCD) Act of 1974 created a new federally assisted housing program – the Section 8 Existing program (also known as the Section 8 Certificate program). The HCD Act represented a significant shift in federal housing strategy from locally owned public housing to privately owned rental housing.

Under the Certificate program, federal housing assistance payments were made directly to private owners of rental housing, where this housing was made available to lower-income families. Eligible families were able to select housing in the private rental market. Assuming that the housing met certain basic physical standards of quality ("housing quality standards") and was within certain HUD-established rent limitations ("fair market rents"), the family would be able to receive rental assistance in the housing unit. Family contribution to rent was generally set at 30 percent of the family's adjusted income, with the remainder of the rent paid by the program.

Another unique feature of the Certificate program was that the rental assistance remained with the eligible *family*, if the family chose to move to another privately-owned rental unit that met program requirements (in contrast to the public housing program where the rental assistance remains with the *unit*, should the family decide to move). Consequently, the Certificate program was characterized as *tenant-based* assistance, rather than unit-based assistance.

The Housing and Community Development (HCD) Act of 1987

The Housing and Community Development (HCD) Act of 1987 authorized a new version of tenant based assistance – the Section 8 Voucher program. The Voucher program was very similar to the Certificate program in that eligible families were able to select housing in the private rental market and receive assistance in that housing unit.

However, the Voucher program permitted families more options in housing selection. Rental housing still had to meet the basic housing quality standards, but there was no fair market rent limitation on rent. In addition, family contribution to rent was not set at a limit of 30 percent of adjusted income. Consequently, depending on the actual rental cost of the unit selected, a family might pay more or less than 30 percent of their adjusted income for rent.

"Conforming" Rules

From 1987 through 1999, public housing agencies managed both the Certificate and Voucher tenant-based assistance programs, with separate rules and requirements for each. From 1994 through 1998, HUD published a series of new rules, known as "conforming" rules, to more closely combine and align the two similar housing programs, to the extent permitted by the law.

Public Housing Reform Act/QHWRA

In 1998, the Quality Housing and Work Responsibility Act (QHWRA) – also known as the Public Housing Reform Act – was signed into law. QHWRA eliminated all statutory differences between the Certificate and Voucher tenant-based programs and required that the two programs be merged into a single tenant-based assistance program, now known as the Housing Choice Voucher (HCV) program.

The HCV program was modeled closely on the pre-merger Voucher program. However, unlike the pre-merger Voucher program, the HCV program requires an assisted family to pay at least 30 percent of adjusted income for rent.

The transition of assistance from the Certificate and Voucher programs to the new HCV program began in October 1999. By October 2001, all families receiving tenant-based assistance were converted to the HCV program.

1.3.2 HCV Program Basics

The purpose of the HCV program is to provide rental assistance to eligible families. The rules and regulations of the HCV program are determined by the U.S. Department of Housing and Urban Development. The PHA is afforded choices in the operation of the program which are included in the PHA's Administrative Plan.

The HCV program offers mobility to eligible families by allowing them to search for suitable housing anywhere in the PHA's jurisdiction. Some families may also be eligible to move to other PHAs' jurisdictions under portability.

When a family is determined to be eligible for the program and funding is available, the PHA issues the family a housing voucher. When the family finds a suitable housing unit and funding is available, the PHA will enter into a contract with the owner and the family will enter into a lease with the owner. Each party makes their respective payment to the owner so that the owner receives full rent.

Although the PHA determines if the family is eligible for the program, the owner has the responsibility of determining if the family is a suitable renter. The PHA continues to make payments to the owner as long as the family is eligible and the housing unit continues to qualify under the program.

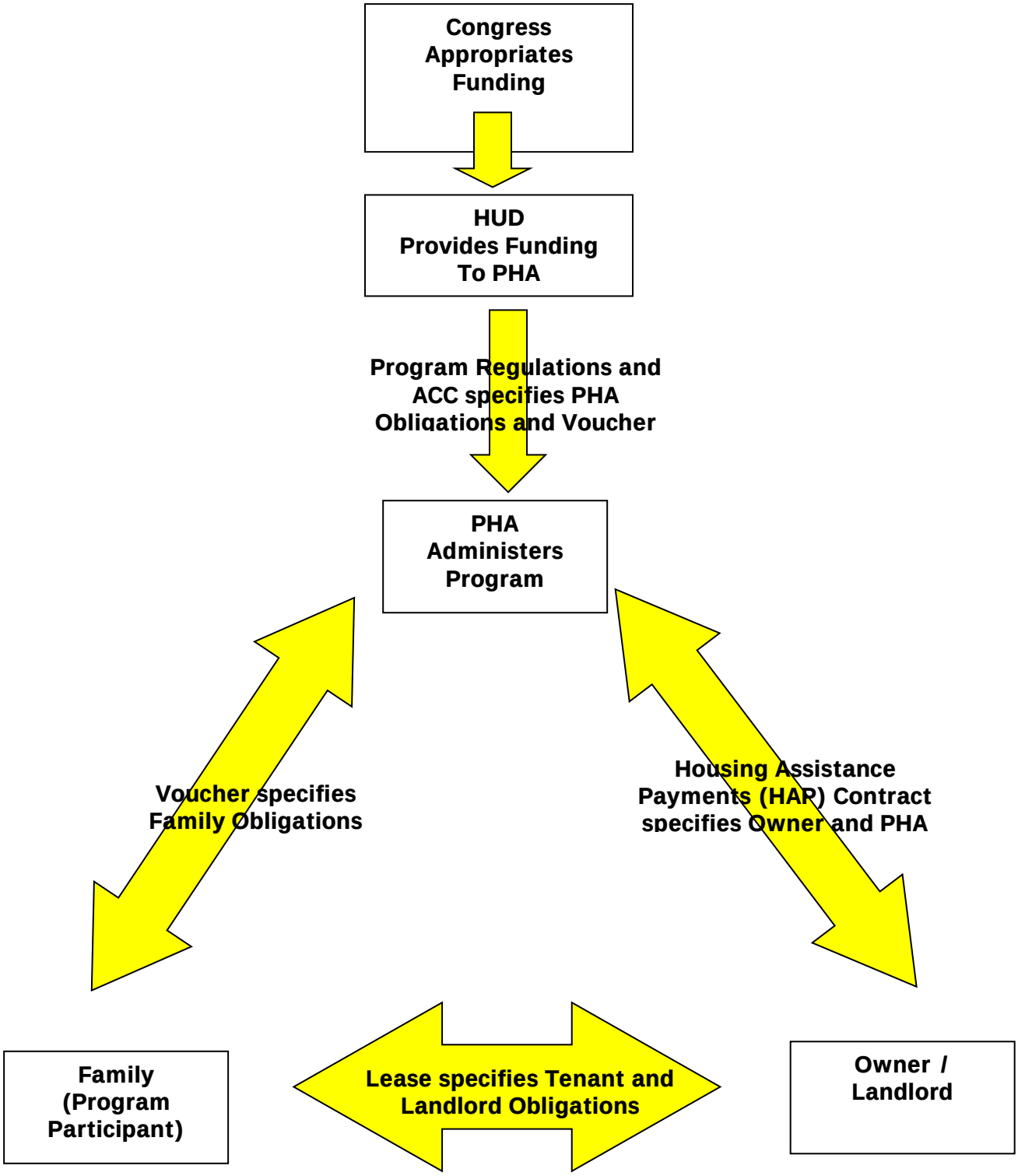
1.3.3 The HCV Partnerships

To administer the HCV program, the PHA enters into a contractual relationship with HUD. The PHA also enters into contractual relationships with the assisted family and the owner or landlord of the housing unit.

For the HCV program to work and be successful, all parties involved – HUD, the PHA, the owner, and the family – have important roles to play. The roles and responsibilities of all parties are defined in federal regulations and in legal documents that parties execute to participate in the program.

The following chart, “HCV Relationships”, illustrates key aspects of these relationships.

The HCV Relationships:



What does HUD do?

HUD has the following major responsibilities:

- Develop regulations, requirements, handbooks, notices and other guidance to implement HCV housing program legislation passed by Congress;
- Allocate HCV program funds to PHAs;
- Provide technical assistance to PHAs on interpreting and applying HCV program requirements;
- Monitor PHA compliance with HCV program requirements and PHA performance in program administration.

What does the PHA do?

The PHA administers the HCV program under contract with HUD and has the following major responsibilities:

- Establish local policies;
- Review applications from interested applicant families to determine whether applicants are eligible for the program;
- Maintain waiting list and select families for admission;
- Issue voucher to selected family and, if necessary, assist the family in finding a place to live;
- Conduct outreach to owners, with special attention to owners outside areas of poverty or minority concentration;
- Approve the rental unit (including assuring compliance with housing quality standards and rent reasonableness), the owner, and the tenancy;
- Make housing assistance payments to the owner in a timely manner;
- Ensure that families and their rental units continue to qualify under the program;
- Ensure that owners and families comply with program rules;
- Provide families and owners with prompt, professional service;
- Comply with all fair housing and equal opportunity requirements, HUD regulations and requirements, the Annual Contributions Contract, HUD-approved applications for funding, the PHA's Administrative Plan, and other applicable federal, state and local laws.

What does the Owner do?

The owner has the following major responsibilities:

- Screen families who apply for tenancy, to determine if they will be good renters.
- The PHA can provide some information to the owner, but the primary responsibility for tenant screening rests with the owner.
- The owner should consider family background factors such as:

Rent and bill-paying history;

History of caring for property;

Respecting the rights of others to peaceful enjoyment of the property;

Compliance with essential conditions of tenancy:

Whether the family is engaging in drug-related criminal activity or other criminal activity that might threaten others.

- Comply with the terms of the Housing Assistance Payments contract, executed with the PHA;
- Comply with all applicable fair housing laws and discriminate against no one;
- Maintain the housing unit by making necessary repairs in a timely manner;
- Collect rent due from the assisted family and otherwise comply with and enforce provisions of the dwelling lease.

What does the Family do?

The family has the following responsibilities:

- Provide the PHA with complete and accurate information, determined by the PHA to be necessary for administration of the program;
- Make their best and most timely efforts to find a place to live that is suitable for them and that qualifies for the program;
- Attend all appointments scheduled by the PHA;
- Allow the PHA to inspect the unit at reasonable times and after reasonable notice;

- Take responsibility for care of the housing unit, including any violations of housing quality standards caused by the family;
- Comply with the terms of the lease with the owner;
- Comply with the family obligations of the voucher;
- Not commit serious or repeated violations of the lease;
- Not engage in drug-related or violent criminal activity;
- Notify the PHA and the owner before moving or terminating the lease;
- Use the assisted unit only for residence and as the sole residence of the family. Not sublet the unit, assign the lease, or have any interest in the unit;
- Promptly notify the PHA of any changes in family composition;
- Not commit fraud, bribery, or any other corrupt or criminal act in connection with any housing programs.

If all parties fulfill their obligations in a professional and timely manner, the program responsibilities will be fulfilled effectively.

1.3.4 Applicable Regulations

Applicable regulations include:

- 24 CFR Part 5: General Program Requirements
- 24 CFR Part 8: Nondiscrimination
- 24 CFR Part 982: Section 8 Tenant-Based Assistance: Housing Choice Voucher Program
- 24 CFR Part 983: Section 8 Project-Based Voucher (PBV) Program

1.4 THE HCV ADMINISTRATIVE PLAN

1.4.1 Overview and Purpose of the Plan

The Administrative Plan is required by HUD. The purpose of the Administrative Plan is to establish policies for carrying out the programs in a manner consistent with HUD requirements and local goals and objectives contained in the PHA's agency plan. This Administrative Plan is a supporting document to the PHA agency plan, and is available for public review as required by CFR 24 Part 903. This Administrative Plan is set forth to define the PHA's local policies for operation of the housing programs in the context of federal laws and regulations. All issues related to Section 8 not addressed in this document are governed by such federal regulations, HUD handbooks and guidebooks, notices and other applicable law. The policies in this

Administrative Plan have been designed to ensure compliance with the consolidated ACC and all HUD-approved applications for program funding.

The PHA is responsible for complying with all changes in HUD regulations pertaining to the HCV program. If such changes conflict with this plan, HUD regulations will have precedence.

Administration of the HCV program and the functions and responsibilities of PHA staff shall be in compliance with the PHA's personnel policy and HUD's Section 8 regulations, except as they may be waived pursuant to the MTW Agreement, as well as all federal, state and local fair housing laws and regulations.

DHCD's Administrative Plan includes regulatory citations from the Code of Federal Regulations (CFR). Where regulatory citations do not specify business or calendar days, DHCD will interpret these citations as calendar days.

> PHA Policy-MTW
>
> DHCD's Administrative Plan includes policies which have been developed and implemented under the MTW program. The policies adopted by DHCD, under the MTW Agreement, will remain in force through the term of the Agreement and will supersede existing and applicable HUD requirements unless and until amended. Program policies related to the Housing Choice Voucher (HCV) Program and not addressed in this Plan are governed, as applicable, by DHCD's MTW Agreement, Annual Plans and Federal statutes and regulations as well as other applicable law.

1.4.2 Contents of the Plan

[24 CFR 982.54]

HUD regulations contain a list of what must be included in the Administrative Plan. The PHA Administrative Plan must cover PHA policies on the following subjects:

- Selection and admission of applicants from the PHA waiting list, including any PHA admission preferences, procedures for removing applicant names from the waiting list, and procedures for closing and reopening the PHA waiting list (CHAPTER 4);

- Issuing or denying vouchers, including PHA policy governing the voucher term and any extensions or suspensions of the voucher term. 'Suspension' means stopping the clock on the term of a family's voucher after the family submits a request for approval of the tenancy. If the PHA decides to allow extensions or suspensions of the voucher term, the PHA Administrative Plan must describe how the PHA determines whether to grant extensions or suspensions, and how the PHA determines the length of any extension or suspension (CHAPTER 5);

- Any special rules for use of available funds when HUD provides funding to the PHA for a special purpose (e.g., desegregation), including funding for specified families or a specified category of families (CHAPTER 4);

- Occupancy policies, including definition of what group of persons may qualify as a 'family', definition of when a family is considered to be 'continuously assisted'; standards for denying admission or terminating assistance based on criminal activity or alcohol abuse in accordance with 982.553 (CHAPTER 3 and CHAPTER 13);

- Encouraging participation by owners of suitable units located outside areas of low income or minority concentration (CHAPTER 14);

- Assisting a family that claims that illegal discrimination has prevented the family from leasing a suitable unit (CHAPTER 2);

- Providing information about a family to prospective owners (CHAPTER 3 and CHAPTER 10);

- Disapproval of owners (CHAPTER 14);

- Subsidy standards (CHAPTER 5);

- Family absence from the dwelling unit (CHAPTER 13);

- How to determine who remains in the program if a family breaks up (CHAPTER 3);

- Informal review procedures for applicants (CHAPTER 17);

- Informal hearing procedures for participants (CHAPTER 17);

- The process for establishing and revising voucher payment standards (CHAPTER 17);

- The method of determining that rent to owner is a reasonable rent (initially and during the term of a HAP contract) (CHAPTER 9);

- Special policies concerning special housing types in the program (e.g., use of shared housing) (CHAPTER 16);

- Policies concerning payment by a family to the PHA of amounts the family owes the PHA (CHAPTER 17);

- Interim redeterminations of family income and composition (CHAPTER 12);

- Restrictions, if any, on the number of moves by a participant family (CHAPTER 11);

- Approval by the board of commissioners or other authorized officials to charge the administrative fee reserve (CHAPTER 17);

- Procedural guidelines and performance standards for conducting required housing quality standards inspections (CHAPTER 8); and

- PHA screening of applicants for family behavior or suitability for tenancy (CHAPTER 3).

1.4.3 Mandatory vs. Discretionary Policy

HUD makes a distinction between mandatory and discretionary policy. The difference is outlined below:

- Mandatory policies: Policies driven by legislation, regulations, current handbooks, notices, and legal opinions.

- Discretionary policies: Policies which are based on optional, non-binding guidance, including guidebooks, notices that have expired and recommendations from individual HUD staff.

HUD expects PHAs to develop policies and procedures that are consistent with mandatory policies and to make clear the optional policies the PHA has adopted. The PHA's Administrative Plan is the foundation of those policies and procedures. HUD's directions require PHAs to make policy choices that provide guidance to staff and consistency to program applicants and participants.

1.4.4 Identifying MTW and Non-MTW Policies

Policies that are adopted by DHCD, under the MTW Agreement, are specifically noted in the Plan as MTW policies. Where a Plan policy relates to MTW and Non-MTW programs, the policy citation will not state MTW or Non-MTW. Finally, where regulatory citations are specifically identified in this Plan, if a corresponding MTW policy is in effect, the MTW policy will supersede the existing and applicable HUD regulatory citation.

1.4.5 Identifying MTW Policy Additions and Modification

The following table reflects the MTW policies contained in DHCD's Administrative Plan including the respective effective date for each policy initiative and modification.

Chapter	Section	Heading/Topic	Effective Date
CHAPTER 1: OVERVIEW	Overview and Purpose of the Plan	• Overview and Purpose of the Plan – MTW Policies	
	Identifying MTW and Non-MTW Policies	• Identifying MTW and Non-MTW Policies	
CHAPTER 6: INCOME AND SUBSIDY DETERMINATIONS	Household Composition and Income	• Household Composition and Income • Summary of Income Included and Excluded by Person - Income of Full-Time Students	• 1/1/12
	Certain Earned Income of Full-Time Students	• Certain Earned Income of Full-Time Students	• 1/1/12
	Earned Income Disallowance for Persons with Disabilities- MTW	• Earned Income Disallowance for Persons with Disabilities- MTW	• 1/1/12
	Imputing Income from Assets	• Imputing Income from Assets	• 1/1/12 • Revised: 9/1/12
	Asset Income Exclusion	• Asset Income Exclusion	• 1/1/12
	Changes in Payment Standards	• Changes in Payment Standards – Increases-MTW	• 1/1/12
	Low-Poverty & High-Opportunity Neighborhoods	• Low-Poverty & High-Opportunity Neighborhoods – MTW	• 7/1/09
	Applying Utility Allowances	• Applying Utility Allowances • Overview	• 4/1/14
	Reasonable Accommodation	• Applying Utility Allowances – Reasonable Accommodation	• 4/1/14
	Utility Allowance Revisions	• Utility Allowance Revisions	• 4/1/14
CHAPTER 7: VERIFICATION	Asset Self Certifications	• Asset Self Certifications - MTW	• 1/1/12
CHAPTER 8: HOUSING QUALITY STANDARDS	Biennial HQS Inspections	• Biennial HQS Inspections – MTW	• 11/1/12
CHAPTER 8: HOUSING QUALITY STANDARDS	Biennial HQS Audit inspections	• Biennial HQS Audit inspections	• 11/1/12
CHAPTER 9: RENT REASONABLENESS AND RENT INCREASES	PHA- and HUD-Initiated Rent Reasonableness Determinations	• PHA- and HUD-Initiated Rent Reasonableness Determinations – MTW	• 7/1/12
CHAPTER 12: REEXAMINATIONS	Biennial Cycle	• Biennial Cycle – MTW	• 1/1/12
	Limit on Voluntary Reexaminations	• Limit on Voluntary Reexaminations • Limit on Voluntary Reporting-MTW	• 1/1/12 • Revised 7/1/12

Chapter	Section	Heading/Topic	Effective Date
	Summary of Income/Expense Changes and Related Actions	• Summary of Income/Expense Changes and Related Actions – MTW	• 1/1/12
	Utility Allowances	• Utility Allowances – MTW	• 1/1/12
CHAPTER 14: OWNERS	MTW Owner Incentive Fund Pilot Program	• MTW Owner Incentive Fund Pilot Program	• 1/1/10
CHAPTER 16: SPECIAL HOUSING TYPES	Utility Allowance – Manufactured Homes	• Utility Allowance – Manufactured Homes	• 4/1/14
CHAPTER 17: PROGRAM ADMINISTRATION	Utility Allowances	• Utility Allowances • Revised UA policies	• 12/1/13: New Adm & Moves • 4/1/14: TBV & PBV not in 1st contract year • 7/1/14: Hardship
	Utility Allowances	• Utility Allowances • Schedule for UA policy implementation at different Project-Based developments	• 4/1/14 existing PBs • Variable: See chart in Section 17.3.3
	Determining Unit Size for Applying the Utility Allowance	• Determining Unit Size for Applying the Utility Allowance	• 4/1/14
CHAPTER 18: PROJECT-BASED VOUCHER (PBV) ASSISTANCE	Family Right to Move (Opt Out) with Tenant-Based Assistance	• Family Right to Move (Opt Out) with Tenant-Based Assistance • Eligibility for PB Opt-outs and related time frame • Caps on PB opt outs • Order of selection for a TB voucher participants with PB preferences • Exceptions to the opt out policies	• 1/1/12
	Biennial HQS Inspections - PB	• Biennial HQS Inspections - PB	• 11/1/12
	Biennial Audit Inspections - PB	• Biennial Audit Inspections - PB	• 11/1/12
	Rent Reasonableness	• Rent Reasonableness – MTW	• 7/1/12
	Rent Adjustments	• Rent Adjustments • PB Rent Redeterminations – MTW	• 7/1/12
CHAPTER 19: TARGETED PROGRAMS	Youth Transition to Success Program	• Youth Transition to Success Program	• 2/22/12
CHAPTER 19: TARGETED PROGRAMS	Expiring Use Preservation Initiative	• Expiring Use Preservation Initiative	• 7/1/12
CHAPTER 19: TARGETED PROGRAMS	Moving to Work Family Economic Stability (FES) Program	• Moving to Work Family Economic Stability (FES) Program	• 7/1/14 • Metro Boston Site

Chapter	Section	Heading/Topic	Effective Date
CHAPTER 20: EXHIBITS	Exhibit 19-1: Youth Transition to Success Program Admin Plan	• Exhibit 19-1: Youth Transition to Success Program Admin Plan	• 7/1/14

1.4.6 Identifying Non-MTW Policy Additions and Modification

The following table reflects the Non-MTW policy additions and revisions made in DHCD's Administrative Plan subsequent to the 9/1/12 version of the Plan, including the respective effective date for each policy initiative.

Chapter	Section	Heading/Topic	Effective Date
CHAPTER 3: ELIGIBILITY	Basic Eligibility Criteria	• Continually Assisted • Existing tenants in Rental Assistance Demonstration (RAD) projects	• 9/1/14
	Family and Household	• Family	• 9/1/14
	Income Eligibility and Targeting	• Types of Low-Income Families • Extremely Low Income	• 9/1/14
CHAPTER 4: APPLICATIONS, WAITING LIST AND TENANT SELECTION	Selection from the Waiting List - Hierarchy	• Selection from the Waiting List - Hierarchy • Families Terminated for Insufficient Funding	• 9/1/14
	The Application Interview	• The Application Interview • Document Request Time Frames	• 9/1/14
	Selection Method	• Income Targeting Requirement • Extremely Low Income	• 9/1/14
CHAPTER 6: INCOME AND SUBSIDY DETERMINATIONS	Assets	• Determining Actual Anticipated Income from Assets • $5,000 Self-Cert of Asset Income	• 9/1/14
	Applying Utility Allowances	• Overview • Applying smaller of unit size and voucher size	• 9/1/14
	Applying Utility Allowances	• Utility Allowance Revisions • Implementation of new UA Schedules	• 7/1/14
CHAPTER 7: VERIFICATION	Overview of Verification Requirements	• Notary Requirements • Requirements for Acceptable Documents	• 9/1/14
	Assets and Income from Assets	• Asset Self Certification • Self-Cert of Assets and Asset Income – Assets $5,000 or less	• 9/1/14
CHAPTER 8: HOUSING QUALITY STANDARDS	Illegal Units	• Illegal Units • Define illegal units and required corrective actions	• 9/1/14
	Lead compliance documentation	• Lead compliance documentation • Updated requirements	• 9/1/14
CHAPTER 10: GENERAL LEASING POLICIES	Tenancy Approval	• Tenancy Approval • Initial inspection requirements and time frames	• 9/1/14
CHAPTER 11: MOVING AND PORTABILITY	Denial of Moves	• Denial of Moves • Insufficient Funding	• 11/1/12
CHAPTER 12: REEXAMINATIONS	Conducting Regular Reexaminations	• Conducting Regular Reexaminations • Document Request Time Frames	• 9/1/14

Chapter	Section	Heading/Topic	Effective Date
	Family-Initiated Interim Reexaminations	• Required Reporting • Interim Reduction Due to Recoupment of SS or SSI	• 9/1/14
	Applying Payment Standards, Subsidy Standards and Utility Allowances	• Subsidy Standards • Live-in aide impact on subsidy standards	• 9/1/14
	Recalculating Family Share and Subsidy Amount	• Utility Allowances • Implementation of revised UA tables	• 4/1/14
CHAPTER 17: PROGRAM ADMINISTRATION	Utility Allowances	• Determining Unit Size for Applying the Utility Allowance	• 7/1/14
	Informal Reviews and Hearings	• Recording of the Hearing • Recording of the Hearing – Non-Citizens	• 9/1/14
	Violence Against Women Reauthorization Acts of 2005 AND 2013 (VAWA): Notification, Documentation, and Confidentiality	• Overview • Additional sections of the Plan have been updated to reflect the revisions outlined in this section, as applicable.	• 9/1/14
	Violence Against Women Reauthorization Acts of 2005 AND 2013 (VAWA): Notification, Documentation, and Confidentiality	• Notification to Program Applicants and Participants • Requirements to provide VAWA notifications	• 9/1/14
CHAPTER 18: PROJECT-BASED VOUCHER (PBV) ASSISTANCE	Owner's Written Tenant Selection Plan	• Owner's Written Tenant Selection Plan • Minimum criteria for tenant selection plan	• 11/1/12
	Preferences	• REMOVED: Limited Local Residency Preference	• 11/1/12
		• Homeless Preference	• 11/1/12
		• Homeless Veterans Preference	• 11/1/12
		• Youth Aging Out Preference	• 11/1/12
		• Homeless Programs or Initiatives	• 11/1/12
CHAPTER 19: Targeted Programs	Housing Options Program	• Disability Status • Transfers	• 9/1/14
	HUD-Veterans Affairs Supportive Housing (VASH-HUD) Program	• Terminations and Appeals	• 9/1/14

Chapter	Section	Heading / Topic	Effective Date
Chapter 20: Exhibits	Exhibit 19-1: Youth Transition to Success Program Admin Plan	• Exhibit 19-1: Youth Transition to Success Program Admin Plan • Termination	• 9/1/14

1.4.7 Organization of the Plan

The Plan is organized to provide information to users in particular areas of operation.

1.4.8 Updating and Revising the Plan

The PHA will revise this Administrative Plan as needed to comply with changes in HUD regulations.

PHA Policy

The PHA will review and update the plan at least once a year, and more often if needed, to reflect changes in regulations, PHA operations, or when needed to ensure staff consistency in operation. RAAs will be notified of additions or changes to this Administrative Plan and DHCD policies and procedures by E-mail or other suitable communication.

The PHA, from time to time, may make non-substantive changes and edits to the Administrative Plan to clarify policy language.

CHAPTER 2 : FAIR HOUSING AND EQUAL OPPORTUNITY

2.1 INTRODUCTION

This chapter explains the laws and HUD regulations requiring PHAs to affirmatively further civil rights and fair housing in all federally-assisted housing programs. The letter and spirit of these laws are implemented through consistent policy and processes. The responsibility to further nondiscrimination pertains to all areas of the PHA's housing choice voucher (HCV) operations.

This chapter describes HUD regulations and PHA policies related to these topics in three parts:

- Nondiscrimination: This part presents the body of laws and regulations governing the responsibilities of the PHA regarding nondiscrimination.

- Policies Related to Persons with Disabilities: This part discusses the rules and policies of the housing choice voucher program related to reasonable accommodation for persons with disabilities. These rules and policies are based on the Fair Housing Act (42.U.S.C.) and Section 504 of the Rehabilitation Act of 1973, and incorporate guidance from the Joint Statement of The Department of Housing and Urban Development and the Department of Justice (DOJ), issued May 17, 2004.

- Prohibition of Discrimination Against Limited English Proficiency Persons: This part details the obligations of the PHA to ensure meaningful access to the HCV program and its activities by persons with limited English proficiency (LEP). This part incorporates the Final Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition against national Origin Discrimination Affecting Limited English Proficient Persons published January 22, 2007, ,in the Federal Register.

2.2 NONDISCRIMINATION

2.2.1 Overview

Federal laws require PHAs to treat all applicants and participants equally, providing the same quality of service, regardless of family characteristics and background. Federal law prohibits discrimination in housing on the basis of race, color, religion, sex, sexual orientation, gender identity, national origin, age, familial status, and disability. The PHA will comply fully with all federal, state, and local nondiscrimination laws, and with rules and regulations governing fair housing and equal opportunity in housing and employment, including:

- Title VI of the Civil Rights Act of 1964

- Title VIII of the Civil Rights Act of 1968 (as amended by the Community Development Act of 1974 and the Fair Housing Amendments Act of 1988)

- Executive Order 11063

- Section 504 of the Rehabilitation Act of 1973

- The Age Discrimination Act of 1975
- Title II of the Americans with Disabilities Act (to the extent that it applies, otherwise Section 504 and the Fair Housing Amendments govern)
- Violence Against Women Reauthorization Act of 2005 and 2013 (VAWA)
- Any applicable state laws or local ordinances and any legislation protecting individual rights of tenants, applicants, or staff that may subsequently be enacted

When more than one civil rights law applies to a situation, the laws will be read and applied together.

> PHA Policy
>
> Massachusetts General Laws 151B Section 4 (10) applies.

2.2.2 Nondiscrimination

Federal regulations prohibit discrimination against certain protected classes. State and local requirements, as well as PHA policies, can prohibit discrimination against additional classes of people.

The PHA shall not discriminate because of race, color, sex, sexual orientation, gender identity, religion, familial status, age, disability or national origin (called “protected classes”).

Familial status includes children under the age of 18 living with parents or legal custodians, pregnant women, and people securing custody of children under the age of 18.

> PHA Policy
>
> The PHA will not discriminate on the basis of marital status.

The PHA will not use any of these factors to:

- Deny to any family the opportunity to apply for housing, nor deny to any qualified applicant the opportunity to participate in the housing choice voucher program
- Provide housing that is different from that provided to others
- Subject anyone to segregation or disparate treatment
- Restrict anyone's access to any benefit enjoyed by others in connection with the housing program
- Treat a person differently in determining eligibility or other requirements for admission

- Steer an applicant or participant toward or away from a particular area based any of these factors

- Deny anyone access to the same level of services

- Deny anyone the opportunity to participate in a planning or advisory group that is an integral part of the housing program

- Discriminate in the provision of residential real estate transactions

- Discriminate against someone because they are related to or associated with a member of a protected class

- Publish or cause to be published an advertisement or notice indicating the availability of housing that prefers or excludes persons who are members of a protected class.

Providing Information to Families and Owners

The PHA must take steps to ensure that families and owners are fully aware of all applicable civil rights laws. As part of the briefing process, the PHA must provide information to HCV applicant families about civil rights requirements and the opportunity to rent in a broad range of neighborhoods [24 CFR 982.301]. The Housing Assistance Payments (HAP) contract informs owners of the requirement not to discriminate against any person because of race, color, religion, sex, national origin, age, familial status, or disability in connection with the contract.

PHA Policy

Fair housing laws are explained to applicants at the briefing session. A Summary of Federal and State fair housing laws, and a copy of the HUD brochure, "Fair Housing -- Its Your Right" that contains housing discrimination complaint Form HUD-903 and/or 903A (Spanish version) are included in the information packet given to the family at the briefing. These documents are also available upon request.

Strategies to deal with owners who are unfamiliar with fair housing laws are presented at the briefing. Particular attention is given to explaining the provisions of the Massachusetts Fair Housing Act applicable to families with children, focusing on issues surrounding lead-based paint and the more common issues that may constitute discrimination; e.g., an owner's refusal to accept a Section 8 subsidy.

If a family is having difficulty leasing a unit the PHA should proactively attempt to spot issues that may be discriminatory. Families should be encouraged to document their housing search efforts beyond the first 60 days as that can become a useful tool in spotting possible discrimination.

Discrimination Complaints

If an applicant or participant believes that any family member has been discriminated against by the PHA or an owner, the family should advise the PHA. HUD requires the PHA to make

every reasonable attempt to determine whether the applicant's or participant's assertions have merit and take any warranted corrective action. In addition, the PHA is required to provide the applicant or participant with information about how to file a discrimination complaint [24 CFR 982.304].

> PHA Policy
>
> Applicants or participants who believe that they have been subject to unlawful discrimination may notify the PHA either orally or in writing. The PHA will attempt to remedy discrimination complaints made against the PHA.
>
> The PHA will refer the complainant to the appropriate fair housing center. If necessary, the PHA will provide them with information on how to complete and submit the housing discrimination complaint form to HUD's Office of Fair Housing and Equal Opportunity (FHEO) and the Massachusetts Commission Against Discrimination (MCAD). If requested by the family the PHA will assist in completing the complaint form.

2.3 POLICIES RELATED TO PERSONS WITH DISABILITIES

2.3.1 Overview

One type of disability discrimination prohibited by the Fair Housing Act is the refusal to make reasonable accommodation in rules, policies, practices, or services when such accommodation may be necessary to afford a person with a disability the equal opportunity to use and enjoy a program or dwelling under the program.

The PHA must ensure that persons with disabilities have full access to the PHA's programs and services. This responsibility begins with the first inquiry of an interested family and continues through every programmatic area of the HCV program.

> PHA Policy
>
> The PHA will ask all applicants and participants if they require any type of accommodations, in writing, on the intake application, reexamination documents, and notices of adverse action by the PHA. Contact information for requests for accommodation for persons with disabilities will be included.

2.3.2 Definition of Reasonable Accommodation

A person with a disability may require special accommodations in order to have equal access to the HCV program. The types of reasonable accommodations the PHA can provide include changes, exceptions, or adjustments to a rule, policy, practice, or service. Federal regulations stipulate that requests for accommodations will be considered reasonable if they do not create an "undue financial and administrative burden" for the PHA, or result in a "fundamental alteration" in the nature of the program or service offered. A fundamental alteration is a modification that alters the essential nature of a provider's operations.

Types of Reasonable Accommodations

When needed, the PHA must modify normal procedures to accommodate the needs of a person with disabilities. Examples include:

- Permitting applications and reexaminations to be completed by mail
- Conducting home visits
- Using higher payment standards (either within the acceptable range or with HUD approval of a payment standard outside the PHA range) if the PHA determines this is necessary to enable a person with disabilities to obtain a suitable housing unit
- Providing time extensions for locating a unit when necessary because of lack of availability of accessible units or special challenges of the family in seeking a unit
- Permitting an authorized designee or advocate to participate in the application or certification process and any other meetings with PHA staff
- Displaying posters and other housing information in locations throughout the PHA's office in such a manner as to be easily readable from a wheelchair

2.3.3 Request for an Accommodation

If an applicant or participant indicates that an exception, change, or adjustment to a rule, policy, practice, or service is needed because of a disability, HUD requires that the PHA treat the information as a request for a reasonable accommodation, even if no formal request is made [Joint Statement of the Departments of HUD and Justice: Reasonable Accommodations under the Fair Housing Act].

The family must explain what type of accommodation is needed to provide the person with the disability full access to the PHA's programs and services.

If the need for the accommodation is not readily apparent or known to the PHA, the family must explain the relationship between the requested accommodation and the disability. There must be an identifiable relationship, or nexus, between the requested accommodation and the individual's disability.

PHA Policy

The PHA will encourage the family to make its request in writing using a reasonable accommodation request form, if available. However, the PHA will consider the accommodation any time the family indicates that an accommodation is needed whether or not a formal written request is submitted.

A person with a disability must first ask for a specific change to a policy or practice as an accommodation of their disability before the PHA will treat a person differently than anyone else. This policy is applicable to all situations described in this Administrative Plan.

2.3.4 Verification of Disability

The regulatory civil rights definition for persons with disabilities is provided in Exhibit 2-1: Definition of a Person with A Disability Under Federal Civil Rights Laws. The definition of a person with a disability for the purpose of obtaining a reasonable accommodation is much broader than the HUD definition of disability which is used for waiting list preferences and income allowances.

Before providing an accommodation, the PHA must determine that the person meets the definition of a person with a disability, and that the accommodation will enhance the family's access to the PHA's programs and services.

If a person's disability is obvious or otherwise known to the PHA, and if the need for the requested accommodation is also readily apparent or known, no further verification will be required [Joint Statement of the Departments of HUD and Justice: Reasonable Accommodations under the Fair Housing Act].

If a family indicates that an accommodation is required for a disability that is not obvious or otherwise known to the PHA, the PHA must verify that the person meets the definition of a person with a disability, and that the limitations imposed by the disability require the requested accommodation.

When verifying a disability, the PHA will follow the verification policies provided in CHAPTER 7. All information related to a person's disability will be treated in accordance with the confidentiality policies provided in CHAPTER 17. In addition to the general requirements that govern all verification efforts, the following requirements apply when verifying a disability:

- Third-party verification must be obtained from an individual identified by the family who is competent to make the determination. A doctor or other medical professional, a peer support group, a non-medical service agency, or a reliable third party who is in a position to know about the individual's disability may provide verification of a disability [Joint Statement of the Departments of HUD and Justice: Reasonable Accommodations under the Fair Housing Act].

- The PHA must request only information that is necessary to evaluate the disability-related need for the accommodation. The PHA will not inquire about the nature or extent of any disability.

- Medical records will not be accepted or retained in the participant file.

- In the event that the PHA does receive confidential information about a person's specific diagnosis, treatment, or the nature or severity for the disability, the PHA will dispose of it. In place of the information, the PHA will note in the file that the disability and other requested information have been verified, the date the verification was received, and the name and address of the knowledgeable professional who sent the information [Notice PIH 2010-26].

2.3.5 Approval/Denial of a Requested Accommodation

[Joint Statement of the Departments of HUD and Justice: Reasonable Accommodations under the Fair Housing Act].

The PHA must approve a request for an accommodation if the following three conditions are met:

- The request was made by or on behalf of a person with a disability.

- There is a disability-related need for the accommodation.

- The requested accommodation is reasonable, meaning it would not impose an undue financial and administrative burden on the PHA, or fundamentally alter the nature of the PHA's HCV operations (including the obligation to comply with HUD requirements and regulations).

Requests for accommodations must be assessed on a case-by-case basis, taking into account factors such as the cost of the requested accommodation with respect to the number of employees, type of facilities and size of budget, type of operation including composition and structure of workforce, the nature and cost of the requested accommodation, and the availability of alterative accommodations that would effectively meet the family's disability-related needs.

Before making a determination whether to approve the request, the PHA may enter into discussion and negotiation with the family, request more information from the family, or may require the family to sign a consent form so that the PHA may verify the need for the requested accommodation.

PHA Policy

After a request for an accommodation is presented together with all requested supportive documentation, the PHA will respond, in writing, within 15 business days.

Approval of a request for an accommodation will include terms, conditions, performance expectations for all parties and a schedule if appropriate.

If the PHA denies a request for an accommodation because it is not reasonable (it would impose an undue financial and administrative burden or fundamentally alter the nature of the PHA's operations), the PHA will discuss with the family whether an alternative accommodation could effectively address the family's disability-related needs without a fundamental alteration to the HCV program and without imposing an undue financial and administrative burden.

If an alternative accommodation is not agreed upon after interactive discussion and negotiation between the family and the PHA, the PHA will notify the family, in writing, of its determination within 15 business days from the date of the most recent discussion or communication with the family.

2.3.6 Program Accessibility for Persons with Hearing or Vision Impairments

HUD regulations require the PHA to ensure that persons with disabilities related to hearing and vision have reasonable access to the PHA's programs and services [24 CFR 8.6].

At the initial point of contact with each applicant, the PHA shall inform all applicants of alternative forms of communication that can be used other than plain language paperwork.

PHA Policy

To meet the needs of persons with hearing impairments, TTD/TTY (text telephone display / teletype) communication will be available.

To meet the needs of persons with vision impairments, large-print and audio versions of key program documents will be made available upon request. These items may not be immediately available and reasonable advance notice must be given. When visual aids are used in public meetings or presentations, or in meetings with PHA staff, one-on-one assistance will be provided upon request.

Additional examples of alternative forms of communication are sign language interpretation; having material explained orally by staff; or having a third party representative (a friend, relative or advocate, named by the applicant) to receive, interpret and explain housing materials and be present at all meetings.

2.3.7 Physical Accessibility

The PHA must comply with a variety of regulations pertaining to physical accessibility, including the following:

- Section 504 of the Rehabilitation Act of 1973, as amended
- The Americans with Disabilities Act of 1990, as amended
- The Architectural Barriers Act of 1968
- The Fair Housing Act of 1988
- Massachusetts General Laws Chapter 22 and Section 13A and Massachusetts Architectural Access Board regulations (521 CMR)
- Massachusetts General Laws Chapter 151B

The PHA's policies concerning physical accessibility must be readily available to applicants and participants. They can be found in three key documents:

- This plan describes the key policies that govern the PHA's responsibilities with regard to physical accessibility.
- Notice PIH 2010-26 summarizes information about pertinent laws and implementing regulations related to non-discrimination and accessibility in federally-funded housing programs.
- The PHA Plan provides information about self-evaluation, needs assessment, and transition plans.

The design, construction, or alteration of PHA facilities must conform to the Uniform Federal Accessibility Standards (UFAS) and other applicable regulations and standards. Newly-constructed facilities must be designed to be readily accessible to and usable by persons with disabilities; alterations must also comply with applicable federal and state requirements.

When issuing a voucher to a family that includes an individual with disabilities, the PHA will include a current list of available accessible units known to the PHA and will assist the family in locating an available accessible unit, if necessary.

In general, owners must permit the family to make reasonable modifications to the unit.

Owners must also comply with Massachusetts law. Pursuant to Massachusetts General Laws Chapter 151B, in the case of publicly assisted housing, multiple dwelling housing consisting of ten or more units, or contiguously located housing consisting of ten or more units (see M.G.L. c. 151B, § 1 for definitions), reasonable modification of existing premises occupied or to be occupied by a person with a disability shall *be at the expense of the owner* or other person

having the right of ownership if such modification is necessary to afford the person with a disability full enjoyment of the premises. A modification which is paid for by the owner or other person having the right of ownership is not considered to be reasonable if it would impose an undue hardship upon the owner or other person having the right of ownership and shall therefore not be required. In the case of other housing where modifications are not required to be at the expense of the owner or other person having the right of ownership, and where such housing is rental and the modification to be paid for by the handicapped person will materially alter the marketability of the housing, the landlord may, where it is reasonable to do so, condition permission for a modification on the renter agreeing to restore, or pay for the cost of restoring, the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted. [24 CFR 100.203; M.G.L. c. 151B, § 4(7A)].

See also 24 CFR Part 8 for obligations of recipients of federal financial assistance pursuant to the Rehabilitation Act and 28 CFR Part 35 for obligations of public housing authorities pursuant to the Americans with Disabilities Act.

2.3.8 Denial or Termination of Assistance

A PHA's decision to deny or terminate the assistance of a family that includes a person with disabilities is subject to consideration of reasonable accommodation [24 CFR 982.552 (2) (iv)].

When applicants with disabilities are denied assistance, the notice of denial must inform them of the PHA's informal review process and their right to request a hearing. In addition, the notice must inform applicants with disabilities of their right to request reasonable accommodations to participate in the informal hearing process.

When a participant family's assistance is terminated, the notice of termination must inform them of the PHA's informal hearing process and their right to request a hearing and reasonable accommodation.

When reviewing reasonable accommodation requests, the PHA must consider whether any mitigating circumstances can be verified to explain and overcome the problem that led to the PHA's decision to deny or terminate assistance. If a reasonable accommodation will allow the family to meet the requirements, the PHA must make the accommodation.

2.4 IMPROVING ACCESS TO SERVICES FOR PERSONS WITH LIMITED ENGLISH PROFICIENCY (LEP)

2.4.1 Overview

Language for Limited English Proficiency Persons (LEP) can be a barrier to accessing important benefits or services, understanding and exercising important rights, complying with applicable responsibilities, or understanding other information provided by the HCV program. In certain circumstances, failure to ensure that LEP persons can effectively participate in or benefit from federally-assisted programs and activities may violate the prohibition under Title VI against discrimination on the basis of national origin. This part incorporates the Final Guidance to Federal Assistance Recipients Regarding Title VI Prohibition against National Origin

Discrimination Affecting Limited English Proficient Persons, published January 22, 2007, in the Federal Register.

The PHA will take affirmative steps to communicate with people who need services or information in a language other than English. These persons will be referred to as Persons with Limited English Proficiency (LEP).

LEP is defined as persons who do not speak English as their primary language and who have a limited ability to read, write, speak or understand English. For the purposes of this Administrative Plan, LEP persons are HCV applicants and participants, and parents and family members of applicants and participants.

In order to determine the level of access needed by LEP persons, the PHA will balance the following four factors:

- The number or proportion of LEP persons eligible to be served or likely to be encountered by the Housing Choice Voucher program;
- The frequency with which LEP persons come into contact with the program;
- The nature and importance of the program, activity, or service provided by the program to people's lives; and
- The resources available to the PHA and costs.

Balancing these four factors will ensure meaningful access by LEP persons to critical services while not imposing undue burdens on the PHA.

2.4.2 Oral Interpretation

In a courtroom, a hearing, or situations in which health, safety, or access to important benefits and services are at stake, the PHA will generally offer, or ensure that the family is offered through other sources, competent services free of charge to the LEP person.

> PHA Policy
>
> The PHA will analyze the various kinds of contacts it has with the public, to assess language needs and decide what reasonable steps should be taken. "Reasonable steps" may not be reasonable where the costs imposed substantially exceed the benefits.
>
> Where feasible, the PHA will train and hire bilingual staff to be available to act as interpreters and translators, will pool resources with other PHAs, and will standardize documents. Where feasible and possible, the PHA will encourage the use of qualified community volunteers.
>
> Where LEP persons desire, they will be permitted to use, at their own expense, an interpreter of their own choosing, in place of or as a supplement to the free language services offered by the PHA. The interpreter may be a family member or friend.

2.4.3 Written Translation

Translation is the replacement of a written text from one language into an equivalent written text in another language.

PHA Policy

In order to comply with written-translation obligations, the PHA will provide written translations of the vital documents identified in its Language Access Plan.

The following HUD forms are available in 10 languages in the Forms Library on the HUD website. The 10 languages are: Arabic, Cambodian, Chinese, Creole, French, Hmong, Korean, Russian, Spanish, and Vietnamese. Additional brochures and materials are also available in various languages on the Forms Library of the HUD website.

- HUD-9886 – Authorization for the Release of Information/Privacy Act Notice
- HUD-50066 – Certification of Domestic Violence, Dating Violence or Stalking
- HUD-52517 – Request for Tenancy Approval
- HUD-52641- Housing Assistance Payments (HAP) Contract
- HUD-52641-A – Tenancy Addendum
- HUD-52646 – Voucher
- HUD-52649 – Statement of Homeowner Obligations (voucher program)
- HUD-52650- Family Self-Sufficiency (FSS) Program Contract of Participation
- HUD-52652- FSS Program Escrow Account Credit Worksheet
- HUD-593- A Good Place to Live (Note: This form is available in Arabic, Cambodian, Chinese, Creole, English, French, and Hmong.)

Translation of other documents, if needed, can be provided orally, upon request.

2.4.4 Language Access Plan

After completing the four-factor analysis and deciding what language assistance services are appropriate, the PHA shall determine whether it is necessary to develop a written implementation plan to address the identified needs of the LEP populations it serves.

If the PHA determines that it is not necessary to develop a written implementation plan, the absence of a written plan does not obviate the underlying obligation to ensure meaningful access by LEP persons to the PHA's Housing Choice Voucher program and services.

> PHA Policy
>
> DHCD has developed a written LAP plan consistent with requirements for providing meaningful access by LEP persons to the PHA's Housing Choice Voucher program and services.
>
> DHCD's Language Access Plan, effective July 2009, is available on its website.

CHAPTER 3 : ELIGIBILITY

3.1 INTRODUCTION

The PHA is responsible for ensuring that every individual and family admitted to the HCV program meets all program eligibility requirements. This includes any individual approved to join the family after the family has been admitted to the program. The family must provide any information needed by the PHA to confirm eligibility and determine the level of the family's assistance.

To be eligible for the HCV program:

- The applicant family must:
    - Qualify as a family as defined by HUD and the PHA.
    - Have income at or below HUD-specified income limits.
    - Qualify on the basis of citizenship or the eligible immigrant status of family members.
    - Provide social security number information for family members as required.
    - Consent to the PHA's collection and use of family information as provided for in PHA-provided consent forms.
- The PHA must determine that the current or past behavior of household members does not include activities that are prohibited by HUD or the PHA.

This Chapter contains three parts:

- Definitions of Family and Household Members: This part contains HUD and PHA definitions of family and household members and explains initial and ongoing eligibility issues related to these members.
- Basic Eligibility Criteria: This part discusses income eligibility, and rules regarding citizenship, social security numbers, and family consent.
- Denial of Assistance: This part covers factors related to an applicant's past or current conduct (e.g. criminal activity) that can cause the PHA to deny assistance.

3.2 DEFINITIONS OF FAMILY AND HOUSEHOLD MEMBERS

3.2.1 Overview

Some eligibility criteria and program rules vary depending upon the composition of the family requesting assistance. In addition, some requirements apply to the family as a whole and others apply to individual persons who will live in the assisted unit. This part provides information that

is needed to correctly identify family and household members, and to apply HUD's eligibility rules.

3.2.2 Family and Household

[24 CFR 982.201(c), HUD-50058 IB, p. 13]

The terms family and household have different meanings in the HCV program.

Family

To be eligible for assistance, an applicant must qualify as a family. As defined by HUD, family includes, but is not limited to, the following, regardless of actual or perceived sexual orientation, gender identity, or marital status.

(1) A single person, who may be an elderly person, displaced person, disabled person, near-elderly person, or any other single person; or

(2) A group of persons residing together, and such group includes, but is not limited to:

(i) A family with or without children (a child who is temporarily away from home because of placement in foster care is considered a member of the family);
(ii) An elderly family;
(iii) A near-elderly family;
(iv) A disabled family;
(v) A displaced family; and
(vi) The remaining member of a tenant family.

Gender identity means actual or perceived gender-related characteristics.

Sexual orientation means homosexuality, heterosexuality, or bisexuality.

The PHA has the discretion to determine if any other group of persons qualifies as a family.

PHA Policy

A family also includes two or more individuals who are not related by blood, marriage, adoption, or other operation of law. DHCD recognizes that a variety of relationships exist, which are not necessarily relationships of ancestry or marriage. Each family must identify the individuals to be included in the family at the time the Family Certification Form is completed and must update this information if the family's composition changes. The term family prohibits the exclusion of otherwise qualified persons who may identify as Lesbian, Gay, Bi- or Transsexual (LGBT) individuals who have an LGBT relations or who may be perceived as such.

Family Composition

See definition of Family (CFR 5.403).

Household

Household is a broader term that includes additional people who, with the PHA's permission, live in an assisted unit, such as live-in aides, foster children, and foster adults.

3.2.3 Family Break-Up and Remaining Family Members

Family Break-Up
[24 CFR 982.315]

Except under the following conditions, the PHA has discretion to determine which members of an assisted family continue to receive assistance if the family breaks up:

If a court determines the family breakup results from an occurrence of domestic violence, dating violence, sexual assault, or stalking, the PHA must ensure that the victim retains assistance. (For documentation requirements and policies related to domestic violence, dating violence, sexual assault, and stalking, see CHAPTER 17 of this Plan.)

If a court determines the disposition of property between members of the assisted family in a divorce or separation decree, the PHA is bound by the court's determination of which family members continue to receive assistance.

PHA Policy

All decisions regarding the disposition of a subsidy in the event of a family break-up will be made by the PHA on a case-by-case basis after considering the circumstances of each individual case. Decisions made by the PHA are final and not subject to appeal. The PHA cannot create two subsidies from one.

When a family on the waiting list breaks up into two otherwise eligible families, only one of the new families may retain the original application date. Other former family members may make a new application with a new application date if the waiting list is open.

If a family breaks up into two otherwise eligible families while receiving assistance, only one of the new families will continue to be assisted.

In the absence of a judicial decision, or an agreement among the original family members, the PHA will determine which family retains their placement on the waiting list, or will continue to receive assistance taking into consideration the following factors:

- The interest of any minor children, including custody arrangements,
- The interest of any ill, elderly, or disabled family members,

PHA Policy Continued

- The interest of any family member who is the victim of domestic violence, dating violence, sexual assault, or stalking including a family member who was forced to leave an assisted unit as a result of such actual or threatened abuse.

- Any possible risks to family members as a result of criminal activity, and

- The recommendations of social service professionals.

Generally, the interests of minor children will take precedence over all other claims and the subsidy will remain with the family member who has primary custody of the minor children.

PHAs must recognize that verification of legal custody may not always be possible, particularly in domestic violence situations. PHAs are encouraged to make the best possible decisions in this regard. Custody or guardianship does not necessarily have to be court-ordered, but it is subject to verification by the PHA. See Caretakers for a Child below.

In situations where the parents have separated previously and custody is given to the parent who is not a member of the assisted household, then the subsidy will remain with the children, as members of the assisted household, provided the new household remains program eligible. The PHA will terminate the HAP contract as soon as possible after notification of the new custody arrangement.

In situations of split custody, where each adult member receives custody of a child, then the subsidy will remain with the original assisted unit. If no one remains in the original assisted unit, and both parents were members of the assisted household then the PHA has discretion to determine who retains the subsidy considering this policy and the circumstances of the individual case.

If there are no minor children, or if each adult has one or more, or in cases of joint custody (split visitation) then the current head of household of record will retain the subsidy except when one of the following is a factor:

- The interest of any ill, elderly, or disabled family members; or

- The interest of any family member who is or has been the victim of domestic violence, dating violence, sexual assault, or stalking and provides documentation in accordance with CHAPTER 17 of this Admin Plan; or

- Any possible risks to family members as a result of criminal activity.

When the family break-up is voluntary, the subsidy will not be transferred to a remaining family member if that individual was not listed as a member of the household with the PHA for six months immediately prior to the transfer.

Remaining Family Members in Special Programs

PHA Policy

As above, but if there is no longer a family member eligible for the supportive services offered by the targeted program, the participant family should be issued a standard HCV so that other eligible families may be assisted under the targeted program. If the remaining family members are in a targeted program that does not provide supportive services they will retain the targeted program subsidy.

Remaining Member of a Tenant Family
[24 CFR 5.403]

The HUD definition of family includes the remaining member of a tenant family, which is a member of an assisted family who remains in the unit when other members of the family have left the unit. Household members such as live-in aides, foster children, and foster adults do not qualify as remaining members of a family.

If dependents are the only "remaining members of a tenant family" and there is no family member able to assume the responsibilities of the head of household, see below.

Caretakers for a Child

PHA Policy

If neither a parent nor a designated guardian remains in a household receiving HCV assistance, the PHA will take the following actions.

(1) If a responsible agency has determined that another adult is to be brought into the assisted unit to care for a child for an indefinite period, the designated caretaker will not be considered a family member until a determination of custody or legal guardianship is made.

(2) If a caretaker has assumed responsibility for a child without the involvement of a responsible agency or formal assignment of custody or legal guardianship, the caretaker will be treated as a visitor for 90 days. After the 90 days has elapsed, the caretaker will be considered a family member subject to the caretaker meeting the PHA's eligibility and screening criteria unless information is provided that would confirm that the caretaker's role is temporary. In such cases the PHA will extend the caretaker's status as an eligible visitor.

(3) At any time that custody or guardianship legally has been awarded to a caretaker, the housing choice voucher will be transferred to the caretaker.

3.2.4 Head of Household

[24 CFR 5.504(b)]

Head of household means the adult member of the family who is considered the head for purposes of determining income eligibility and rent. The head of household is responsible for ensuring that the family fulfills all of its responsibilities under the program, alone or in conjunction with a co-head or spouse.

> PHA Policy
>
> The family may designate any qualified family member as the head of household. The head of household must have the legal capacity to enter into a lease under state and local law. A minor who is emancipated under state law may be designated as head of household.

3.2.5 Spouse, Co-head, and Other Adult

A family may have a spouse or co-head, but not both [HUD-50058 IB, p. 13].

<u>Spouse</u>

Spouse means the marriage partner of the head of household.

> PHA Policy
>
> The term “spouse” does not apply to friends, roommates, or significant others who are not marriage partners. A minor who is emancipated under state law may be designated as a spouse.

<u>Co-head</u>

A co-head is an individual in the household who is equally responsible with the head of household for ensuring that the family fulfills all of its responsibilities under the program, but who is not a spouse. A family can have only one co-head.

> PHA Policy
>
> Minors who are emancipated under state law may be designated as a co-head.

<u>Other Adult</u>

Other adult means a family member, other than the head, spouse, or co-head, who is 18 years of age or older. Foster adults and live-in aides are not considered other adults.

3.2.6 Dependent
[24 CFR 5.603]

A dependent is a family member who is under 18 years of age or a person of any age who is a person with a disability or a full-time student, except that the following persons can never be dependents: the head of household, spouse, or co-head and foster children and adults and live-in aides.

Identifying each dependent in the family is important because each dependent qualifies the family for a dependent deduction from annual income as described in CHAPTER 6.

Joint Custody of Dependents

> PHA Policy
>
> Dependents that are subject to a joint custody arrangement will be considered a member of the family, if they live with the applicant or participant family 50 percent or more of the time (183 or more days and in a leap year, 184 or more days).
>
> When more than one applicant or participant family is claiming the same dependents as family members, the family with primary custody at the time of the initial examination or reexamination will be able to claim the dependents.
>
> If there is a dispute about which family should claim them, the PHA will make the determination based on available documents such as court orders, school records, or an IRS return showing which family has claimed the child for income tax purposes.

3.2.7 Full-Time Student
[24 CFR 5.603; HCV GB, p. 5-29]

A full-time student (FTS) is a person who is attending school or vocational training on a full-time basis. The time commitment or subject load that is needed to be full-time is defined by the educational institution.

Identifying each FTS is important because: (1) each family member that is an FTS, other than the head, spouse, or co-head, qualifies the family for a dependent deduction, and (2) the income of such an FTS is treated differently from the income of other family members.

3.2.8 Elderly and Near-Elderly Persons, and Elderly Family
[24 CFR 5.100 and 5.403]

Elderly Persons

An elderly person is a person who is at least 62 years of age.

Near-Elderly Persons

A near-elderly person is a person who is 50-61 years of age.

Elderly Family

An elderly family is one in which the head, spouse, co-head, or sole member is an elderly person. Identifying elderly families is important because these families qualify for special deductions from income as described in CHAPTER 6.

3.2.9 Persons with Disabilities and Disabled Family

[24 CFR 5.403]

Persons with Disabilities

Under the HCV program, special rules apply to persons with disabilities and to any family whose head, spouse, or co-head is a person with disabilities. The technical definitions of individual with handicaps and persons with disabilities are provided in the Exhibits at the end of this Administrative Plan (Exhibit 3-1: Detailed Definitions Related to Disabilities and Exhibit 3-2: Definition of Institution of Higher Education). These definitions are used for a number of purposes including ensuring that persons with disabilities are not discriminated against based upon disability.

As discussed in CHAPTER 2, the PHA must make all aspects of the HCV program accessible to persons with disabilities and consider reasonable accommodations requested based upon a person's disability.

Disabled Family

A disabled family is one in which the head, spouse, or co-head is a person with disabilities. Identifying disabled families is important because these families qualify for special deductions from income as described in CHAPTER 6.

Even though persons with drug or alcohol dependencies are considered persons with disabilities for the purpose of non-discrimination, this does not prevent the PHA from denying assistance for reasons related to alcohol and drug abuse following policies found in this Chapter, or from terminating assistance following the policies in CHAPTER 13.

3.2.10 Guests

[24 CFR 5.100]

A guest is a person temporarily staying in the unit with the consent of a member of the household who has express or implied authority to so consent.

> PHA Policy
>
> A guest can remain in the assisted unit no longer than 30 consecutive days or a total of 90 cumulative calendar days during any 12-month period.
>
> Children who are subject to a joint custody arrangement or for whom a family has visitation privileges, that are not included as a family member because they live outside of the assisted household more than 50 percent of the time, are not subject to the time limitations of guests as described above.
>
> A family may request an exception to this policy for valid reasons (e.g., care of a relative recovering from a medical procedure is expected to last 40 consecutive days).
>
> An exception will not be made unless the family can identify and provide documentation of the residence to which the guest will return.

3.2.11 Foster Children and Foster Adults

Foster adults are usually persons with disabilities, unrelated to the tenant family, who are unable to live alone [24 CFR 5.609].

The term foster child is not specifically defined by the regulations.

Foster children and foster adults that are living with an applicant or assisted family are considered household members but not family members. The income of foster children/adults is not counted in family annual income, and foster children/adults do not qualify for a dependent deduction [24 CFR 5.603 and HUD-50058 IB, p. 13].

> PHA Policy
>
> A foster child is a child that is in the legal guardianship or custody of a state, county, or private adoption or foster care agency, yet is cared for by foster parents in their own homes, under some kind of short-term or long-term foster care arrangement with the custodial agency.
>
> A foster child or foster adult may be allowed to reside in the unit if their presence would not result in a violation of HQS space standards according to 24 CFR 982.401.

Children that are temporarily absent from the home as a result of placement in foster care are discussed in the policies related to Absent Family Members below.

3.2.12 Absent Family Members

Individuals may be absent from the family, either temporarily or permanently, for a variety of reasons including educational activities, placement in foster care, employment, illness, incarceration, and court order.

Definition of Temporarily Absent

> PHA Policy
>
> Generally an individual who is or is expected to be absent from the assisted unit for 180 consecutive days or less is considered temporarily absent and continues to be considered a family member.

Definition of Permanently Absent

> PHA Policy
>
> Generally an individual who is or is expected to be absent from the assisted unit for more than 180 consecutive days is considered permanently absent and no longer a family member. Exceptions to this general policy are discussed below.

Absent Students

> PHA Policy
>
> When someone who has been considered a family member attends school away from home, the person will continue to be considered a family member unless information becomes available to the PHA indicating that the student has established a separate household or the family declares that the student has established a separate household.

Deployed Military Families

PIH Notice 2003-5 encourages PHAs and private owners to be as lenient as responsibly possible to support military families. In accordance with this Notice, the PHA will make reasonable exceptions to program requirements for active duty military families, to the extent the PHA can do so while responsibly administering the HCV program. These exceptions will be granted at the PHA's sole discretion on a case by case basis. Exceptions must be approved by the Leased Housing Director or his/her designee.

Exceptions for active duty military families may include, but are not limited to:

- Allowing a suitable guardian to move into the assisted unit on a temporary basis to care for any dependents that the military person leaves in the unit. Income of the guardian temporarily living in the unit solely for this purpose is not to be counted in determining family income and rent;
- Carefully considering the circumstances of any case involving delayed payment of rent by the family;

- Continuing to pay HAPs to the owner on behalf of the military family for the duration of deployment even if all members of the family are temporarily absent from the assisted unit; however, the PHA may not exceed the regulatory limit of 180 days for family absence from the unit.
- Considering a family member who is absent from the assisted unit due to their active military duty temporarily absent. The person will continue to be considered a family member for the duration of the individual's deployment unless information becomes available to the PHA indicating that the individual has established a separate household or the family declares that the individual has established a separate household.
- Using provisional documents and income information to complete a recertification and then conducting an interim recertification when the military personnel's information is available.

Absences Due to Placement in Foster Care
[24 CFR 5.403]

Children temporarily absent from the home as a result of placement in foster care are considered members of the family.

> PHA Policy
>
> If a child has been placed in foster care, the PHA will verify with the appropriate agency whether and when the child is expected to be returned to the home. Unless the agency confirms that the child has been permanently removed from the home, the child will be counted as a family member.

Absent Head, Spouse, or Co-head Due to Employment

> PHA Policy
>
> An employed head, spouse, or co-head absent from the unit more than 180 consecutive days due to employment will continue to be considered a family member.

Family Members Permanently Confined for Medical Reasons
[HCV GB, p. 5-22]

If a family member is confined to a nursing home or hospital on a permanent basis, that person is no longer considered a family member and the income of that person is not counted [HCV GB, p. 5-22].

> PHA Policy
>
> The PHA will request verification from a responsible medical professional and will use this determination. If the responsible medical professional cannot provide a determination, the person generally will be considered temporarily absent. The family may present evidence that the family member is confined on a permanent basis and request that the person not be considered a family member.

Return of Permanently Absent Family Members

> PHA Policy
>
> The family must request PHA approval for the return of any adult family members that the PHA has determined to be permanently absent. The individual is subject to the eligibility and screening requirements discussed elsewhere in this Chapter.

3.2.13 Live-in Aide

Live-in aide means a person who resides with one or more elderly persons, or near-elderly persons, or persons with disabilities, and who: (1) is determined to be essential to the care and well-being of the persons, (2) is not obligated for the financial support of the persons, and (3) would not be living in the unit except to provide the necessary supportive services [24 CFR 5.403].

The PHA must approve a live-in aide if needed as a reasonable accommodation in accordance with 24 CFR 8, to make the program accessible to and usable by the family member with disabilities.

A live-in aide is a member of the household, not the family, and the income of the aide is not considered in income calculations [24 CFR 5.609(b)]. Relatives may be approved as live-in aides if they meet all of the criteria defining a live-in aide. However, a relative who serves as a live-in aide is not considered a family member and would not be considered a remaining member of a tenant family.

PHA Policy

A family's request for a live-in aide must be made in writing. Written verification will be required from a reliable, knowledgeable professional, such as a doctor, social worker, or case worker, that the live-in aide is essential for the care and well-being of the elderly, near-elderly, or disabled family member. For continued approval, the family must submit a new, written request, subject to PHA verification, at each regular reexamination.

In addition, the family and live-in aide will be required to submit a certification stating that the live-in aide is (1) not obligated for the support of the person(s) needing the care, and (2) would not be living in the unit except to provide the necessary supportive services.

Occasional, intermittent, multiple or rotating care givers typically do not reside in the unit and would not qualify as live- in aides. Therefore, an additional bedroom should not be approved for a live- in aide under these circumstances. [PIH Notice 2010-51].

The PHA will not approve a particular person as a live-in aide, and may withdraw such approval if [24 CFR 982.316(b)]:

- The person commits fraud, bribery or any other corrupt or criminal act in connection with any federal housing program;
- The person commits drug-related criminal activity or violent criminal activity; or
- The person currently owes rent or other amounts to the PHA or to another PHA in connection with Section 8 or public housing assistance under the 1937 Act.

Within 15 business days of receiving a request for a live-in aide, including all required documentation related to the request, the PHA will notify the family of its decision in writing.

A PHA must perform a CORI on live-in aides and their family members 18 years or age or older that will be residing in the unit. The CORI must be acceptable for approval to be granted.

When there are complaints about a live-in aide, the PHA should investigate those complaints and deny or withdraw approval if any of the above conditions are met.

A participant must immediately notify the PHA of any changes in the status of a live-in aid and family members if any. Failure to do so may result in program termination.

Live-in aide With Spouse or Dependent

> PHA Policy
>
> A PHA may only approve one additional bedroom for a live- in aide. Although a live-in aide may have PHA-approved family member/s live with him/her in the assisted unit, no additional bedrooms will be provided for the family members of the live-in aide. The PHA must ensure that housing quality standards (HQS) will not be violated and that there will be no more than two people per bedroom or living/sleeping space in the unit in accordance with 24 CFR § 982.401(d)(2)(ii). If the approval of additional family members of a live- in aide would result in the violation of HQS, the additional family members of the live-in aide may not be approved. [PIH Notice 2010-51].

3.3 BASIC ELIGIBILITY CRITERIA

3.3.1 Income Eligibility and Targeting

Income Limits

HUD is required by law to set income limits that determine the eligibility of applicants for HUD's assisted housing programs, including the housing choice voucher program. The income limits are published annually and are based on HUD estimates of median family income in a particular area or county, with adjustments for family size.

Types of Low-Income Families
[24 CFR 5.603(b)]

- Low-income family. A family whose annual income does not exceed 80 percent of the median income for the area, adjusted for family size.

- Very low-income family. A family whose annual income does not exceed 50 percent of the median income for the area, adjusted for family size.

- Extremely low-income family. A very low income family whose annual income does not exceed the higher of the Federal poverty level or 30 percent of the area median income for the area, adjusted for family size.

- HUD may establish income ceilings higher or lower than 30, 50, or 80 percent of the median income for an area if HUD finds that such variations are necessary because of unusually high or low family incomes.

Using Income Limits for Eligibility
[24 CFR 982.201]

Income limits are used for eligibility only at admission. Eligibility is established by comparing a family's annual income with HUD's published income limits. To be income-eligible, a family must be one of the following:

- A very low-income family

- A low-income family that qualifies for voucher assistance as a non-purchasing household living in HOPE 1 (public housing homeownership), HOPE 2 (multifamily housing homeownership) developments, or other HUD-assisted multifamily homeownership programs covered by 24 CFR 248.173

- A low-income or moderate-income family that is displaced as a result of the prepayment of a mortgage or voluntary termination of a mortgage insurance contract on eligible low-income housing as defined in 24 CFR 248.101

- A low-income family that has been "continuously assisted" under the 1937 Housing Act. A family is considered to be continuously assisted if the family is already receiving assistance under any 1937 Housing Act program at the time the family is admitted to the HCV program [24 CFR 982.4].

PHA Policy

The PHA will consider a family to be continuously assisted if the family was already leasing a unit under any 1937 Housing Act program at the time they were issued a voucher by the PHA.

1937 Housing Act programs are:

- The federal public or Indian housing programs.

- Any program assisted under Section 8 of the 1937 Act[1], including assistance under a Section 8 tenant-based, moderate rehabilitation, or project-based program.

- The Section 23 leased housing program.

- The Section 23 housing assistance payments program.

[1]Section 23 of the United States Housing Act of 1937 prior to enactment of the Housing and Community Development Act of 1974.

Continually Assisted

> PHA Policy
>
> Brief interruptions in assistance caused by transitioning from one form of assistance under one 1937 Act program to another will not be considered to break the continuity of assistance where the reason for the transition was through no fault of the family, such as the expiration of a HAP contract for a project-based development or termination of a HAP contract for owner breach. DHCD policy limits the extent of the brief interruption of an applicant's prior participation to 120 days.
>
> This definition of "continually assisted" also includes families that, at the time they were selected from the waiting list, were either participants in good standing of the MTW Demonstration Program or had graduated in good standing from the MTW Demonstration Program.

HUD permits the PHA to establish additional categories of low-income families that may be determined eligible. The additional categories must be consistent with the PHA plan and the consolidated plans for local governments within the PHA's jurisdiction.

> PHA Policy
>
> A low-income household comprised solely of persons with disabilities and receiving state-funded services is eligible for admission as part of the Commonwealth's effort to provide the least restrictive setting possible for persons with disabilities.
>
> Existing tenants in Rental Assistance Demonstration (RAD) projects on the date of the conversion action may be low income.

Using Income Limits for Targeting
[24 CFR 982.201]

At least 75 percent of the families admitted to the PHA's program during a PHA fiscal year must be extremely low-income families. HUD may approve exceptions to this requirement if the PHA demonstrates that it has made all required efforts, but has been unable to attract an adequate number of qualified extremely low-income families.

Families continuously assisted under the 1937 Housing Act and families living in eligible low-income housing that are displaced as a result of prepayment of a mortgage or voluntary termination of a mortgage insurance contract are not subject to the 75 percent restriction.

3.3.2 Screening

Screening for Criminal Background

PHAs are authorized to obtain criminal conviction records from law enforcement agencies to screen applicants for admission to the HCV program. This authority assists the PHA in complying with HUD requirements and PHA policies to deny assistance to applicants who are

engaging in or have engaged in certain criminal activities. In order to obtain access to the records the PHA must require every applicant family to submit a consent form signed by each adult household member [24 CFR 5.903].

> PHA Policy
>
> The PHA will conduct a criminal background check on every adult household member in accordance with current Criminal Offender Record Information (CORI) regulations. CORI regulations and procedures may be found at Criminal Offender Record Information (CORI) - Executive Office of Public Safety.

PHAs are required to perform criminal background checks necessary to determine whether any household member is subject to a lifetime registration requirement under a state sex offender program in the state where the housing is located, as well as in any other state where a household member is known to have resided [24 CFR 982.553(a)(2)(i)]. See Sex Offender Registration Records for more detail.

If the PHA proposes to deny assistance based on a criminal record or on lifetime sex offender registration information, the PHA must notify the household of the proposed action and must provide the subject of the record and the applicant a copy of the record and an opportunity to dispute the accuracy and relevance of the information prior to a denial of admission. [24 CFR 5.903(f) and 5.905(d)].

Debt Screening

PHA Policy

The PHA will conduct a debt screening to determine:

- If the applicant owes rent or other amounts to the PHA, other Housing Authorities or other assisted housing programs in connection with the HCV program or public housing;

- If the family has not reimbursed the PHA, other Housing Authorities or other assisted housing programs for amounts paid to an owner under a HAP contract for rent, damages to the unit or other amounts owed by the family under the lease;

- If the family has breached an agreement with the PHA, other Housing Authorities or other assisted housing programs to pay amounts owed to the PHA, other Housing Authorities or other assisted housing programs;

- If the family has breached an agreement with the PHA, other Housing Authorities, or other assisted housing programs to repay amounts paid to an owner by the PHA, other Housing Authorities or other assisted housing programs.

When an applicant currently owes the PHA, other Housing Authorities or other assisted housing programs money from previous public or assisted housing residency or HCV program participation, PHA will require that the entire amount be paid in full within 90 days prior to allowing the applicant admission or re-admission to the HCV Program.

For purposes of this section, "current" means amounts owed to the PHA during the last 6 years or such other period for which the statute of limitations has not tolled in Massachusetts or other applicable jurisdiction.

For example, if an applicant's participation in an assisted program was ended in 2007 due to debts owed, and the applicant never repaid such amounts and applies for the HCV program in 2011, then a "current" debt is owed. If the applicant's participation in an assisted program ended in 1985 for the same reason, that debt could not be considered "current" unless applicable law permitted.

The PHA will consider debt that is not "current" (as defined above) as part of a history of non-payment and may deny admission to a household if there is other evidence of a history of non-payment and/or other eligibility factors, when taken as whole, that render a household ineligible for admission.

Screening for Suitability as a Tenant
[24 CFR 982.307]

The PHA has no liability or responsibility to the owner for the family's behavior or suitability for tenancy. The PHA may opt to conduct additional screening to determine whether an applicant is likely to be a suitable tenant.

> PHA Policy
>
> The PHA will not conduct additional screening to determine an applicant family's suitability for tenancy.

The owner is responsible for screening and selection of the family to occupy the owner's unit. The PHA must inform owners of their responsibility to screen prospective tenants.

An owner may consider a family's history with respect to factors such as:

- Payment of rent and utilities
- Caring for a unit and premises,
- Respecting the rights of other residents to the peaceful enjoyment of their housing,
- Criminal activity that is a threat to the health, safety or property of others, and
- Compliance with other essential conditions of tenancy.

HUD requires the PHA to provide prospective owners with the family's current and prior address (as shown in PHA records) and the name and address (if known) of the owner at the family's current and prior addresses. HUD permits the PHA to provide owners with additional information, as long as families are notified that the information will be provided, and the same type of information is provided to all owners.

The PHA will not provide any confidential information provided as documentation of domestic violence, dating violence, sexual assault, or stalking unless the individual who provided the confidential information has provided written consent to do so. [24CRF 5.2007 (a)(4)].

> PHA Policy
>
> The PHA will inform owners of their responsibility to screen tenants and *if requested*, will provide owners with the required known name and address information, at the time of the initial HQS inspection or before. If requested, the PHA will provide the owner with all information on previous landlords.
>
> The PHA will not provide any additional information to the owner, such as tenancy history, criminal history, etc.

3.3.3 Citizenship or Eligible Immigration Status

[24 CFR 5, Subpart E]

Housing assistance is available only to individuals who are U.S. citizens, U.S. nationals (herein referred to as citizens and nationals), or noncitizens that have eligible immigration status. At least one family member must be a citizen, national, or noncitizen with eligible immigration status in order for the family to qualify for any level of assistance.

All applicant families must be notified of the requirement to submit evidence of their citizenship status when they apply. Where feasible, and in accordance with the PHA's Limited English Proficiency Plan the notice must be in a language that is understood by the individual if the individual is not proficient in English.

Declaration

[24 CFR 5.508]

HUD requires each family member to declare whether the individual is a citizen, a national, or an eligible noncitizen, except those members who elect not to contend that they have eligible immigration status. Those who elect not to contend their status are considered to be ineligible noncitizens. For citizens, nationals and eligible noncitizens the declaration must be signed personally by the head, spouse, co-head, and any other family member 18 or older, and by a parent or guardian for minors. The family must identify in writing any family members who elect not to contend their immigration status (see Ineligible Noncitizens below). No declaration is required for live-in aides, foster children, or foster adults.

U.S. Citizens and Nationals

In general, citizens and nationals are required to submit only a signed declaration that claims their status. However, HUD regulations permit the PHA to request additional documentation of their status, such as a passport.

> PHA Policy
>
> Family members who declare citizenship or national status will not be required to provide additional documentation unless the PHA receives information indicating that an individual's declaration may not be accurate.

Eligible Noncitizens

In addition to providing a signed declaration, those declaring eligible noncitizen status must sign a verification consent form and cooperate with PHA efforts to verify their immigration status as described in CHAPTER 7.

Lawful residents of the Marshall Islands, the Federated States of Micronesia, and Palau, together known as the Freely Associated States, or FAS, are eligible for housing assistance under section 141 of the Compacts of Free Association between the U.S. Government and the Governments of the FAS [Public Law 106-504].

Ineligible Noncitizens

Those noncitizens who do not wish to contend their immigration status are required to have their names listed on a non-contending family members listing, signed by the head, spouse, or co-head (regardless of citizenship status), indicating their ineligible immigration status. The PHA is not required to verify a family member's ineligible status and is not required to report an individual's unlawful presence in the U.S. to the United States Citizenship and Immigration Services (USCIS).

Providing housing assistance to noncitizen students is prohibited [24 CFR 5.522]. This prohibition extends to the noncitizen spouse of a noncitizen student as well as to minor children who accompany or follow to join the noncitizen student. Such prohibition does not extend to the citizen spouse of a noncitizen student or to the children of the citizen spouse and noncitizen student. Such a family is eligible for prorated assistance as a mixed family.

Mixed Families

A family is eligible for assistance as long as at least one member is a citizen, national, or eligible noncitizen. Families that include eligible and ineligible individuals are considered *mixed families*. Such families will be given notice that their assistance will be prorated and that they may request a hearing if they contest this determination. See CHAPTER 6 for a discussion of how rents are prorated, and CHAPTER 17 for a discussion of informal hearing procedures.

Ineligible Families
[24 CFR 5.514(d), (e), and (f)]

A PHA may elect to provide assistance to a family before the verification of the eligibility of the individual or one family member [24 CFR 5.512(b)]. Otherwise, no individual or family may be assisted prior to the affirmative establishment by the PHA that the individual or at least one family member is eligible. Verification of eligibility for this purpose occurs when the individual or family members have submitted documentation to the PHA in accordance with program requirements [24 CFR 5.512(a)].

PHA Policy

The PHA will not provide assistance to a family before the verification of the eligibility of the individual or at least one family member.

When a PHA determines that an applicant family does not include any citizens, nationals, or eligible noncitizens, following the verification process, the family will be sent a written denial notice within 15 business days of the determination.

The denial notice will explain the reasons for the denial of assistance, that the family may be eligible for proration of assistance, and will advise the family of its right to request an appeal to the United States Citizenship and Immigration Services (USCIS), or to request an informal hearing with the PHA. The informal hearing with the PHA may be requested in lieu of the USCIS appeal, or at the conclusion of the USCIS appeal process.

The notice must also inform the applicant family that assistance may not be delayed until the conclusion of the USCIS appeal process, but that it may be delayed pending the completion of the informal hearing process. Informal hearing procedures are contained in CHAPTER 17.

Timeframe for Determination of Citizenship Status
[24 CFR 5.508(g)]

For new occupants joining the assisted family, the PHA must verify status at the first interim or regular reexamination following the person's approved occupancy, whichever comes first.

PHA Policy

The PHA will require citizenship/immigration status declarations and applicable verification for new occupants joining an assisted family prior to approving the addition to the household.

If an individual qualifies for a time extension for the submission of required documents, the PHA must grant such an extension for no more than 30 days [24 CFR 5.508(h)]. Each family member is required to submit evidence of eligible status only one time during continuous occupancy.

3.3.4 Social Security Numbers
[24 CFR 5.216 and 5.218, Notice PIH 2010-3]

The applicant and all members of the applicant's household must disclose the complete and accurate social security number (SSN) assigned to each household member, and the documentation necessary to verify each SSN. A detailed discussion of acceptable documentation is provided in CHAPTER 7.

Note: These requirements do not apply to noncitizens who do not contend eligible immigration status.

In addition, each participant who has not previously disclosed an SSN, has previously disclosed an SSN that HUD or the SSA determined was invalid, or has been issued a new SSN must submit their complete and accurate SSN and the documentation required to verify the SSN at the time of the next interim or regular reexamination or recertification. Participants age 62 or older as of January 31, 2010, whose determination of eligibility was begun before January 31, 2010, are exempt from this requirement and remain exempt even if they move to a new assisted unit.

The PHA must deny assistance to an applicant family if they do not meet the SSN disclosure and documentation requirements contained in 24 CFR 5.216.

Timeframe to Submit Documents for SSN

PHA Policy

Applicants will be required to provide a SSN on the pre-application form. The PHA will request verification of the SS number during screening for eligibility.

Alternate arrangements will be made for applicants who are not US Citizens or have eligible immigration status.

The PHA will defer the eligibility determination for a period of 60 days from the date of the screening appointment for households with applicants who are eligible to receive a SSN (those who contend eligible immigration status and US Citizens), to produce required SS number documentation. If after 60 days, required SS numbers are not provided, PHA will deny assistance.

Participants who contend eligible immigration status and who have not previously disclosed a valid SSN must do so at their next scheduled or interim recertification.

3.3.5 Family Consent to Release of Information

[24 CFR 5.230, HCV GB, p. 5-13]

HUD requires each adult family member, and the head of household, spouse, or co-head, regardless of age, to sign form HUD-9886, Authorization for the Release of Information/Privacy Act Notice, and other consent forms as needed to collect information relevant to the family's eligibility and level of assistance. CHAPTER 7 provides detailed information concerning the consent forms and verification requirements.

The PHA must deny admission to the program if any member of the applicant family fails to sign and submit the consent forms for obtaining information in accordance with 24 CFR 5, Subparts B and F [24 CFR 982.552(b)(3)]

3.3.6 Students Enrolled in Institutions of Higher Education

[24 CFR 5.612 and FR Notice 4/10/06]

Section 327 of Public Law 109-115 and the implementing regulation at 24 CFR 5.612 established new restrictions on the eligibility of certain students (both part- and full-time) who are enrolled in institutions of higher education.

If a student enrolled at an institution of higher education is under the age of 24, is not a veteran, is not married, does not have a dependent child, and is not a person with disabilities receiving HCV assistance as of November 30, 2005, the student's eligibility must be examined along with the income eligibility of the student's parents. In these cases, both the student and the student's parents must be income eligible for the student to receive HCV assistance. If, however, a student in these circumstances is determined independent from his/her parents in accordance with PHA policy, the income of the student's parents will not be considered in determining the student's eligibility.

The new law does not apply to students who reside with parents who are applying to receive HCV assistance. It is limited to students who are seeking assistance on their own, separately from their parents.

Determining Student Eligibility

If a student is applying for assistance on his/her own, apart from his/her parents, the PHA must determine whether the student is subject to the eligibility restrictions contained in 24 CFR 5.612. If the student is subject to those restrictions, the PHA must ensure that: (1) the student is individually eligible for the program, (2) either the student is independent from his/her parents or the student's parents are income eligible for the program, and (3) the "family" with which the student is applying is collectively eligible for the program.

PHA Policy

For any student who is subject to the 5.612 restrictions, the PHA will:

- Follow its usual policies in determining whether the student individually and the student's "family" collectively are eligible for the program
- Determine whether the student is independent from his/her parents in accordance with the definition of *independent student* in this section.
- Follow the policies below, if applicable, in determining whether the student's parents are income eligible for the program

If the PHA determines that the student, the student's parents (if applicable), or the student's "family" is not eligible, the PHA will send a notice of denial in accordance with the policies in this Chapter, and the applicant family will have the right to request an informal review in accordance with the policies in CHAPTER 17.

In determining whether and how the new eligibility restrictions apply to a student, the PHA will rely on the following definitions [FR 4/10/06, p. 18148].

Dependent Child

In the context of the student eligibility restrictions, *dependent child* means a dependent child of a student enrolled in an institution of higher education. The dependent child must also meet the definition of *dependent* in 24 CFR 5.603, which states that the dependent must be a member of the assisted family, other than the head of household or spouse, who is under 18 years of age, or is a person with a disability, or is a full-time student. Foster children and foster adults are not considered dependents.

Independent Student

PHA Policy

The PHA will consider a student "independent" from his or her parents and the parents' income will not be considered when determining the student's eligibility if the following criteria are all met:

- The individual is of legal contract age under state law.
- The individual has established a household separate from his/her parents for at least one year prior to application for occupancy or the individual meets the U.S. Department of Education's definition of independent student.
- To be considered an *independent student* according to the Department of Education, a student must meet one or more of the following criteria:
- Be at least 24 years old by December 31 of the award year for which aid is sought
- Be an orphan or a ward of the court through the age of 18
- Be a veteran of the U.S. Armed Forces
- Have one or more legal dependents other than a spouse (for example, dependent children or an elderly dependent parent)
- Be a graduate or professional student
- Be married
- The individual was not claimed as a dependent by his/her parents pursuant to IRS regulations, as demonstrated on the parents' most recent tax forms.
- The individual provides a certification of the amount of financial assistance that will be provided by his/her parents. This certification must be signed by the individual providing the support and must be submitted even if no assistance is being provided.

The PHA will verify that a student meets the above criteria in accordance with the policies in CHAPTER 7.

Institution of Higher Education

The PHA will use the statutory definition under section 102 of the Higher Education Act of 1965 to determine whether a student is attending an *institution of higher education* (see Exhibit 3-2: Definition of Institution of Higher Education at the end of this Admin Plan).

Parents

> PHA Policy
>
> For purposes of student eligibility restrictions, the definition of parents includes biological or adoptive parents, stepparents (as long as they are currently married to the biological or adoptive parent), and guardians (e.g., grandparents, aunt/uncle, godparents, etc.).

Person with Disabilities

The PHA will use the statutory definition under section 3(b)(3)(E) of the 1937 Act to determine whether a student is a *person with disabilities* (see Exhibit 3-1: Detailed Definitions Related to Disabilities at the end of this Admin Plan).

Veteran

> PHA Policy
>
> A *veteran* is a person who served in the active military, naval, or air service and who was discharged or released from such service under conditions other than dishonorable.

Determining Parental Income Eligibility

PHA Policy

For any student who is subject to the 5.612 restrictions and who does not satisfy the definition of *independent student* above, the PHA will determine the income eligibility of the student's parents as follows:

- If the student's parents are married and living together, the PHA will obtain a joint income declaration and certification of joint income from the parents.
- If the student's parent is widowed or single, the PHA will obtain an income declaration and certification of income from that parent.
- If the student's parents are divorced or separated, the PHA will obtain an income declaration and certification of income from each parent.
- If the student has been living with one of his/her parents and has not had contact with or does not know where to contact his/her other parent, the PHA will require the student to submit a certification under penalty of perjury describing the circumstances and stating that the student does not receive financial assistance from the other parent. The PHA will then obtain an income declaration and certification of income from the parent with whom the student has been living or had contact.

In determining the income eligibility of the student's parents, the PHA will use the income limits for the jurisdiction in which the parents live.

3.4 DENIAL OF ASSISTANCE

3.4.1 Overview

A family that does not meet the eligibility criteria must be denied assistance. In addition, HUD requires or permits the PHA to deny assistance based on certain types of current or past behaviors of family members.

Forms of Denial
[24 CFR 982.552(a)(2); HCV GB, p. 5-35]

Denial of assistance includes any of the following:

- Not placing the family's name on the waiting list
- Denying or withdrawing a voucher
- Not approving a request for tenancy or refusing to enter into a HAP contract
- Refusing to process a request for or to provide assistance under portability procedures

Prohibited Reasons for Denial of Program Assistance
[24 CFR 982.202(b), Pub.L. 109-162]

HUD rules prohibit denial of program assistance to the program based on any of the following criteria:

- Age, disability, race, color, religion, sex, sexual orientation, gender identity, and/or national origin. (See CHAPTER 2 for additional information about fair housing and equal opportunity requirements.)
- Where a family lives prior to admission to the program
- Where the family will live with assistance under the program. Although eligibility is not affected by where the family will live, there may be restrictions on the family's ability to move outside the PHA's jurisdiction (see CHAPTER 11).
- Whether members of the family are unwed parents, recipients of public assistance, or children born out of wedlock
- Whether the family includes children
- Whether a family decides to participate in a family self-sufficiency program
- Whether or not a qualified applicant is or has been a victim of domestic violence, dating violence, sexual assault, or stalking if the applicant is otherwise qualified for assistance.

3.4.2 Mandatory Denial of Assistance
[24 CFR 982.553(a)]

HUD requires the PHA to deny assistance in the following cases:

- Any member of the household has been evicted from federally-assisted housing in the last 3 years for drug-related criminal activity. HUD permits, but does not require, the PHA to admit an otherwise-eligible family if the household member has completed a PHA-approved drug rehabilitation program or the circumstances which led to eviction no longer exist (e.g., the person involved in the criminal activity no longer lives in the household).

> PHA Policy
>
> The PHA will admit an otherwise-eligible family who was evicted from state- or federally-assisted housing within the past 3 years for drug-related criminal activity, if the PHA is able to verify that the household member who engaged in the criminal activity has completed a supervised drug rehabilitation program approved by the PHA, or the person who committed the crime, is no longer living in the household.

- The PHA determines that any household member is currently engaged in the use of illegal drugs.

> PHA Policy
>
> Currently engaged in is defined as any use of illegal drugs during the previous six months, unless the applicant is currently enrolled in and fully compliant with treatment.

- The PHA has reasonable cause to believe that any household member's current use or pattern of use of illegal drugs, or current abuse or pattern of abuse of alcohol, may threaten the health, safety, or right to peaceful enjoyment of the premises by other residents.

> PHA Policy
>
> In determining reasonable cause, the PHA will consider all credible evidence, including but not limited to, any record of convictions, arrests, or evictions of household members related to the use of illegal drugs or the abuse of alcohol. A conviction will be given more weight than an arrest. The PHA will also consider evidence from treatment providers or community-based organizations providing services to household members.

- Any household member has ever been convicted of drug-related criminal activity for the production or manufacture of methamphetamine on the premises of federally assisted housing.

> PHA Policy
>
> Any household member has ever been convicted of drug-related criminal activity for the production or manufacture of methamphetamine *in any location*, not just federally assisted housing, the family will be denied assistance.

- Any household member is subject to a lifetime registration requirement under a state sex offender registration program

Sex Offender Registration Records

PHA Policy

A PHA must carry out background checks necessary to determine whether a member of a household applying for admission is subject to a lifetime sex offender registration requirement under a State sex offender registration program. This check must be carried out for Massachusetts and for other states where the household members are known to have resided.

In addition to screening adult members of the household, juvenile household members will also be screened to the extent allowed by state and local law. The Family Certification Form, completed at the time of application, has been revised to include a question asking whether the applicant or any member of the applicant's household is subject to a lifetime state sex offender registration program in any state. Failure to answer this question will jeopardize the approval of the application.

PHAs will verify the information provided by the applicant by searching both the Massachusetts Sex Offender Registry Board (SORB) website and the Dru Sjodin National Sex Offender database. The Dru Sjodin National Sex Offender Database is an online, searchable database, hosted by the Department of Justice, which combines the data from individual state sex offender registries. A record of this screening, including date performed, should be retained. PHAs must destroy the results of the search in accordance with 24 CFR 5.903 (g).

- Massachusetts Sex Offender Registry Board (SORB)
http://www.mass.gov/sorb

- United States Department of Justice National Sex Offender Public Registry
http://www.nsopr.gov/

In Massachusetts, whether a person is a lifetime registrant depends on the crime they committed, NOT on whether they are classified as level 1, 2 or 3. Section 178G of M.G.L. c.6 states that the duty to register ends 20 years after conviction, adjudication, or release from jail, unless the person has committed certain types of crimes, in which case he must register for his lifetime.

A sex offender is subject to lifetime registration if the offender:

- Has been determined (by the SORB) to be a sexually violent predator,

- Has been convicted of two or more Wetterling offenses, committed on different occasions,

- Has been convicted of a sexually violent offense,

- Has been convicted of a sex offense involving a child

PHA Policy Continued

The Sex Offender regulations (803 CMR 1.00 et seq.) define a Wetterling offense as:

- Indecent A&B on a child under 14,
- Rape of a child under 16 with force,
- Rape and abuse of a child,
- Assault of a child with intent to commit rape,
- Kidnapping a child,
- Enticing a child under the age of 16 for the purpose of committing a crime,
- Enticing a child into prostitution,
- Living off or sharing earnings of a minor prostitute,
- Possession of child pornography,
- Unnatural and lascivious acts with a child under 16,
- Aggravated rape.

The above is a summary of the regulation. For a complete definition of Wetterling offenses go to www.mass.gov/sorb, and read the definition in 803 CMR 1.03).

If an offender is a juvenile (or was at the time he committed the crime) then he may not be subject to lifetime registration.

3.4.3 Other Permitted Reasons for Denial of Assistance

HUD permits, but does not require, The PHA may deny assistance for the reasons discussed in this section.

Criminal Activity
[24 CFR 982.553]

HUD permits, but does not require, The PHA may deny assistance if the PHA determines that any household member is currently engaged in, or has engaged in during a reasonable time before the family would receive assistance, certain types of criminal activity.

PHA Policy

If any household member is currently engaged in, or has engaged in any of the following criminal activities, within the past three years, the family will be denied assistance.

- Drug-related criminal activity, defined by HUD as the illegal manufacture, sale, distribution, or use of a drug, or the possession of a drug with intent to manufacture, sell, distribute or use the drug [24 CFR 5.100].

- Violent criminal activity, defined by HUD as any criminal activity that has as one of its elements the use, attempted use, or threatened use of physical force substantial enough to cause, or be reasonably likely to cause, serious bodily injury or property damage [24 CFR 5.100]. However, persons convicted of egregious acts of violence may be denied assistance regardless of the length of time that has elapsed since the crime was committed. Egregious crimes mean extremely bad crimes, reprehensible crimes, where the scars of such crimes have life-long effects on the victim, their families, and the community.

Examples include but are not limited to sexual molestation, rape, sexual slavery, enforced prostitution, indecent assault and battery with intent to rape, murder (first, second, or third degree), and manslaughter.

- Criminal activity that may threaten the health, safety, or right to peaceful enjoyment of the premises by other residents or persons residing in the immediate vicinity; or

- Criminal activity that may threaten the health or safety of property owners, management staff, and persons performing contract administration functions or other responsibilities on behalf of the PHA (including a PHA employee or a PHA contractor, subcontractor, or agent).

Immediate vicinity means within a three-block radius of the premises.

Evidence of such criminal activity includes, but is not limited to:

- Any conviction for drug-related or violent criminal activity within the past 3 years.

- Any arrests for drug-related or violent criminal activity within the past 3 years.

- Any record of eviction from public or privately-owned housing as a result of criminal activity within the past 3 years. A conviction for drug-related or violent criminal activity will be given more weight than an arrest for such activity. Proof of conviction or eviction is evidenced by written documentation from a court of law, district attorney's office, or other agencies or sources that have legitimate access to this information.

In making its decision to deny assistance, the PHA will consider the factors discussed in this Chapter. Upon consideration of such factors, the PHA may, on a case-by-case basis, decide not to deny assistance.

Previous Behavior in Assisted Housing
[24 CFR 982.552(c)]

HUD authorizes the PHA to deny assistance based on the family's previous behavior in assisted housing:

PHA Policy

The PHA will not deny assistance to an otherwise eligible family because the family previously failed to meet its obligations under the Family Self-Sufficiency (FSS) program.

The PHA will deny assistance to an applicant family if:

- The family does not provide information that the PHA or HUD determines is necessary in the administration of the program.
- The family does not provide complete and true information to the PHA.
- Any family member has been evicted from federally-or state-assisted housing in the last five years (3 years for drug related criminal activity).
- Any PHA has ever terminated assistance under the program for any member of the family; however if the family resubmits an application with the household member in question removed from the application, the PHA will consider the family for assistance.
- Any family member has committed fraud, bribery, or any other corrupt or criminal act in connection with any federal or state housing program; e.g., withholding or misrepresenting information about income.
- The family owes rent or other amounts to any PHA in connection with any federal or state housing program, unless the family repays the full amount of the debt prior to being selected from the waiting list or, if otherwise eligible, before a voucher is issued. For more information, see Debt Screening.
- A family member has engaged in or threatened violent or abusive behavior toward PHA personnel.

Abusive or violent behavior towards PHA personnel includes verbal as well as physical abuse or violence. Use of racial epithets, or other language, written or oral, that is customarily used to intimidate may be considered abusive or violent behavior.

Threatening refers to oral or written threats or physical gestures that communicate intent to abuse or commit violence. In making its decision to deny assistance, the PHA will consider the factors discussed in 3.4.4 Criteria for Deciding to Deny Assistance. Upon consideration of such factors, the PHA may, on a case-by-case basis, decide not to deny assistance.

3.4.4 Criteria for Deciding to Deny Assistance

Evidence
[24 CFR 982.553(c)]

> PHA Policy
>
> The PHA will use the concept of the preponderance of the evidence as the standard for making all admission decisions.

Preponderance of the Evidence

> PHA Policy
>
> Preponderance of the evidence is defined as evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not.
>
> Preponderance of the evidence may not be determined by the number of witnesses, but by the greater weight of all evidence.
>
> Documentation may include police reports or arrest/disturbance reports.

Consideration of Circumstances
[24 CFR 982.552(c) (2)]

HUD authorizes the PHA to consider all relevant circumstances when deciding whether to deny assistance based on a family's past history except in the situations for which denial of assistance is mandated (see 3.4.2 Mandatory Denial of Assistance).

PHA Policy

The PHA will consider the following factors prior to making its decision:

- The seriousness of the case, especially with respect to how it would affect other residents.
- The effects that denial of assistance may have on other members of the family who were not involved in the action or failure
- The extent of participation or culpability of individual family members, including whether the culpable family member is a minor or a person with disabilities, or (as discussed further in "Prohibition Against Denial of Assistance to Victims of Domestic Violence, Dating Violence, Sexual Assault, and Stalking") a victim of domestic violence, dating violence, sexual assault, or stalking.
- The length of time since the violation occurred, the family's recent history and the likelihood of favorable conduct in the future.
- In the case of drug or alcohol abuse, whether the culpable household member is participating in or has successfully completed a supervised drug or alcohol rehabilitation program or has otherwise been rehabilitated successfully.
- The PHA will require the applicant to submit evidence of the household member's current participation in or successful completion of a supervised drug or alcohol rehabilitation program, or evidence of otherwise having been rehabilitated successfully.

Removal of a Family Member's Name from the Application
[24 CFR 982.552(c)(2)(ii)]

HUD permits PHAs to impose as a condition of admission, a requirement that family members who participated in or were culpable for an action or failure to act which results in the denial of assistance, to not reside in the unit.

PHA Policy

As a condition of receiving assistance, a family may agree to remove the culpable family member from the application. In such instances, the head of household must certify that the family member will not be permitted to visit or to stay as a guest in the assisted unit.

After admission to the program, the family must present evidence of the former family member's current address upon PHA request.

Reasonable Accommodation
[24 CFR 982.552(c)(2)(iv)]

If the family includes a person with disabilities, the PHA's decision concerning denial of admission is subject to consideration of reasonable accommodation in accordance with 24 CFR Part 8.

> PHA Policy
>
> If the family indicates that the behavior of a family member with a disability is the reason for the proposed denial of assistance, the PHA will determine whether the behavior is related to the disability.
>
> If so, upon the family's request, the PHA will determine whether alternative measures are appropriate as a reasonable accommodation.
>
> The PHA will only consider accommodations that can reasonably be expected to address the behavior that is the basis of the proposed denial of assistance. See CHAPTER 2 for a discussion of reasonable accommodation.

3.4.5 Notice of Eligibility or Denial

If the family is eligible for assistance, the PHA will notify the family when it extends the invitation to attend the voucher briefing appointment, as discussed in CHAPTER 5.

If the PHA determines that a family is not eligible for the program for any reason, the family must be notified promptly.

> PHA Policy
>
> The family will be notified of a decision to deny assistance in writing within 15 business days of the determination.

The notice must describe:

- The reasons for which assistance has been denied,
- The family's right to an informal review, and
- The process for obtaining the informal review. See Section Informal Reviews in CHAPTER 17 for policies and procedures. [24 CFR 982.554 (a)].

If a PHA uses a criminal record or sex offender registration information obtained under 24 CFR 5, Subpart J, as the basis of a denial, a copy of the record must proceed the notice to deny, with an opportunity for the applicant to dispute the accuracy and relevance of the information before the PHA can move to deny the application. In addition, a copy of the record must be provided to the subject of the record [24 CFR 5.903(f) and 5.905(d)]. The PHA must give the

family an opportunity to dispute the accuracy and relevance of that record, in the informal review process in accordance with program requirements [24 CFR 982.553(d)].

PHA Policy

If based on a criminal record or sex offender registration information, an applicant family appears to be ineligible the PHA will notify the family in writing of the proposed denial and provide a copy of the record to the applicant and to the subject of the record. The family will be given 15 business days to dispute the accuracy and relevance of the information before the PHA can move to deny the application.

If the family does not contact the PHA to dispute the information within that 15-day period, the PHA will proceed with issuing the notice of denial of admission.

A family that does not exercise their right to dispute the accuracy of the information prior to issuance of the official denial letter will still be given the opportunity to do so as part of the informal review process.

Notice requirements related to denying assistance to noncitizens are contained in 17.4.4 Hearing and Appeal Provisions for Non-Citizens.

Notice policies related to denying admission to applicants who may be victims of domestic violence, dating violence, sexual assault, or stalking are below in 3.4.6 and in 17.10 Violence Against Women Reauthorization Act of 2005 and 2013 (VAWA): Notification, Documentation, and Confidentiality.

3.4.6 Prohibition Against Denial of Assistance to Victims of Domestic Violence, Dating Violence, Sexual Assault, and Stalking

[24 CFR Part 5, Subpart L]

The Violence against Women Reauthorization Act of 2005 and 2013 (VAWA) and the HUD regulation at 24 CFR 5.2005(b) prohibit denial of admission to an otherwise qualified applicant on the basis that the applicant is or has been a victim of domestic violence, dating violence, sexual assault, or stalking.

Definitions of key terms in VAWA are provided in Section 17.10 Violence Against Women Reauthorization Act of 2005 and 2013 (VAWA): Notification, Documentation, and Confidentiality, where general VAWA requirements and policies pertaining to notification documentation, and confidentiality are also located.

Notification

PHA Policy

The PHA acknowledges that a victim of domestic violence, dating violence, sexual assault, or stalking may have an unfavorable history – (e.g., a poor credit history, a record of previous damage to an apartment, a prior arrest record) that would warrant denial under the PHA's policies.

Therefore, if the PHA makes a determination to deny admission to an applicant family, the PHA will include in its notice of denial the information described in CHAPTER 17 of this plan and will request that an applicant wishing to claim protection under VAWA notify the PHA within 10 business days.

Victim Documentation

PHA Policy

If an applicant claims the protection against denial of assistance that VAWA provides to victims of domestic violence, dating violence, sexual assault, or stalking, the PHA will request in writing that the applicant provide documentation supporting the claim in accordance with Section 17.10 Violence Against Women Reauthorization Act of 2005 and 2013 (VAWA): Notification, Documentation, and Confidentiality.

Perpetrator Documentation

PHA Policy

If the perpetrator of the abuse is a member of the applicant family, the applicant must provide additional documentation consisting of one of the following:

- A signed statement requesting that the perpetrator be removed from the application and certifying that the perpetrator will not be permitted to visit or to stay as a guest in the assisted unit.

- Documentation that the perpetrator has successfully completed, or is successfully undergoing, rehabilitation or treatment. The documentation must be signed by an employee or agent of a domestic violence service provider or by a medical or other knowledgeable professional from whom the perpetrator has sought or is receiving assistance in addressing the abuse.

- The signer must attest under penalty of perjury to his or her belief that the rehabilitation was successfully completed or is progressing successfully. The victim and perpetrator must also sign or attest to the documentation.

CHAPTER 4 : APPLICATIONS, WAITING LIST AND TENANT SELECTION

4.1 INTRODUCTION

When a family wishes to receive Section 8 HCV assistance, the family must submit an application that provides the PHA with the information needed to determine the family's eligibility. HUD requires the PHA to place all families that apply for assistance on a waiting list. When HCV assistance becomes available, the PHA must select families from the waiting list in accordance with HUD requirements and PHA policies as stated in the Administrative Plan and the annual plan.

The PHA is required to adopt a clear approach to accepting applications, placing families on the waiting list, selecting families from the waiting list and must follow this approach consistently. The actual order in which families are selected from the waiting list can be affected if a family has certain characteristics designated by HUD or the PHA to receive preferential treatment. Funding earmarked exclusively for families with particular characteristics may also alter the order in which families are served.

HUD regulations require that all families have an equal opportunity to apply for and receive housing assistance, and that the PHA affirmatively further fair housing goals in the administration of the program [24 CFR 982.53, HCV GB p. 4-1]. Adherence to the selection policies described in this Chapter ensures that the PHA will be in compliance with all relevant fair housing requirements, as described in CHAPTER 2.

This Chapter describes HUD and PHA policies for taking applications, managing the waiting list and selecting families for HCV assistance. The policies outlined in this Chapter are organized into three sections, as follows:

- The Application Process. This part provides an overview of the application process, and discusses how applicants can obtain and submit applications. It also specifies how the PHA will handle the applications it receives.

- Managing the Waiting List. This part presents the policies that govern how the PHA's waiting list is structured, when it is opened and closed, and how the public is notified of the opportunity to apply for assistance. It also discusses the process the PHA will use to keep the waiting list current.

- Selection for HCV Assistance. This part describes the policies that guide the PHA in selecting families for HCV assistance as such assistance becomes available. It also specifies how in-person interviews will be used to ensure that the PHA has the information needed to make a final eligibility determination.

4.2 THE APPLICATION PROCESS

4.2.1 Overview

This part describes the policies that guide the PHA's efforts to distribute and accept applications, and to make preliminary determinations of applicant family eligibility that affect placement of the family on the waiting list. This part also describes the PHA's obligation to ensure the accessibility of the application process to elderly persons, people with disabilities, and people with limited English proficiency (LEP).

4.2.2 Applying for Assistance

[HCV GB, pp. 4-11 – 4-16, Notice PIH 2009-36]

Any family that wishes to receive HCV assistance must apply for admission to the program. HUD permits the PHA to determine the format and content of HCV applications, as well how such applications will be made available to interested families and how applications will be accepted by the PHA. However, the PHA must include Form HUD-92006, Supplement to Application for Federally Assisted Housing, as part of the PHA's application. This form is available in 10 languages on HUD's website.

PHA Policy

Depending upon the length of time that applicants may need to wait to receive assistance, the PHA may use a one- or two-step application process.

A one-step process will be used when it is expected that a family will be selected from the waiting list within 60 days of the date of application. At application, the family must provide all of the information necessary to establish family eligibility and level of assistance.

A two-step process will be used when it is expected that a family will not be selected from the waiting list for at least 60 days from the date of application. Under the two-step application process, the PHA initially will require families to provide only the information needed to place the family on the waiting list. The family will be required to provide all of the information necessary to establish family eligibility and level of assistance when the family is selected from the waiting list.

Families may obtain application forms from the PHA's office during normal business hours. Families may also request, by telephone or by mail, that a form be sent to the family via first class mail. Applications are available on the PHA's website.

Completed applications must be returned to the PHA by mail or submitted in person during normal business hours. Applications must be complete in order to be accepted by the PHA for processing. At a minimum the following information is included on a pre-application:

- Applicant name and address.
- Number of members in household.
- Household Income.
- Current housing situation.
- Social Security Number for the Head of Household only. A SSN is required to ensure that duplicate applications are not entered onto the waiting list
- Racial or ethnic designation of the head of household.
- Incomplete, photocopied, E-mailed or faxed applications will not be accepted. The PHA is not responsible for material that is illegible or missing as a result of transmitting by Fax or E-mail or lost/delayed through the mail.
- If an application is incomplete, the PHA will notify the family of the additional information required if an address has been provided. If the waiting list is closed, a corrected application will not be accepted unless the applicant can demonstrate mitigating circumstances.

4.2.3 Accessibility of the Application Process

Elderly and Disabled Populations
[24 CFR 8 and HCV GB, pp. 4-11 – 4-13]

The PHA must take a variety of steps to ensure that the application process is accessible to those people who might have difficulty complying with the normal, standard PHA application process. This could include people with disabilities, certain elderly individuals, as well as persons with limited English proficiency (LEP). The PHA must provide reasonable accommodation to the needs of individuals with disabilities. The application-taking facility and the application process must be fully accessible, or the PHA must provide an alternate approach that provides full access to the application process. CHAPTER 2 provides a full discussion of the PHA's policies related to providing reasonable accommodations for people with disabilities.

Limited English Proficiency

PHAs are required to take reasonable steps to ensure meaningful access to their programs and activities by persons with limited English proficiency [24 CFR 1]. CHAPTER 2 provides a full discussion on the PHA's policies related to ensuring access to people with limited English proficiency (LEP).

4.2.4 Placement on the Waiting List

The PHA must review each complete application received and make a preliminary assessment of the family's eligibility. The PHA must accept applications from families for whom the list is open unless there is good cause for not accepting the application (such as denial of assistance) for the grounds stated in the regulations [24 CFR 982.206(b)(2)]. Where the family is determined to be ineligible, the PHA must notify the family in writing [24 CFR 982.201(f)]. Where the family is not determined to be ineligible, the family will be placed on a waiting list of applicants.

No applicant has a right or entitlement to be listed on the waiting list, or to any particular position on the waiting list [24 CFR 982.202(c)].

Ineligible for Placement on the Waiting List

> PHA Policy
>
> If the PHA can determine from the information provided that a family is ineligible, the family will not be placed on the waiting list.
>
> Where a family is determined to be ineligible, the PHA will send written notification of the ineligibility determination within 15 business days of receiving a complete application. The notice will specify the reasons for ineligibility, and will inform the family of its right to request an informal review and explain the process for doing so (see CHAPTER 17).

Eligible for Placement on the Waiting List

PHA Policy

Each month the PHA will send written notice of placement on the waiting list to all new HCVP applicants whose complete pre-applications were received in the previous month. For example, letters must be sent by February 15th for pre-applications received in January.

The letter must include, at a minimum, the following information:

- Date and time pre-application was received
- Program(s) applied for
- An estimate of the wait time based on average agency turnover
- Notice of the applicant's obligation to provide a current mailing address
- Circumstances under which names will be removed from the waiting list
- Method of Selection

RAAs must enter pre-applications and mail letters promptly.

Placement on the waiting list does not indicate that the family is, in fact, eligible for assistance. A final determination of eligibility will be made when the family is selected from the waiting list. Applicants will be placed on the waiting list according to any preference(s) for which they qualify, and the date and time their complete application is received by the PHA.

The application will be part of the permanent file. Applications may be scanned and kept in an imaging file; however, the original paper application must not be destroyed. Neither RAAs nor DHCD will provide applicants with their number on the waiting list. Upon request, RAAs must provide applicants with an estimate of the wait time based on its average agency turnover. RAAs are strongly encouraged to establish a recorded message which effectively communicates this information to applicants.

See Exhibit 4-1: Sample Letter Notice of Placement on the Waiting List.

4.3 MANAGING THE WAITING LIST

4.3.1 Overview

The PHA must have policies regarding various aspects of organizing and managing the waiting list of applicant families. This includes opening the list to new applicants, closing the list to new applicants, notifying the public of waiting list openings and closings, updating waiting list

information, purging the list of families that are no longer interested in or eligible for assistance, as well as conducting outreach to ensure a sufficient number of applicants.

In addition, HUD imposes requirements on how a PHA may structure its waiting list and how families must be treated if they apply for assistance from a PHA that administers more than one assisted housing program.

4.3.2 Organization of the Waiting List

[24 CFR 982.204 and 205]

The PHA's HCV waiting list must be organized in such a manner to allow the PHA to accurately identify and select families for assistance in the proper order, according to the admissions policies described in this plan.

The waiting list must contain the following information for each applicant listed:

- Applicant name;
- Family unit size (for PBV only);
- Date and time of application;
- Household Income
- Qualification for any local preference;
- Racial or ethnic designation of the head of household.

HUD requires the PHA to maintain a single waiting list for the HCV program unless it serves more than one county or municipality. Such PHAs are permitted, but not required, to maintain a separate waiting list for each county or municipality served.

> PHA Policy
>
> The PHA will maintain a separate waiting list for each region within the Commonwealth of Massachusetts.

<u>Regional Designation</u>

> PHA Policy
>
> Regional designation is automatically assigned when an applicant's data is first entered into the waiting list. The regional designation is based on the mailing address provided in the pre-application. The regional designation places the applicant on one of the regional waiting lists. Applicants residing out of state are not entitled to a regional residency preference and are assigned a regional designation of zero.

Change in Regional Designation

PHA Policy

After the initial regional designation has been assigned it may be changed only for three reasons: 1) change of address; 2) employment out of region; or 3) if the applicant resides in a shelter at the time of application. A change of regional designation may either increase or decrease an applicant's waiting time depending upon the number of applicants in that region, the number of vouchers allocated to that region, and participant turnover. When an applicant submits a change of address, the regional designation is not changed automatically by the RAA. The applicant must request the change in writing and provide proper verification as described below.

Change of Address

PHA Policy

An applicant may change their regional designation if they have moved to a community that is in a different region from where they applied. The applicant must provide verification of residence at the new address such as a current utility bill.

Work Location

PHA Policy

An applicant may change their regional designation if the community in which they work is in a different region than where they reside. The applicant must provide verification of employment in the region such as a current pay stub or a statement from the employer.

Applicants in Shelter

PHA Policy

An applicant residing in a shelter may change their regional designation to the region of their last permanent residence, if different. No evidence of residence will be required for the initial change; however, if subsequent changes are requested, verification will be required.

Regional Special Programs

PHA Policy

Certain special programs are not administered statewide. If an RAA receives a referral for a regional project-based special program other than PBV, DHCD must be consulted.

Waiting List Partnerships

> PHA Policy
>
> DHCD is willing to partner with local housing authorities to extend the benefits of its statewide waiting list to applicants and PHAs throughout the Commonwealth. Procedures will be articulated in a Memorandum of Understanding signed by the participating agencies.

HUD directs that a family that applies for assistance from the HCV program must be offered the opportunity to be placed on the waiting list for any public housing, project-based voucher or moderate rehabilitation program the PHA operates if 1) the other programs' waiting lists are open, and 2) the family is qualified for the other programs.

HUD permits, but does not require, that PHAs maintain a single merged waiting list for their public housing, Section 8, and other subsidized housing programs.

A family's decision to apply for, receive, or refuse other housing assistance must not affect the family's placement on the HCV waiting list, or any preferences for which the family may qualify.

> PHA Policy
>
> The PHA will not merge the HCV waiting list with the waiting list for any other non-HCV program the PHA operates.

4.3.3 Opening and Closing the Waiting List

[24 CFR 982.206]

Closing the Waiting List

A PHA is permitted to close the waiting list if it has an adequate pool of families to use its available HCV assistance. Alternatively, the PHA may elect to continue to accept applications only from certain categories of families that meet particular preferences or funding criteria.

> PHA Policy
>
> DHCD may choose to close its waiting list at any time. There is no HUD requirement for a public notice to close the waiting list.

Reopening the Waiting List

If the waiting list has been closed, it cannot be reopened until the PHA publishes a notice in local newspapers of general circulation, minority media, and other suitable media outlets. The notice must comply with HUD fair housing requirements and must specify who may apply, and where and when applications will be received.

> PHA Policy
>
> On March 27, 2000, DHCD opened its waiting list with the intention that it will remain open indefinitely.
>
> The PHA will announce the reopening of the waiting list at least 15 business days prior to the date applications will first be accepted. If the list is only being reopened for certain categories of families, this information will be contained in the notice.
>
> Each PHA will give public notice by publishing the relevant information in suitable media outlets including, but not limited to: a newspaper of general circulation and regionally appropriate minority newspapers. PHAs also disseminate information through use of web sites, bulletin boards, newsletters, and outreach to other housing and service providers in their jurisdiction, including agencies which serve individuals with disabilities.
>
> If the waiting list is closed, and all applicants within an PHA administrative area have been exhausted, the PHA will open the list in a limited manner accepting applications only from applicants that reside or work in that region.

4.3.4 Family Outreach

[HCV GB, pp. 4-2 to 4-4]

The PHA must conduct outreach as necessary to ensure that the PHA has a sufficient number of applicants on the waiting list to use the HCV resources it has been allotted.

Because HUD requires the PHA to serve a specified percentage of extremely low income families, the PHA may need to conduct special outreach to ensure that an adequate number of such families apply for assistance [HCV GB, p. 4-20 to 4-21].

PHA outreach efforts must comply with fair housing requirements. This includes:

- Analyzing the housing market area and the populations currently being served to identify underserved populations
- Ensuring that outreach efforts are targeted to media outlets that reach eligible populations that are underrepresented in the program
- Avoiding outreach efforts that prefer or exclude people who are members of a protected class

PHA outreach efforts must be designed to inform qualified families about the availability of assistance under the program. These efforts may include, as needed, any of the following activities:

- Submitting press releases to local newspapers, including minority newspapers
- Developing informational materials and flyers to distribute to other agencies
- Providing application forms to other public and private agencies that serve the low income population
- Developing partnerships with other organizations that serve similar populations, including agencies that provide services for persons with disabilities

> PHA Policy
>
> The PHA will conduct targeted outreach efforts if and when certain identified populations are being underserved.

4.3.5 Reporting Changes in Family Circumstances While on the Waiting List

> PHA Policy
>
> While the family is on the waiting list, the family must immediately inform the PHA of changes in family composition, preference and contact information, including current residence, mailing address, and phone number. The changes must be submitted in writing. Applicants should not rely on forwarding orders with the post office.
>
> If a family on the waiting list submits a subsequent application, the record will be updated to reflect the information provided in the most recent application.
>
> The PHA will not provide notice that an address or other change was received and processed.

4.3.6 Updating the Waiting List

[24 CFR 982.204]

HUD requires the PHA to establish policies to use when removing applicant names from the waiting list.

Purging the Waiting List

The decision to withdraw an applicant family that includes a person with disabilities from the waiting list is subject to reasonable accommodation. If the applicant did not respond to a PHA request for information or updates because of the disability, the PHA must reinstate the applicant family to their former position on the waiting list [24 CFR 982.204(c) (2)].

PHA Policy

The waiting list will be updated to ensure that all applications and application information is current and timely. Due to the size of the list, the PHA will update only those applications that are anticipated to be selected from the waiting list for the next twenty-four month period.

To update the waiting list, the PHA will send an update request via first class mail to each family on the waiting list to determine whether the family continues to be interested in the program.

This update request will be sent to the last address that the PHA has on record for the family. The update request will provide a deadline by which the family must respond and will state that failure to respond will result in the applicant's name being removed from the waiting list.

The family's response must be in writing and may be delivered in person or by mail. Responses should be postmarked or received by the PHA by the date specified on the update request. A response time will be a minimum of 30 days from the date of the PHA letter.

If the family fails to respond within the established response time, the family will be removed from the waiting list without further notice.

If the notice is returned by the post office with no forwarding address, this will be used as proof that the applicant has moved without notice and the applicant will be removed from the waiting list without further notice.

If the notice is returned by the post office with a forwarding address, the notice will be re-sent to the address indicated. The family will have 30 days to respond from the date the letter was re-sent.

If a family is removed from the waiting list for failure to respond, the PHA may reinstate the family if it determines the lack of response was due to PHA error, or to circumstances beyond the family's control.

Reinstatement to Waiting list

PHA Policy

Applicants that have been removed from the waiting list for failure to respond to a written notice may request reinstatement of their application for a period of 12 months following the deadline for response. The PHA shall reinstate the application if the applicant has no previous history or failure to respond to written notices. The PHA may reinstate the application even with previous history of non-response if:

- There is evidence that the applicant never received the notice; e.g., letter was returned as undeliverable but applicant has remained at that address.
- There is evidence of PHA error.
- The PHA determines that circumstances beyond the applicant's control prevented timely response to the notice: e.g., death in the family or hospitalization, or
- There is evidence that the applicant is now able to complete the application process in a timely fashion; e.g. now has a case manager or other support services that will assist the applicant in the application process.

No applications will be reinstated after 12 months from a deadline to respond, unless the PHA determines that the applicant's failure to respond is caused by documented PHA error.

At the discretion of the PHA an applicant that has been removed from the list for failure to respond to a written request may be reinstated as a reasonable accommodation without limitation or if mitigating circumstances can be proven and the request is made within a reasonable period of time.

Applicants who are approved by the PHA for reinstatement to the waiting list will retain their original date and time of application.

However, all applications in progress as of the date of reinstatement shall have priority for funding over the reinstated application, even if they were submitted after the reinstated application's initial date of PHA application.

If funds are not available at the time of reinstatement after all applications in progress are offered a voucher, the reinstated application shall remain on the top of the waiting list until such time as vouchers are available for applications with the same or later dates of initial application.

The PHA does not accept responsibility for mail delays and/or nonreceipt by the applicant.

Removal from the Waiting List

PHA Policy

If at any time an applicant family is on the waiting list, the PHA determines that the family is not eligible for assistance (see CHAPTER 3) the family will be removed from the waiting list.

If a family is removed from the waiting list because the PHA has determined the family is not eligible for assistance, a notice will be sent to the family's address of record as well as to any alternate address provided on the initial application. The notice will state the reasons the family was removed from the waiting list and will inform the family how to request an informal review regarding the PHA's decision (see CHAPTER 17) [24 CFR 982.201(f)].

PHAs will remove names of applicants:

- That do not respond to a written request for information or updates;
- That have become a participant in any of the PHA's HCV programs;
- If correspondence to the applicant is returned by the Postal Service for any reason.

In these instances the PHA is not required to make any further effort to contact the applicant. An informal review is not required to be offered.

4.4 SELECTION FOR HCV ASSISTANCE

4.4.1 Overview

As vouchers become available, families on the waiting list must be selected for assistance in accordance with the policies described in this part.

The order in which families receive assistance from the waiting list depends on the selection method chosen by the PHA and is impacted in part by any selection preferences that the family qualifies for. The source of HCV funding also may affect the order in which families are selected from the waiting list.

The PHA must maintain a clear record of all information required to verify that the family is selected from the waiting list according to the PHA's selection policies [24 CFR 982.204(b) and 982.207(e)].

4.4.2 Selection and HCV Funding Scores

Special Admissions
[24 CFR 982.203]

HUD may award funding for specifically-named families living in specified types of units (e.g., a family that is displaced by demolition of public housing; a non-purchasing family residing in a HOPE 1 or 2 projects).

In these cases, the PHA may admit families that are not on the waiting list, or without considering the family's position on the waiting list. The PHA must maintain records showing that such families were admitted with special program funding.

Targeted Funding
[24 CFR 982.204(e)]

HUD may award a PHA funding for a specified category of families on the waiting list. The PHA must use this funding only to assist the families within the specified category. Within this category of families, the order in which such families are assisted is determined according to the policies provided in this Chapter. See Section 4.4.3 Selection Method.

PHA Policy

The PHA administers the following types of targeted funding:

FUP, VASH, VHP, HOP, MS, and DSG

Separate regional waiting lists are maintained for all targeted programs; except MS, DSG and VASH, however not all are administered statewide.

Applicants for these programs must meet additional, specific, eligibility requirements. For most targeted programs, applicants are referred by agencies that provide services to the targeted population. These applicant referrals are placed on the specific targeted program waiting list and the applicant is placed on the regular HCV waiting list if it is open. When a family cannot establish basic program eligibility at the time of application, the provider agency is prohibited from making a referral and/or the PHA will refuse to accept the referral. For example, a referral to the Family Unification program (FUP) will not be placed on the waiting list unless the Department of Children and Families (DCF) verifies that the applicant has an open DCF case.

When vouchers become available to issue, DHCD will request referrals from its partnering agencies. If denial of admission decisions are made by the provider agency, that agency is responsible for conducting the informal review or to provide the applicant with a comparable process. See CHAPTER 19 for more information on DHCD's targeted programs and selection criteria.

Regular HCV Funding

Regular HCV funding may be used to assist any eligible family on the waiting list. Families are selected from the waiting list according to the policies provided in CHAPTER 4 regarding Selection Method.

4.4.3 Selection Method

PHAs must describe the method for selecting applicant families from the waiting list, including the system of admission preferences that the PHA will use [24 CFR 982.202(d)]. Families will be selected from the Waiting List based on the targeted funding, special housing initiatives, preferences for which they qualify, income targeting requirements, and date and time of application.

Local Preferences
[24 CFR 982.207; HCV p. 4-16]

PHAs are permitted to establish local preferences, and to give priority to serving families that meet those criteria. HUD specifically authorizes and places restrictions on certain types of local preferences. HUD also permits the PHA to establish other local preferences, at its discretion. Any local preferences established must be consistent with the PHA plan and the consolidated plan, and must be based on local housing needs and priorities that can be documented by generally accepted data sources.

Families Terminated Due to Insufficient Funding

> PHA Policy
>
> The PHA will offer a preference to any family that has been terminated from its HCV program due to insufficient program funding.

Regional Residency Preference

> PHA Policy
>
> A regional residency preference will be applied to all applicants that meet the residency criteria. Use of the residency preference will not have the purpose or effect of delaying or otherwise denying admission to the program based on race, color, ethnic origin, gender, sex, sexual orientation, religion, disability, or age of any member of an applicant family.
>
> The residency preference areas are the administrative areas of DHCD's RAAs. An administrative area may include more than one of DHCD's contracting areas. Additionally, applicants who are working or who have been notified that they are hired to work in a residency preference area will be treated as residents of the residency preference area upon written request.

Single Applicant

PHA Policy

Single applicants, defined as a household with only one member, must be either elderly or a person with disabilities to receive assistance. Use of the term “single” in this context does not refer to marital status. Upon selection from the waiting list, an applicant that is a one-member household and is not elderly or a person with disabilities will be denied assistance. Because of the structure and length of DHCD’s waiting list it is no longer practical to skip singles that do not meet this selection preference.

The PHAs selection letter must describe the implications of being a one-member household that is not elderly or a person with a disability upon program eligibility.

One member households that are neither elderly nor disabled may occupy project-based single room occupancy (SRO and ESRO) units under the project-based voucher program.

Project Based Opt Outs

PHA Policy

DHCD will select eligible Project Based Opt-Out families from the waiting list according to the PB Opt-Out hierarchy. Within PB opt-out categories, applicants will be selected according to date and time of application.

PB Category 4 is subject to the applicable RAA annual cap. For policy information on the voluntary PB Opt-Out cap see CHAPTER 18.

PB 1: Forced Opt Outs
PB 2: Overhoused
PB 3: Underhoused
PB 4: Voluntary PB Opt Outs (subject to the applicable annual cap)

The following PB Opt-Out households are deemed PB 1: Forced Opt-Outs:

- Households that are victims of domestic violence pursuant to the VAWA policy;
- Households that require a tenant-based voucher to address an approved reasonable accommodation request;
- Non-disabled households that occupy an accessible unit and that have been requested to move to allow a disabled household to move into the accessible unit;
- Households that can document the need to move in order to obtain or maintain employment; and
- Households that can document that a household member has been accepted into a higher education institution and can document the need to move in order to attend the institution.

Selection from the Waiting List - Hierarchy
[Notice 2011-32]

PHA Policy

Selection from the Waiting List is made in the order as outlined below. For applicants within the same preference, selection will be made according to date and time of application. For families within the same category who were previously terminated or who had vouchers recalled due to insufficient funding, selection will be made according to date and time of termination: those terminated or with vouchers recalled first, will be selected first.

a. Families who requested moves that were denied due to insufficient funding.

b. Families with special purpose vouchers (NEDs, FUP, VASH) that were previously terminated or who had vouchers recalled due to insufficient funding

c. Once the PHA resumes issuing vouchers after a funding shortfall, if the PHA is not assisting the required number of NEDs, VASH, and FUP vouchers, the PHA will issue vouchers to special purpose voucher categories of families on its WL until the PHA is assisting its required number of special purpose vouchers.

d. Families without special purpose vouchers who were previously terminated or who had vouchers recalled due to insufficient funding

e. PB Opt-Out: Forced Opt-Out

f. PB Opt-Out: Underhoused

g. PB Opt-Out: Overhoused

h. PB Voluntary Opt-Out (subject to the applicable RAA cap)

i. Households, with a regional residency preference

j. Households with no regional residency preference; i.e., that are not residents of the Commonwealth of Massachusetts at the time they applied.

Income Targeting Requirement
[24 CFR 982.201(b) (2)]

HUD requires that extremely low-income (ELI) families make up at least 75% of the families admitted to the HCV program during the PHA's fiscal year. ELI families are those with annual incomes that do not exceed the higher of the Federal poverty level or 30% of the area median income. To ensure this requirement is met, a PHA may skip non-ELI families on the waiting list in order to select an ELI family.

Low income families admitted to the program that are "continuously assisted" under the 1937 Housing Act [24 CFR 982.4(b)], as well as low-income or moderate-income families admitted to the program that are displaced as a result of the prepayment of the mortgage or voluntary termination of an insurance contract on eligible low-income housing, are not counted for income targeting purposes [24 CFR 982.201(b) (2) (v)].

> PHA Policy
>
> The PHA will monitor progress in meeting the ELI requirement throughout the fiscal year. Extremely low-income families will be selected ahead of other eligible families on an as-needed basis to ensure the income targeting requirement is met.
>
> The PHA will allow the admission of low-income families provided that these families either graduated in good standing from the MTW Demonstration Programs or were participants in good standing in the MTW Demonstration Programs at the time they were selected from the waiting list. These families are counted for income targeting purposes. [MTW Plan FY 2010].

Order of Selection

The PHA system of preferences provides for selection of families either according to the date and time of application, or by a random selection process [24 CFR 982.207(c)]. When selecting families from the waiting list PHAs are required to use targeted funding to assist only those families who meet the specified criteria, and PHAs are not permitted to skip down the waiting list to a family that it can afford to subsidize when there are not sufficient funds to subsidize the family at the top of the waiting list [24 CFR 982.204(d) and (e)].

> PHA Policy
>
> Within each targeted funding category, families will be selected on a first-come, first-served basis according to the date and time their complete application is received by the PHA

Selection Method for New Allocations of Fair Share HCVP Vouchers Received After 1/1/2000

> PHA Policy
>
> All new non-targeted HCVs for which DHCD receives an Annual Contributions Contract after 1/1/2000 will be issued to eligible applicants selected from the statewide waiting list by date and time and without regard to the regional residency preference.

Effect of Selection on the Waiting Status for Other Programs

PHA Policy

An applicant may be on several different HCV waiting lists, e.g., FUP, Mainstream, etc. but may be processed only for one program at a time. When an applicant is sent a selection letter for any program, they must complete the intake process for that program before they may be selected from a different HCV program waiting list.

To ensure that an applicant is not selected under more than one program at a time, the admissions tracking system does not recognize the "waiting" status of an applicant under any other program once they have been selected and are active in the admissions process.

When an applicant successfully completes the admission process by leasing a unit under any DHCD Section 8 program, the tracking system automatically removes their name from the waiting list for all other programs that they have applied for.

Treatment of Single (one-person household) Applicants

PHA Policy

An applicant's status may change while they are on the waiting list. Households with only one member that have not self-identified as being elderly or a person with disabilities must be selected in order to determine if their situation has changed. If an applicant does not qualify for the singles preference, they shall be denied admission and removed from the waiting list. The PHA selection letter must include a statement that addresses the implications of being a one-member household that is not elderly or a person with a disability upon program eligibility.

4.4.4 Notification of Selection

When a family has been selected from the waiting list, the PHA must notify the family.

PHA Policy

The PHA will notify the family by first class mail when it is selected from the waiting list. The notice will inform the family of the following:

- Date, time, and location of the scheduled application interview, including any procedures for rescheduling the interview
- Who is required to attend the interviewed
- Documents that must be provided at the interview to document the legal identity of household members, including information about what constitutes acceptable documentation
- Other documents and information that should be brought to the interview

If the PHA does not conduct application interviews the letter will inform the family of the alternate application procedure which is typically conducted by mail.

If a notification letter is returned to the PHA with no forwarding address, the family will be removed from the waiting list. A notice of denial (see CHAPTER 3) will be sent to the family's address of record, as well as to any known alternate address.

4.4.5 The Application Interview

HUD recommends that the PHA obtain the information and documentation needed to make an eligibility determination though a private interview [HCV GB, pg. 4-16]. Being invited to attend an interview does not constitute admission to the program.

Assistance cannot be provided to the family until all SSN documentation requirements are met. However, if the PHA determines that an applicant family is otherwise eligible to participate in the program, the family may retain its place on the waiting list for a period of time determined by the PHA [Notice PIH 2010-3].

Reasonable accommodation must be made for persons with disabilities who are unable to attend an interview due to their disability.

PHA Policy

PHAs are strongly encouraged to conduct eligibility interviews for families selected from the waiting list and recommends the following procedure. PHAs that choose not to hold in-person interviews must provide detailed information regarding their eligibility process in the selection letter.

If the PHA conducts eligibility interviews, families selected from the waiting list are required to participate.

The head of household and the spouse/co-head will be strongly encouraged to attend the interview together. However, either the head of household or the spouse/co-head may attend the interview on behalf of the family.

Verification of information pertaining to adult members of the household not present at the interview will not begin until signed release forms are returned to the PHA.

The interview will be conducted only if the head of household or spouse/co-head provides appropriate documentation of legal identity. (CHAPTER 7 provides a discussion of proper documentation of legal identity). If the family representative does not provide the required documentation, the appointment may be rescheduled when the proper documents have been obtained. The PHA will not provide assistance to a family until all SSN documentation requirements are met. See Timeframe to Submit Documents for SSN.

The family must provide the information necessary to establish the family's eligibility and determine the appropriate level of assistance, as well as completing required forms, providing required signatures, and submitting required documentation. If any materials are missing, the PHA will provide the family with a written list of items that must be submitted.

Any required documents or information must be provided by the family within 15 business days from the date of the PHA request with the exception of SSN documentation (See Timeframe to Submit Documents for SSN).

If the required documents and information are not provided within the required time frame (plus any extensions), the family will be sent a notice of denial (See CHAPTER 3).

An advocate, interpreter, or other assistant may assist the family with the application and the interview process.

Interviews will be conducted in English. For limited English proficient (LEP) applicants, the PHA will provide translation services in accordance with the PHA's LEP plan. Subcontractors with bi-lingual staff are encouraged to offer interviews in another language, either routinely, or upon special request.

PHA Policy Continued

If the family is unable to attend a scheduled interview, the family should contact the PHA in advance of the interview to schedule a new appointment. In all circumstances, if a family does not attend a scheduled interview, the PHA will send another notification letter with a new interview appointment time. Applicants who fail to attend two scheduled interviews without PHA approval will be denied assistance based on the family's failure to supply information needed to determine eligibility. A notice of denial will be issued in accordance with policies contained in CHAPTER 3.

4.4.6 Completing the Application Process

The PHA must verify all information provided by the family (see CHAPTER 7). Based on verified information, the PHA must make a final determination of eligibility (see CHAPTER 3) and must confirm that the family qualified for any special admission, targeted admission, or selection preference that affected the order in which the family was selected from the waiting list.

PHA Policy

If the PHA determines that the family is ineligible, the PHA will send written notification of the ineligibility determination within 15 business days of the determination. The notice will specify the reasons for ineligibility, and will inform the family of its right to request an informal review (CHAPTER 17).

If a family fails to qualify for any criteria that affected the order in which it was selected from the waiting list (e.g. targeted funding, extremely low-income), the family will be returned to its original position on the waiting list. The PHA will notify the family in writing that it has been returned to the waiting list, and will specify the reasons for it.

If the PHA determines that the family is eligible to receive assistance, the PHA will invite the family to attend a briefing in accordance with the policies in CHAPTER 5.

CHAPTER 5 : BRIEFING AND ISSUANCE

5.1 INTRODUCTION

This chapter explains the briefing and voucher issuance process. When a family is determined to be eligible for the Housing Choice Voucher (HCV) program, the PHA must ensure that the family fully understands the way the program operates and the family's obligations under the program. This is accomplished through both an oral briefing and provision of a briefing packet containing written documentation of information the family needs to know. Once the family is fully informed of the program's requirements, the PHA issues the family a voucher. The voucher includes the unit size the family qualifies for based on the PHA's subsidy standards, as well as the dates of issuance and expiration of the voucher. The voucher is the document that permits the family to begin its search for a unit, and limits the amount of time the family has to successfully locate an acceptable unit.

This Chapter describes HUD regulations and PHA policies related to these topics in two parts:

- Briefings and Family Obligations: This part details the program's requirements for briefing families orally, and for providing written materials describing the program and its requirements. It includes a particular focus on the family's obligations under the program.

- Subsidy Standards and Voucher Issuance: This part discusses the PHA's standards for determining how many bedrooms a family of a given composition qualifies for, which in turn affects the amount of subsidy the family can receive. It also discusses the policies that dictate how vouchers are issued, and how long families have to locate a unit.

5.2 BRIEFINGS AND FAMILY OBLIGATIONS

5.2.1 Overview

HUD regulations require the PHA to conduct mandatory briefings for applicant families. The briefing provides a broad description of owner and family responsibilities, explains the PHA's procedures, and includes instructions on how to lease a unit. This part describes how oral briefings will be conducted, specifies what written information will be provided to families, and lists the family's obligations under the program.

5.2.2 Briefing

[24 CFR 982.301]

The PHA must give the family an oral briefing and provide the family with a briefing packet containing written information about the program. Families may be briefed individually or in groups. At the briefing, the PHA must ensure effective communication in accordance with Section 504 requirements (Section 504 of the Rehabilitation Act of 1973), and ensure that the briefing site is accessible to individuals with disabilities. For a more thorough discussion of accessibility requirements, refer to CHAPTER 2.

PHA Policy

Briefings will be conducted in group meetings held at the PHA office.

Generally, the head of household is required to attend the briefing. If the head of household is unable to attend, the PHA may approve another adult family member to attend the briefing.

If the family cannot attend a briefing because of illness or disability, the PHA shall conduct individual briefing sessions at a location convenient to the family; or, the family may send a proxy to the briefing. The family must sign a release form authorizing the proxy to attend the briefing on its behalf. The family, not the proxy, must sign all forms distributed at the briefing.

Families that attend group briefings and still need individual assistance will be referred to an appropriate PHA staff member.

Briefings will be conducted in English. For limited English proficient (LEP) applicants, the PHA will provide translation services in accordance with the PHA's LEP plan (See CHAPTER 2).

Notification and Attendance

PHA Policy

Families will be notified of their eligibility for assistance at the time they are invited to attend a briefing. The notice will identify who is required to attend the briefing, as well as the date and time of the scheduled briefing.

If the notice is returned by the post office with no forwarding address, a notice of denial (see CHAPTER 3) will be sent to the family's address of record, as well as to any alternate address provided on the initial full application.

Applicants who fail to attend a scheduled briefing will automatically be scheduled for another briefing. The PHA will notify the family of the date and time of the second scheduled briefing. Applicants who fail to attend two scheduled briefings, without PHA approval, will be denied assistance (see CHAPTER 3).

5.2.3 Oral Briefing

[24 CFR 982.301(a)]

Each briefing must provide information on the following subjects:

- How the Housing Choice Voucher program works;
- Family and owner responsibilities;

- Where the family can lease a unit, including renting a unit inside or outside the PHA's jurisdiction;

- For families eligible under portability, an explanation of portability. The PHA cannot discourage eligible families from moving under portability;

- For families living in high-poverty census tracts, an explanation of the advantages of moving to areas outside of high-poverty concentrations; and

- For families receiving welfare-to-work vouchers, a description of any local obligations of a welfare-to-work family and an explanation that failure to meet the obligations is grounds for denial of admission or termination of assistance.

PHA Policy

- When PHA-owned units are available for lease, the PHA will inform the family during the oral briefing that the family has the right to select any eligible unit available for lease, and is not obligated to choose a PHA-owned unit.

- The PHA will also inform the family of the following;

- The possible impact of a CORI on an applicant's ability to transfer to another PHA or PHA jurisdiction.

- Restrictions on moving with continued assistance if money is owed;

- Explanation of an exception payment standard and its appropriate use as a mechanism to enable the family to further its housing opportunities. See CHAPTER 17 for a description of DHCD's policy on granting exception payment standards for MTW and Non-MTW vouchers (See Section Exception Payment Standards and Section Unit-by-Unit Exceptions).

- An explanation of the PHA's reasonable accommodation policies.

5.2.4 Briefing Packet

[24 CFR 982.301(b)]

Documents and information provided in the briefing packet must include the following:

- The term of the voucher, and the PHA's policies on any extensions or suspensions of the term. If the PHA allows extensions, the packet must explain how the family can request an extension.

- A description of the method used to calculate the housing assistance payment for a family, including how the PHA determines the payment standard for a family, how the PHA determines total tenant payment for a family, and information on the payment standard and utility allowance schedule.

- An explanation of how the PHA determines the maximum allowable rent for an assisted unit.

- Where the family may lease a unit. For a family that qualifies to lease a unit outside the PHA jurisdiction under portability procedures, the information must include an explanation of how portability works.

- The HUD-required tenancy addendum, which must be included in the lease.

- The form the family must use to request approval of tenancy, and a description of the procedure for requesting approval for a tenancy.

- A statement of the PHA policy on providing information about families to prospective owners.

- The PHA subsidy standards including when and how exceptions are made.

- The HUD brochure on how to select a unit.

- The HUD pamphlet on lead-based paint entitled Protect Your Family from Lead in Your Home.

- Information on federal, state and local equal opportunity laws and a copy of the housing discrimination complaint form (Form HUD-903).
- A list of landlords or other parties willing to lease to assisted families or help families find units, especially outside areas of poverty or minority concentration.

- Notice that if the family includes a person with disabilities, the family may request a list of available accessible units known to the PHA.

- The family obligations under the program, including any obligations of a welfare-to-work family.

- The grounds on which the PHA may terminate assistance for a participant family because of family action or failure to act.

- PHA informal review and hearing procedures including when the PHA is required to offer a participant family the opportunity for an informal review or hearing, and how to request the hearing.

The following additional information may be included in the briefing packet in order to expand housing opportunities.

- Maps showing areas with housing opportunities outside areas of poverty or minority concentration, both within its jurisdiction and its neighboring jurisdiction.

- Information about the characteristics of these areas including job opportunities, schools, transportation and other services.

- An explanation of how portability works, including a list of portability contact persons for neighboring PHAs with names, addresses, and telephone numbers.

5.2.5 Additional Items to Be Included in the Briefing Packet

In addition to items required by the regulations, PHAs may wish to include supplemental materials to help explain the program to both participants and owners [HCV GB p. 8-7, Notice PIH 2010-19].

PHA Policy

The PHA will provide the following additional materials in the briefing packet.

- When PHA-owned units are available for lease, a written statement that the family has the right to select any eligible unit available for lease, and is not obligated to choose a PHA-owned unit.
- Information on how to fill out and file a housing discrimination complaint form.
- Information about the protections afforded by the Violence Against Women Act of 2005 and 2013 (VAWA) to victims of domestic violence, dating violence, sexual assault, and stalking (See CHAPTER 1 Violence Against Women Reauthorization Act of 2005 and 2013 (VAWA): Notification, Documentation, and Confidentiality).
- "Is Fraud Worth It?" (form HUD 1141-OIG) which explains the types of actions a family must avoid and the penalties for program abuse.
- "What You Should Know about EIV," a guide to the Enterprise Income Verification (EIV) system published by HUD as an attachment to Notice PIH 2010-19.
- The DHCD required letter explaining portability and the consequences of voluntarily giving up the voucher. This letter must be signed by the applicant and a copy retained in the tenant file. (See Exhibit 5-1: Important Information For Section 8 Voucher Program Participants Who Want To Move Or Who Want To Give Up Their Section 8 Voucher)
- Other items as the PHA or DHCD may determine.

5.2.6 Family Obligations

Obligations of the family are described in the housing choice voucher (HCV) regulations and on the voucher itself. These obligations include responsibilities the family is required to fulfill, as well as prohibited actions. The PHA must inform families of these obligations during the oral briefing, and the same information must be included in the briefing packet. When the family's unit is approved and the HAP contract is executed, the family must meet those obligations in order to continue participating in the program. Violation of any family obligation may result in termination of assistance, as described in CHAPTER 13.

Time Frames for Reporting Changes Required By Family Obligations

> PHA Policy
>
> Unless otherwise noted below, when family obligations require the family to respond to a request or notify the PHA of a change, notifying the PHA of the request or change within 15 business days is considered prompt notice.
>
> When a family is required to provide notice to the PHA, the notice must be in writing.

Family Obligations
[24 CFR 982.551]

Following is a listing of a participant family's obligations under the HCV program:

- The family must supply any information that the PHA or HUD determines to be necessary, including submission of required evidence of citizenship or eligible immigration status.
- The family must supply any information requested by the PHA or HUD for use in a regularly scheduled reexamination or interim reexamination of family income and composition.
- The family must disclose and verify social security numbers and sign and submit consent forms for obtaining information.
- Any information supplied by the family must be true and complete.
- The family is responsible for any Housing Quality Standards (HQS) breach by the family caused by failure to pay tenant-provided utilities or appliances, or damages to the dwelling unit or premises beyond normal wear and tear caused by any member of the household or guest.

> PHA Policy
>
> Damages beyond normal wear and tear will be considered to be damages which could be assessed against the security deposit.

- The family must allow the PHA to inspect the unit at reasonable times and after reasonable notice, as described in CHAPTER 8 of this plan.

- The family must not commit any serious or repeated violation of the lease

> PHA Policy
>
> The PHA will determine if a family has committed serious or repeated violations of the lease based on available evidence, including but not limited to, a court-ordered eviction, or an owner's notice to evict.
>
> Serious and repeated lease violations will include, but not be limited to, nonpayment of rent, disturbance of neighbors, destruction of property, or living or housekeeping habits that cause damage to the unit or premises and criminal activity.
>
> Generally, the criteria to be used is whether the reason for the eviction was through no fault of the tenant or guests.
>
> Any incidents of, or criminal activity related to, domestic violence, dating violence, sexual assault, or stalking will not be construed as serious or repeated lease violations by the victim [24CFR 5.2005 (c)(1)].

- The family must notify the PHA and the owner before moving out of the unit or terminating the lease.

> PHA Policy
>
> The family must comply with lease requirements regarding written notice to the owner. The family must provide written notice to the PHA at the same time the owner is notified.

- The family must promptly give the PHA a copy of any owner eviction notice.

- The family must use the assisted unit for residence by the family. The unit must be the family's only residence.

- The composition of the assisted family residing in the unit must be approved by the PHA. The family must promptly notify the PHA in writing of the birth, adoption, or court-awarded custody of a child. The family must request PHA approval to add any other family member as an occupant of the unit.

> PHA Policy
>
> The request to add a family member must be submitted in writing and approved prior to the person moving into the unit. The PHA will determine eligibility of the new member in accordance with the policies in CHAPTER 3.

- The family must promptly notify the PHA in writing if any family member no longer lives in the unit.

- If the PHA has given approval, a foster child or a live-in aide may reside in the unit. The PHA has the discretion to adopt reasonable policies concerning residency by a foster child or a live-in aide, and to define when PHA consent may be given or denied. For policies related to the request and approval/disapproval of foster children, foster adults, and live-in aides, see CHAPTER 3, and CHAPTER 12.

- The family must not sublease the unit, assign the lease, or transfer the unit.

> PHA Policy
>
> Subleasing includes receiving payment to cover rent and utility costs by a person living in the unit who is not listed as a family member.

- The family must supply any information requested by the PHA to verify that the family is living in the unit or information related to family absence from the unit.

- The family must promptly notify the PHA when the family is absent from the unit.

> PHA Policy
>
> Notice is required under this provision only when all family members will be absent from the unit for an extended period. An extended period is defined as any period greater than 30 calendar days. Written notice must be provided to the PHA at the start of the extended absence. If the family will be absent from the unit for more than 30 days it must promptly notify both the owner and the PHA in writing, and obtain approval from the PHA.
>
> To obtain PHA approval, the family must:
>
> - Satisfy notice requirements; and
> - Provide documentation acceptable to the PHA regarding the length of absence and the reason for the absence; and,
> - Affirm their intent to return to the unit at the end of the leave period; and,
> - Agree to be responsible for receiving and responding to all notices sent by the PHA to the unit during periods of absence; and
> - Pay rent to the owner and pay for utilities while they are absent, and.
> - Make arrangements for the unit to be available for PHA inspections as necessary.
>
> If this procedure is not followed, the unit will be considered abandoned and the PHA will terminate housing assistance payments and the family's participation in the program.

- The family must pay utility bills and provide and maintain any appliances that the owner is not required to provide under the lease [Form HUD-52646, Voucher].

- The family must not own or have any interest in the unit, (other than in a cooperative and owners of a manufactured home leasing a manufactured home space).

- Family members must not commit fraud, bribery, or any other corrupt or criminal act in connection with the program. (See CHAPTER 15 for additional information).

- Family members must not engage in drug-related criminal activity or violent criminal activity or other criminal activity that threatens the health, safety or right to peaceful enjoyment of other residents and persons residing in the immediate vicinity of the premises. See CHAPTER 13 for HUD and PHA policies related to drug-related and violent criminal activity.

- Members of the household must not engage in abuse of alcohol in a way that threatens the health, safety or right to peaceful enjoyment of the other residents and persons residing in the immediate vicinity of the premises. See CHAPTER 13 for a discussion of HUD and PHA policies related to alcohol abuse.

- An assisted family or member of the family must not receive HCV program assistance while receiving another housing subsidy, for the same unit or a different unit under any other federal, state or local housing assistance program.

- A family must not receive HCV program assistance while residing in a unit owned by a parent, child, grandparent, grandchild, sister or brother of any member of the family, unless the PHA has determined (and has notified the owner and the family of such determination) that approving rental of the unit, notwithstanding such relationship, would provide reasonable accommodation for a family member who is a person with disabilities.

5.3 SUBSIDY STANDARDS AND VOUCHER ISSUANCE

5.3.1 Overview

The PHA must establish subsidy standards that determine the number of bedrooms needed for families of different sizes and compositions. This part presents the policies that will be used to determine the family unit size (also known as the voucher size) a particular family should receive, and the policies that govern making exceptions to those standards. The PHA also must establish policies related to the issuance of the voucher, to the voucher term, and to any extensions or suspensions of that term.

5.3.2 Determining Family Unit (Voucher) Size

[24 CFR 982.402]

For each family, the PHA determines the appropriate number of bedrooms under the PHA subsidy standards and enters the family unit size on the voucher that is issued to the family. The family unit size does not dictate the size of unit the family must actually lease, nor does it determine who within a household will share a bedroom/sleeping room.

The following requirements apply when the PHA determines family unit size:

- The subsidy standards must provide for the smallest number of bedrooms needed to house a family without overcrowding.

- The subsidy standards must be consistent with space requirements under the housing quality standards.

- The subsidy standards must be applied consistently for all families of like size and composition.

A child who is temporarily away from the home because of placement in foster care is considered a member of the family in determining the family unit size.

> PHA Policy
>
> As used in this section, "temporarily" means that the Department of Children and Families (DCF) goal for the family is reunification with their children within one year of the date the subsidy is issued.
>
> When the goal for children in foster care is adoption, the children are not considered "temporarily" absent and the family will be issued a subsidy size that does not include the children in foster care. Should DCF change a family's goal from adoption to reunification the PHA will increase the family's subsidy size as appropriate, and when appropriate. In any case, the PHA will not terminate a HAP contract unless HQS space standards are violated.
>
> The family must sign a release for the purpose of obtaining relevant information from DCF.
>
> If a planned reunification does not occur within the first year after the subsidy is issued the family will be considered overhoused.

- A family that consists of a pregnant woman (with no other persons) must be treated as a two-person family.

- Any live-in aide (approved by the PHA to reside in the unit to care for a family member who is disabled or is at least 50 years of age) must be counted in determining the family unit size;

- Unless a live-in aide resides with a family, the family unit size for any family consisting of a single person must be either a zero- or one-bedroom unit, as determined under the PHA subsidy standards.

PHA Policy

The PHA will assign one bedroom for each two persons within the household, except in the following circumstances:

- Family members of the opposite sex (other than spouses) will be allocated separate bedrooms.
- Live-in aides will be allocated a separate bedroom.
- Single person families will be allocated one bedroom.

The PHA will reference the following chart in determining the appropriate voucher size for a family:

Voucher Size	Number of Persons in Household		Minimum number of bedrooms*
	Minimum	Maximum	
SRO	1	1	0
0	1	2	0
1	1	2	0
2	2	4	1
3	3	6	2
4	4	8	3
5	5	10	4
6	6	12	5

*Min. # of bedrooms does not include other rooms that could be used for sleeping.

For purposes of determining subsidy standards, an adult is 21 years of age or older.

A child is under 21 years of age.

Adults will be allocated one bedroom per adult. If two adults consider themselves partners they will be allocated one bedroom.

An adult will not be required to share a bedroom with a child.

A parenting minor will not be required to share a bedroom with a child.

The head of household will be allocated one bedroom. If s/he has a partner, the partner will share the bedroom.

Unborn children will be included in the size of the household.

Two children of the same gender will share one bedroom regardless of the age differential. This includes children of blended families, who may have different parents.

Two children of the opposite gender will be allocated separate bedrooms.

PHA Policy Continued

In instances where a family member does not have sole custody of a child, or if a child lives only part of the time with the household, the PHA must consider custody and the amount of time that the child spends with the applicant/participant. The PHA must quantify the amount of time the child spends with the applicant/participant based on documentary proof provided by the applicant/participant. More than one applicant or participant cannot claim the same child.

5.3.3 Exceptions to Subsidy Standards

In determining family unit size for a particular family, the PHA may grant an exception to its established subsidy standards if the PHA determines that the exception is justified by the age, sex, health, handicap, or relationship of family members or other personal circumstances [24 CFR 982.402(b)(8)]. Reasons may include, but are not limited to:

- A need for an additional bedroom for medical equipment
- A need for a separate bedroom for reasons related to a family member's disability, medical or health condition
- For a single person who is not elderly, disabled, or a remaining family member, an exception cannot override the regulatory limit of a zero or one bedroom [24 CFR 982.402(b)(8)].

PHA Policy

The PHA will consider granting an exception for any of the reasons specified in the regulation: the age, sex, health, handicap, or relationship of family members or other personal circumstances.

The family must request any exception to the subsidy standards in writing. The request must explain the need or justification for a larger family unit size, and must include appropriate documentation.

Requests based on health-related reasons must be verified by a knowledgeable professional source, such as a doctor or other medical professional unless the disability and the disability–related request for accommodation is readily apparent or otherwise known.

The PHA will notify the family of its determination within 15 business days of receiving the family's request. If a participant family's request is denied, the notice will inform the family of their right to request an informal hearing.

5.3.4 Voucher Issuance

[24 CFR 982.302]

When a family is selected from the waiting list (or as a special admission as described in CHAPTER 4), or when a participant family wants to move to another unit, the PHA issues a Housing Choice Voucher, form HUD-52646. This Chapter deals only with voucher issuance for applicants. For voucher issuance associated with moves of program participants, please refer to CHAPTER 11.

The voucher is the family's authorization to search for housing. It specifies the unit size for which the family qualifies, and includes both the date of voucher issuance and date of expiration. It contains a brief description of how the program works and explains the family obligations under the program. The voucher is evidence that the PHA has determined the family to be eligible for the program, and that the PHA expects to have money available to subsidize the family if the family finds an approvable unit. However, the PHA does not have any liability to any party by the issuance of the voucher, and the voucher does not give the family any right to participate in the PHA's housing choice voucher program [Voucher, form HUD-52646].

A voucher can be issued to an applicant family only after the PHA has determined that the family is eligible for the program based on information received within the 60 days prior to issuance [24 CFR 982.201(e)] and after the family has attended an oral briefing [HCV 8-1].

> PHA Policy
>
> Vouchers will be issued to eligible applicants immediately following the mandatory briefing.

The PHA should have sufficient funds to house an applicant before issuing a voucher. If funds are insufficient to house the family at the top of the waiting list, the PHA must wait until it has adequate funds before it calls another family from the list [HCV GB p. 8-10].

If the PHA determines that there is insufficient funding after a voucher has been issued, the PHA may rescind the voucher and place the affected family back on the waiting list.

PHA Policy

Prior to issuing any vouchers, the PHA will determine whether it has sufficient funding in accordance with the policies in CHAPTER 17.

If, due to budgetary constraints, the PHA must rescind vouchers that have already been issued to families, the PHA will do so according to the instructions under each of the categories below.

The PHA will first rescind vouchers that fall under Category 1. Vouchers in Category 2 will only be rescinded after all vouchers under Category 1 have been rescinded.

- Category 1: Vouchers for which a Request for Tenancy Approval (RTA) and proposed lease have **not** been submitted to the PHA. Vouchers will be rescinded in order of the date and time they were issued, starting with the most recently issued vouchers.

- Category 2: Vouchers for which a Request for Tenancy Approval and proposed lease have been submitted to the PHA. Vouchers will be rescinded in order of the date and time the RTA was submitted to the PHA, starting with the most recently submitted requests.

Families who have their voucher rescinded will be notified in writing and will be reinstated to their former position on the waiting list. When funding is again available, families will be selected from the waiting list in accordance with PHA selection policies described in CHAPTER 4.

5.3.5 Voucher Term, Extensions, and Suspensions

Voucher Term
[24 CFR 982.303]

The initial term of a voucher must be at least 60 calendar days. The initial term must be stated on the voucher [24 CFR 982.303(a)].

PHA Policy

The initial voucher term will be 60 calendar days.

The family must submit a Request for Tenancy Approval and proposed lease within the 60-day period unless the PHA grants an extension.

Extensions of Voucher Term
[24 CFR 982.303(b)]

The PHA has the authority to grant extensions of search time, to specify the length of an extension, and to determine the circumstances under which extensions will be granted. There is no limit on the number of extensions that the PHA can approve. Discretionary policies related to extension and expiration of search time must be described in the PHA's Administrative Plan [24 CFR 982.54].

PHAs must approve additional search time if needed as a reasonable accommodation to make the program accessible to and usable by a person with disabilities. The extension period must be reasonable for the purpose.

The family must be notified in writing of the PHA's decision to approve or deny an extension. The PHA's decision to deny a request for an extension of the voucher term is not subject to informal review [24 CFR 982.554(c) (4)].

PHA Policy

The PHA will automatically approve one 30-day extension upon written request from the family.

The PHA will approve additional extensions only in the following circumstances:

- It is necessary as a reasonable accommodation for a person with disabilities.
- It is necessary due to reasons beyond the family's control, as determined by the PHA. Following is a list of extenuating circumstances that the PHA may consider in making its decision. The presence of these circumstances does not guarantee that an extension will be granted.

1. Serious illness or death in the family
2. Other family emergency
3. Obstacles due to employment
4. Whether the family has already submitted requests for tenancy approval that were not approved by the PHA
5. Whether family size or other special requirements make finding a unit difficult

Any request for an additional extension must include the reason(s) an additional extension is necessary. The PHA may require the family to provide documentation to support the request.

All requests for extensions to the voucher term must be made in writing and submitted to the PHA prior to the expiration date of the voucher (or extended term of the voucher).

The PHA will decide whether to approve or deny an extension request within 15 business days of the date the request is received, and will immediately provide the family written notice of its decision.

Suspensions of Voucher Term
[24 CFR 982.303(c)]

At its discretion, a PHA may adopt a policy to suspend the housing choice voucher term if the family has submitted a Request for Tenancy Approval (RTA) during the voucher term. "Suspension" means stopping the clock on a family's voucher term from the time a family submits the RTA until the time the PHA approves or denies the request [24 CFR 982.4]. The PHA's determination not to suspend a voucher term is not subject to informal review [24 CFR 982.554(c) (4)].

PHA Policy

When a Request for Tenancy Approval and a proposed lease are received by the PHA, the term of the voucher will be suspended while the PHA processes the request.

When the PHA denies a request for tenancy, the family will be notified immediately that the clock on the voucher term has restarted. The notice will include the new expiration date of the voucher.

Expiration of Voucher Term

Once a family's housing choice voucher term (including any extensions) expires, the family is no longer eligible to search for housing under the program. If the family still wishes to receive assistance, the PHA may require that the family reapply, or may place the family on the waiting list with a new application date but without requiring reapplication. Such a family does not become ineligible for the program on the grounds that it was unable to locate a unit before the voucher expired [HCV GB p. 8-13].

PHA Policy

If an applicant family's voucher term or extension expires before the PHA has approved a tenancy, the PHA will require the family to reapply for assistance.

Within 15 business days after the expiration of the voucher term or any extension, the PHA will notify the family in writing that the voucher term has expired and that the family must reapply in order to be placed on the waiting list.

CHAPTER 6 : INCOME AND SUBSIDY DETERMINATIONS

6.1 INTRODUCTION

A family's income determines eligibility for assistance and is also used to calculate the family's payment and the PHA's subsidy. The PHA will use the policies and methods described in this Chapter to ensure that only eligible families receive assistance and that no family pays more or less than its obligation under the regulations. This Chapter describes HUD regulations and PHA policies related to these topics in three parts as follows:

- Annual Income: HUD regulations specify the sources of income to include and exclude to arrive at a family's annual income. These requirements and PHA policies for calculating annual income are found in this section.

- Adjusted Income: Once annual income has been established HUD regulations require the PHA to subtract from annual income any of five mandatory deductions for which a family qualifies. These requirements and PHA policies for calculating adjusted income are found in this section.

- Calculating Family Share and PHA Subsidy: This part describes the statutory formula for calculating total tenant payment (TTP), the use of utility allowances, and the methodology for determining PHA subsidy and required family payment.

6.2 ANNUAL INCOME

6.2.1 Overview

The general regulatory definition of *annual income* shown below is from 24 CFR 5.609.

5.609 Annual income:

(a) Annual income means all amounts, monetary or not, which:

(1) Go to, or on behalf of, the family head or spouse (even if temporarily absent) or to any other family member; or

(2) Are anticipated to be received from a source outside the family during the 12-month period following admission or regular reexamination effective date; and

(3) Which are not specifically excluded in paragraph [5.609(c)].

(4) Annual income also means amounts derived (during the 12-month period) from assets to which any member of the family has access.

In addition to this general definition, HUD regulations establish policies for treating specific types of income and assets. The full texts of those portions of the regulations are provided in exhibits at the end of this plan as follows:

- Annual Income Inclusions (See Exhibit 6-1: Annual Income Inclusions)
- Annual Income Exclusions (See Exhibit 6-2: Annual Income Exclusions)
- Treatment of Family Assets (See Exhibit 6-3: Treatment of Family Assets)
- Earned Income Disallowance for Persons with Disabilities (See Exhibit 6-4: Earned Income Disallowance for Persons with Disabilities)
- The Effect of Welfare Benefit Reduction (See Exhibit 6-5: The Effect of Welfare Benefit Reduction)

Sections regarding Household Composition and Anticipating Annual Income discuss general requirements and methods for calculating annual income. The rest of this section describes how each source of income is treated for the purposes of determining annual income. HUD regulations and the PHA's MTW Agreement present income inclusions and exclusions separately [24 CFR 5.609(b) and 24 CFR 5.609(c)]. In this plan, however, the discussions of income inclusions and exclusions are integrated by topic (e.g., all policies affecting earned income are discussed together in section regarding Earned Income). Verification requirements for annual income are discussed in CHAPTER 7.

6.2.2 Household Composition and Income

Income received by all family members must be counted unless specifically excluded by the regulations. It is the responsibility of the head of household to report changes in family composition. The rules on which sources of income are counted vary somewhat by family member. The chart below summarizes how family composition affects income determinations.

Summary of Income Included and Excluded by Person	
Live in aides	Income from all sources is excluded [24 CFR 5.609(c)(5)].
Income to and/or on behalf of Foster child or foster adult	• Payments received for the care of foster children or foster adults is excluded. [24 CFR 5.609(c)(2)] • Earned income for foster children is excluded and earned income for foster adults is included. • All other unearned income for foster children and adults is included.
Head, spouse, or co-head Other adult family members	All sources of income not specifically excluded by the regulations are included.
Children under 18 years of age	Employment income is excluded [24 CFR 5.609(c)(1)]. All other sources of income, except those specifically excluded by the regulations, are included.
Full-time students 18 years of age or older (not head, spouse, or co-head)	PHA Policy – Non- MTW Employment income above $480/year is excluded [24 CFR 5.609(c)(11)]. All other sources of income, except those specifically excluded by the regulations, are included.
	PHA Policy – MTW All earned income of full-time students 18 years of age or older (not head, spouse, or co-head) is excluded. All other sources of income, except those specifically excluded by the regulations, are included.

Absent Family Members

The income of family members approved to live in the unit will be counted, even if the family member is temporarily absent from the unit [HCV GB, p. 5-18]. PHA's definition of permanently absent and temporarily absent as well as policies regarding absences due to placement in foster care, absences due to permanent confinement for medical reasons, and policies regarding an absent students, an absent head, co-head, or spouse are contained in the Section 3.2.12 Absent Family Members.

Family Members Permanently Confined for Medical Reasons

> PHA Policy
>
> When an individual who has been counted as a family member is determined permanently absent, the family is eligible for the medical expense deduction only if the remaining head, spouse, or co-head qualifies as an elderly person or a person with disabilities.

Caretakers for a Child

> PHA Policy
>
> During any period that a caretaker is considered a visitor, the income of the caretaker is not counted in annual income and the caretaker does not qualify the family for any deductions from income. For more information regarding the definition of caretakers for a child, see Section Caretakers for a Child in CHAPTER 3

6.2.3 Anticipating Annual Income

The PHA is required to count all income "anticipated to be received from a source outside the family during the 12-month period following admission or regular reexamination effective date" [24 CFR 5.609(a)(2)]. Policies related to anticipating annual income are provided below.

6.2.4 Basis of Annual Income Projection

The PHA generally will use current circumstances to determine anticipated income for the coming 12-month period. HUD authorizes the PHA to use other than current circumstances to anticipate income when:

- An imminent change in circumstances is expected [HCV GB, p. 5-17]
- It is not feasible to anticipate a level of income over a 12-month period (e.g., seasonal or cyclic income) [24 CFR 5.609(d)]
- The PHA believes that past income is the best available indicator of expected future income [24 CFR 5.609(d)].

PHAs are required to use HUD's Enterprise Income Verification (EIV) system in its entirety as a third party source to verify employment and income information, and to reduce administrative subsidy payment errors in accordance with HUD administrative guidance [24 CFR 5.233(a)(2).

HUD allows PHAs to use pay-stubs to project income once EIV data has been received in such cases where the family does not dispute the EIV employer data and where the PHA does not determine it is necessary to obtain additional third-party data.

PHA Policy

When EIV is obtained and the family does not dispute the EIV employer data, the PHA will use current tenant-provided documents to project annual income. When the tenant provided documents are pay stubs, the PHA will make every effort to obtain current and consecutive pay stubs dated within 60 days of the PHA request date.

The PHA will obtain written and/or oral third-party verification in accordance with the verification requirements and policy in CHAPTER 7 in the following cases:

- If EIV or other UIV data is not available,
- If the family disputes the accuracy of the EIV employer data, and/or
- If the PHA determines additional information is needed.

In such cases, the PHA will review and analyze current data to anticipate annual income. In all cases, the family file will be documented with a clear record of the reason for the decision, and a clear audit trail will be left as to how the PHA annualized projected income.

When the PHA cannot readily anticipate income based upon current circumstances (e.g., in the case of seasonal employment, unstable working hours, or suspected fraud), the PHA will review and analyze historical data for patterns of employment, paid benefits, and receipt of other income and use the results of this analysis to establish annual income.

Any time current circumstances are not used to project annual income, a clear rationale for the decision will be documented in the file. In all such cases the family may present information and documentation to the PHA to show why the historic pattern does not represent the family's anticipated income.

Known Changes in Income

If the PHA verifies an upcoming increase or decrease in income, annual income will be calculated by applying each income amount to the appropriate part of the 12-month period.

Example: An employer reports that a full-time employee who has been receiving $8/hour will begin to receive $8.25/hour in the eighth week after the effective date of the reexamination. In such a case the PHA would calculate annual income as follows: ($8/hour × 40 hours × 7 weeks) + ($8.25 × 40 hours × 45 weeks).

The family may present information that demonstrates that implementing a change before its effective date would create a hardship for the family. In such cases the PHA will calculate annual income using current circumstances and then require an interim reexamination when the change actually occurs. This requirement will be imposed even if the PHA's policy on reexaminations does not require interim reexaminations for other types of changes.

Projecting Income

The PHAs will not use EIV quarterly wages to project annual income, unless using historical patterns of income is required to determine projected income.

6.2.5 Earned Income

6.2.6 Types of Earned Income Included in Annual Income

The full texts of those portions of the regulations on earned income included in annual income are provided in Exhibit 6-1: Annual Income Inclusions. Outlined in this Chapter are the most commonly applied elements of earned income.

Wages and Related Compensation

The full amount, before any payroll deductions, of wages and salaries, overtime pay, commissions, fees, tips and bonuses, and other compensation for personal services is included in annual income [24 CFR 5.609(b)(1)].

> PHA Policy
>
> For persons who regularly receive bonuses or commissions, the PHA will verify and then average amounts received for the one year preceding admission or reexamination. In addition the family may provide, and the PHA will consider, a credible justification for not using this history to anticipate future bonuses or commissions. If a new employee has not yet received any bonuses or commissions, the PHA will count only the amount estimated by the employer.

Some Types of Military Pay

All regular pay, special pay and allowances of a member of the Armed Forces are counted [24 CFR 5.609(b)(8)] except for the special pay to a family member serving in the Armed Forces who is exposed to hostile fire [24 CFR 5.609(c)(7)].

Earned Income from Foster Adults

Earned income from foster adults is included.

6.2.7 Types of Earned Income Not Counted in Annual Income

The full texts of those portions of the regulations on earned income not included in annual income are provided in Exhibit 6-2: Annual Income Exclusions. Outlined in this Chapter are the most commonly applied elements of earned income that are not included in annual income.

Temporary, Nonrecurring, or Sporadic Income
[24 CFR 5.609(c)(9)]

This type of income (including gifts) is not included in annual income. Sporadic income includes temporary payments from the U.S. Census Bureau for employment lasting no longer than 180 days [Notice PIH 2009-19].

> PHA Policy
>
> Sporadic income is income that is not received periodically and cannot be reliably predicted. For example, the income of an individual who works occasionally as a handyman would be considered sporadic if future work could not be anticipated and no historic, stable pattern of income existed.

Children's Earnings

Employment income earned by children (including foster children) under the age of 18 years is not included in annual income [24 CFR 5.609(c)(1)]. (See CHAPTER 3 on Eligibility and the section on 3.2.11 Foster Children and Foster Adults for the definition of a foster child.

Certain Earned Income of Full-Time Students

Earnings in excess of $480 for each full-time student 18 years old or older (except for the head, spouse, or co-head) are not counted [24 CFR 5.609(c)(11)]. To be considered "full-time," a student must be considered "full-time" by an educational institution with a degree or certificate program [HCV GB, p. 5-29].

> PHA Policy – MTW
>
> All earned income for each full-time student 18 years old or older (except for the head, spouse, or co-head) will not be counted .

> PHA Policy
>
> To be considered "full-time," a student must be considered "full-time" by an educational institution with a degree or certificate program.

Income of a Live-in Aide

Income earned by a live-in aide, as defined in [24 CFR 5.403], is not included in annual income [24 CFR 5.609(c)(5)]. (See CHAPTER 3 for a full discussion of live-in aides.)

Income Earned under Certain Federal Programs

- Income from some federal programs is specifically excluded from consideration as income [24 CFR 5.609(c)(17)], including:
- Payments to volunteers under the Domestic Volunteer Services Act of 1973 (42 U.S.C. 5044(f)(1), 5058)
- Awards under the federal work-study program (20 U.S.C. 1087 uu)
- Payments received from programs funded under Title V of the Older Americans Act of 1965 (42 U.S.C. 3056(g))
- Allowances, earnings, and payments to AmeriCorps participants under the National and Community Service Act of 1990 (42 U.S.C. 12637(d))
- Allowances, earnings, and payments to participants in programs funded under the Workforce Investment Act of 1998 (29 U.S.C. 2931)

Resident Service Stipend

Amounts received under a resident service stipend are not included in annual income. A resident service stipend is a modest amount (not to exceed $200 per individual per month) received by a resident for performing a service for the PHA or owner, on a part-time basis, that enhances the quality of life in the development. Such services may include, but are not limited to, fire patrol, hall monitoring, lawn maintenance, resident initiatives coordination, and serving as a member of the PHA's governing board. No resident may receive more than one such stipend during the same period of time [24 CFR 5.600(c)(8)(iv)].

State and Local Employment Training Programs

Incremental earnings and benefits to any family member resulting from participation in qualifying state or local employment training programs (including training programs not affiliated with a local government) and training of a family member as resident management staff are excluded from annual income. Amounts excluded by this provision must be received under employment training programs with clearly defined goals and objectives and are excluded only for the period during which the family member participates in the training program [24 CFR 5.609(c)(8)(v)].

PHA Policy

The PHA defines training program as "a learning process with goals and objectives, generally having a variety of components, and taking place in a series of sessions over a period of time. It is designed to lead to a higher level of proficiency, and it enhances the individual's ability to obtain employment. It may have performance standards to measure proficiency.

Training may include, but is not limited to: (1) classroom training in a specific occupational skill, (2) on-the-job training with wages subsidized by the program, or (3) basic education" [expired Notice PIH 98-2, p. 3].

The PHA defines incremental earnings and benefits as the difference between: (1) the total amount of welfare assistance and earnings of a family member prior to enrollment in a training program, and (2) the total amount of welfare assistance and earnings of the family member after enrollment in the program [expired Notice PIH 98-2, pp. 3–4].

In calculating the incremental difference, the PHA will use as the pre-enrollment income the total annualized amount of the family member's welfare assistance and earnings reported on the family's most recently completed HUD-50058.

End of participation in a training program must be reported in accordance with the PHA's interim reporting requirements.

HUD-Funded Training Programs

Amounts received under training programs funded in whole or in part by HUD [24 CFR 5.609(c)(8)(i)] are excluded from annual income. Eligible sources of funding for the training include operating subsidy, Section 8 administrative fees, and modernization, Community Development Block Grant (CDBG), HOME program, and other grant funds received from HUD.

PHA Policy

To qualify as a training program, the program must meet the definition of training program provided above for state and local employment training programs.

Earned Income Tax Credit

Earned income tax credit (EITC) refund payments received on or after January 1, 1991 (26 U.S.C. 32(l)), are excluded from annual income [24 CFR 5.609(c)(17)]. Although many families receive the EITC annually when they file taxes, an EITC can also be received throughout the year. The prorated share of the annual EITC is included in the employee's payroll check.

Earned Income Disallowance

The earned income disallowance for persons with disabilities is discussed below.

6.2.8 Earned Income Disallowance for Persons with Disabilities- Non-MTW
[24 CFR 5.617]

The earned income disallowance (EID) encourages people with disabilities to enter the work force by not including the full value of increases in earned income for a period of time. The full text of 24 CFR 5.617 is included as Exhibit 6-4: Earned Income Disallowance for Persons with Disabilities – Non-MTW. Eligibility criteria and limitations on the disallowance are summarized below.

Eligibility

This disallowance applies only to individuals in families already participating in the HCV program (not at initial examination). To qualify, the family must experience an increase in annual income that is the result of one of the following events:

- Employment of a family member who is a person with disabilities and who was previously unemployed for one or more years prior to employment. Previously unemployed includes a person who annually has earned not more than the minimum wage applicable to the community multiplied by 500 hours. The applicable minimum wage is the federal minimum wage unless there is a higher state or local minimum wage.

- Increased earnings by a family member who is a person with disabilities and whose earnings increase during participation in an economic self-sufficiency or job-training program. A self-sufficiency program includes a program designed to encourage, assist, train, or facilitate the economic independence of HUD-assisted families or to provide work to such families [24 CFR 5.603(b)].

- New employment or increased earnings by a family member who is a person with disabilities and who has received benefits or services under Temporary Assistance for Needy Families (TANF) or any other state program funded under Part A of Title IV of the Social Security Act within the past six months. If the benefits are received in the form of monthly maintenance, there is no minimum amount. If the benefits or services are received in a form other than monthly maintenance, such as one-time payments, wage subsidies, or transportation assistance, the total amount received over the six-month period must be at least $500.

Calculation of the Disallowance

Calculation of the earned income disallowance for an eligible member of a qualified family begins with a comparison of the member's current income with his or her "prior income."

> PHA Policy – Non-MTW
>
> The PHA defines prior income, or prequalifying income, as the family member's last certified income prior to qualifying for the EID.

The family member's prior, or prequalifying, income remains constant throughout the period that he or she is receiving the EID.

Initial 12-Month Exclusion

During the initial 12-month exclusion period, the full amount (100 percent) of any increase in income attributable to new employment or increased earnings is excluded. The 12 months are cumulative and need not be consecutive.

> PHA Policy – Non-MTW
>
> The initial EID exclusion period will begin on the first of the month following the date an eligible member of a qualified family is first employed or first experiences an increase in earnings.

Second 12-Month Exclusion and Phase-In

During the second 12-month exclusion period, the exclusion is reduced to half (50 percent) of any increase in income attributable to employment or increased earnings. The 12 months are cumulative and need not be consecutive.

Lifetime Limitation

The EID has a four-year (48-month) lifetime maximum. The four-year eligibility period begins at the same time that the initial exclusion period begins and ends 48 months later. The one-time eligibility for the EID applies even if the eligible individual begins to receive assistance from another housing agency, if the individual moves between public housing and Section 8 assistance, or if there are breaks in assistance.

> PHA Policy – Non-MTW
>
> During the 48-month eligibility period, the PHA will schedule and conduct an interim reexamination each time there is a change in the family member's annual income that affects or is affected by the EID (e.g., when the family member's income falls to a level at or below his/her prequalifying income, when one of the exclusion periods ends, and at the end of the lifetime maximum eligibility period).

6.2.9 Earned Income Disallowance for Persons with Disabilities- MTW

The earned income disallowance (EID) encourages people with disabilities to enter the work force by not including the full value of increases in earned income for a period of time. Eligibility criteria and limitations on the MTW disallowance are summarized below.

Eligibility

PHA Policy-MTW

MTW households who have an EID in place prior to January 1, 2012 will continue to have the EID applied according to regulatory requirements.

This disallowance applies only to disabled individuals in families already participating in the HCV program (not at initial examination) and who don't already have an approved EID prior to January 1, 2012. To qualify, the disabled individual must experience an increase in annual income that is the result of the following event:

- Employment of a disabled individual who was previously unemployed for one or more years prior to employment. Previously unemployed includes a person who had no earned income of any kind for a period of one or more years before becoming employed.

Calculation of the Disallowance

PHA Policy-MTW

Calculation of the earned income disallowance for an eligible member of a qualified family begins with the first regular or interim reexamination where earned income is reported after a one or more year period of prior unemployment.

All income received by the disabled household member will be verified and calculated prior to the beginning of the EID.

24-Month Exclusion

PHA Policy-MTW

The eligibility for the 24-month exclusion period begins on the first of the month following the date of hire, not on the date the disabled tenant reports the earned income to the PHA.

During the 24 month exclusion period, the full amount (100 percent) of any earned income attributable to the disabled individual's new employment is excluded. The 24 months are consecutive.

Lifetime Limitation

PHA Policy-MTW

The EID has a twenty four (24) consecutive month lifetime maximum. Each eligible member may receive one EID during the term of their tenancy in the HCV program.

If the eligible member loses employment during the 24 month exclusion period, they are no longer eligible for an EID upon commencement of new employment even if the employment occurs during the 24 month eligibility period.

The twenty four month eligibility period begins on the first of the month following the date of hire and ends 24 consecutive months later.

Required Reporting

PHA Policy-MTW

During the 24-month eligibility period, the eligible member is required to report the loss of earned income. The PHA will then schedule and conduct an interim reexamination. The PHA will also conduct an interim reexamination at the end of the lifetime maximum eligibility period.

Earned Income Disallowance Example – MTW

PHA Policy-MTW

Sandra, a disabled individual and a member of a MTW household, begins a new job on May 15, 2012.

She reports her employment to the PHA on June 20, 2012.

Sandra has been unemployed since January 2, 2011 and has never received an EID. Sandra qualifies for an earned income disallowance.

The exclusion period begins on the first of the month following the date of hire or June 1, 2012 and ends 24 consecutive months later or May 31, 2014.

An interim reexam would be completed with a July 1, 2012 effective date since the employment was not reported until June 20, 2012.

Sandra earns $800/month at her new job, and receives $300 from SSI.

The amount of disallowance would be $800/month. Sandra's income and rent would be based on the $300/month from SSI. Her next regular reexam effective date is March 1, 2013. The PHA would continue to exclude Sandra's employment income at the March 1, 2013 reexamination. The family's next regular reexamination effective date would be March 1, 2015.

Assuming there were no further changes in income and/or family composition since the March 1, 2013 regular reexam, the PHA would complete an interim, on June 1, 2014 which is 24 consecutive months after the EID employment began.

At the June 1, 2014 reexamination, the PHA would include in income both her SSI income and her employment income.

6.2.10 Business Income

[24 CFR 5.609(b)(2)]

Annual income includes "the net income from the operation of a business or profession. Expenditures for business expansion or amortization of capital indebtedness shall not be used as deductions in determining net income. An allowance for depreciation of assets used in a business or profession may be deducted, based on straight line depreciation, as provided in Internal Revenue Service regulations. Any withdrawal of cash or assets from the operation of a business or profession will be included in income, except to the extent the withdrawal is reimbursement of cash or assets invested in the operation by the family" [24 CFR 5.609(b)(2)].

Business Expenses

Net income is "gross income less business expense" [HCV GB, p. 5-19].

> PHA Policy
>
> To determine business expenses that may be deducted from gross income, the PHA will use current applicable Internal Revenue Service (IRS) rules for determining allowable business expenses [see IRS Publication 535], unless a topic is addressed by HUD regulations or guidance as described below.

Business Expansion

HUD regulations do not permit the PHA to deduct from gross income expenses for business expansion.

> PHA Policy
>
> Business expansion is defined as any capital expenditures made to add new business activities, to expand current facilities, or to operate the business in additional locations. For example, purchase of a street sweeper by a construction business for the purpose of adding street cleaning to the services offered by the business would be considered a business expansion. Similarly, the purchase of a property by a hair care business to open at a second location would be considered a business expansion.

Capital Indebtedness

HUD regulations do not permit the PHA to deduct from gross income the amortization of capital indebtedness.

> PHA Policy
>
> Capital indebtedness is defined as the principal portion of the payment on a capital asset such as land, buildings, and machinery. This means the PHA will allow as a business expense interest, but not principal, paid on capital indebtedness.

Negative Business Income

If the net income from a business is negative, no business income will be included in annual income; a negative amount will not be used to offset other family income.

Withdrawal of Cash or Assets from a Business

HUD regulations require the PHA to include in annual income the withdrawal of cash or assets from the operation of a business or profession unless the withdrawal reimburses a family member for cash or assets invested in the business by the family.

> PHA Policy
>
> Acceptable investments in a business include cash loans and contributions of assets or equipment.
>
> For example, if a member of an assisted family provided an up-front loan of $2,000 to help a business get started, the PHA will not count as income any withdrawals from the business up to the amount of this loan until the loan has been repaid. Investments do not include the value of labor contributed to the business without compensation.

Co-owned Businesses

> PHA Policy
>
> If a business is co-owned with someone outside the family, the family must document the share of the business it owns. If the family's share of the income is lower than its share of ownership, the family must document the reasons for the difference.

6.2.11 Assets

[24 CFR 5.609(b)(3) and 24 CFR 5.603(b)]

There is no asset limitation for participation in the HCV program. However, HUD requires that the PHA include in annual income the "interest, dividends, and other net income of any kind from real or personal property" [24 CFR 5.609(b)(3)]. This section discusses how the income from various types of assets is determined. For most types of assets, the PHA must determine the value of the asset in order to compute income from the asset. Therefore, for each asset type, this section discusses:

- How the value of the asset will be determined
- How income from the asset will be calculated

Exhibits at the end of this Plan provide the regulatory requirements for calculating income from assets [24 CFR 5.609(b)(3)], and the regulatory definition of net family assets (See Exhibit 6-1: Annual Income Inclusions and Exhibit 6-3: Treatment of Family Assets).

Income from Assets

The PHA generally will use current circumstances to determine both the value of an asset and the anticipated income from the asset. As is true for all sources of income, HUD authorizes the PHA to use other than current circumstances to anticipate income when (1) an imminent change in circumstances is expected (2) it is not feasible to anticipate a level of income over 12 months or (3) the PHA believes that past income is the best indicator of anticipated income. For example, if a family member owns real property that typically receives rental income but the property is currently vacant, the PHA can take into consideration past rental income along with the prospects of obtaining a new tenant.

> PHA Policy
>
> Any time current circumstances are not used to determine asset income, a clear rationale for the decision will be documented in the file. In such cases the family may present information and documentation to the PHA to show why the asset income determination does not represent the family's anticipated asset income.

Valuing Assets

The calculation of asset income sometimes requires the PHA to make a distinction between an asset's market value and its cash value.

- Market Value of an Asset: The market value of an asset is its worth (e.g., the amount a buyer would pay for real estate or the balance in an investment account).
- Cash Value of an Asset: The cash value of an asset is its market value less all reasonable amounts that would be incurred when converting the asset to cash.

> PHA Policy
>
> Reasonable costs that would be incurred when disposing of an asset include, but are not limited to, penalties for premature withdrawal, broker and legal fees, and settlement costs incurred in real estate transactions [HCV GB, p. 5-28].

Lump-Sum Receipts

Payments that are received in a single lump sum, such as inheritances, capital gains, lottery winnings, insurance settlements, and proceeds from the sale of property, are generally considered assets, not income. However, such lump-sum receipts are counted as assets only if they are retained by a family in a form recognizable as an asset (e.g., deposited in a savings or checking account) [RHIIP FAQs]. (For a discussion of lump-sum payments that represent the delayed start of a periodic payment, most of which are counted as income, see sections 6.2.13 Periodic Payments and 6.2.14 Payments in Lieu of Earnings in CHAPTER 6.)

Imputing Income from Assets
[24 CFR 5.609(b)(3)]

Imputed income from assets is calculated by multiplying the total cash value of all family assets by the PHA approved passbook savings rate.

The PHA will establish its own passbook savings rate and will update the rate on or about the first of each fiscal year. The passbook savings rate will be calculated by using the Savings National Rate as calculated by the Federal Deposit Insurance Corporation (FDIC) and adding 75 basis points (.75) percent to the Savings National Rate in effect on or about the first of the fiscal year. At no time will the PHA's passbook savings rate be less than 0 percent. The PHA will apply this policy to calculate imputed asset income. For example if the Savings National Rate on the first of the fiscal year is .12%, the PHA approved passbook savings rate would be .12% + .75% = .87%.

PHA Policy – MTW

When market/face value of family assets are in excess of $50,000, the PHA will calculate asset income by taking the market/face value of assets and multiplying that value by the PHA approved passbook savings rate.

PHA Policy – Non-MTW

When the family has net family assets in excess of $5,000, the PHA will include in annual income the greater of (1) the actual income derived from the assets or (2) the imputed income. Imputed income from assets is calculated by multiplying the total cash value of all family assets by the average passbook savings rate as determined by the PHA.

Determining Actual Anticipated Income from Assets

It may or may not be necessary for the PHA to use the value of an asset to compute the actual anticipated income from the asset. When the value is required to compute the anticipated income from an asset, the market value of the asset is used. For example, if the asset is a property for which a family receives rental income, the anticipated income is determined by annualizing the actual monthly rental amount received for the property; it is not based on the property's market value. However, if the asset is a savings account, the anticipated income is determined by multiplying the market value of the account by the interest rate on the account.

PHA Policy – Non-MTW

The PHA will accept a family's declaration of the amount of assets equal to or less than $5,000, and the amount of income expected to be received from those assets.

Asset Income Exclusion

> PHA Policy - MTW
>
> When family assets are valued at $50,000 or less, the PHA will exclude the income from these assets.

Withdrawal of Cash or Liquidation of Investments

Any withdrawal of cash or assets from an investment will be included in income except to the extent that the withdrawal reimburses amounts invested by the family. For example, when a family member retires, the amount received by the family from a retirement plan is not counted as income until the family has received payments equal to the amount the family member deposited into the retirement fund.

Jointly Owned Assets

The regulation at 24 CFR 5.609(a)(4) specifies that annual income includes "amounts derived (during the 12-month period) from assets to which any member of the family has access."

> PHA Policy
>
> If an asset is owned by more than one person and any family member has unrestricted access to the asset, the PHA will count the full value of the asset unless the family presents evidence that the asset is not effectively owned by the family member.
>
> A family member has unrestricted access to an asset when he or she can legally dispose of the asset without the consent of any of the other owners.
>
> An asset is not effectively owned by a family member when (1) the asset and any income it earns accrue to the benefit of someone else who is not a member of the family and (2) that other person is responsible for income taxes incurred on income generated by the asset.
>
> If an asset is owned by more than one person, including a family member, but the family member does not have unrestricted access to the asset, the PHA will prorate the asset according to the percentage of ownership. If no percentage is specified or provided for by state or local law, the PHA will prorate the asset evenly among all owners.

Assets Disposed Of for Less than Fair Market Value
[24 CFR 5.603(b)]

HUD regulations require the PHA to count as a current asset any business or family asset that was disposed of for less than fair market value during the two years prior to the effective date of the examination/reexamination, except as noted below.

Minimum Threshold

The *HVC Guidebook* permits the PHA to set a threshold below which assets disposed of for less than fair market value will not be counted [HCV GB, p. 5-27].

> PHA Policy
>
> The PHA will not include the value of assets disposed of for less than fair market value unless the cumulative fair market value of all assets disposed of during the past two years exceeds the gross amount received for the assets by more than $1,000.
>
> When the two-year period expires, the income assigned to the disposed asset(s) also expires. If the two-year period ends between annual recertifications, the family may request an interim recertification to eliminate consideration of the asset(s).
>
> Assets placed by the family in nonrevocable trusts are considered assets disposed of for less than fair market value except when the assets placed in trust were received through settlements or judgments.

Separation or Divorce

The regulation also specifies that assets are not considered disposed of for less than fair market value if they are disposed of as part of a separation or divorce settlement and the applicant or tenant receives important consideration not measurable in dollar terms.

> PHA Policy
>
> All assets disposed of as part of a separation or divorce settlement will be considered assets for which important consideration not measurable in monetary terms has been received. In order to qualify for this exemption, a family member must be subject to a formal separation or divorce settlement agreement established through arbitration, mediation, or court order.

Foreclosure or Bankruptcy

Assets are not considered disposed of for less than fair market value when the disposition is the result of a foreclosure or bankruptcy sale.

Family Declaration

PHA Policy – Non – MTW

Families must sign a declaration form at initial certification and each regular recertification identifying all assets that have been disposed of for less than fair market value or declaring that no assets have been disposed of for less than fair market value. The PHA may verify the value of the assets disposed of if other information available to the PHA does not appear to agree with the information reported by the family.

PHA Policy – MTW

Families must sign an Asset Self Certification at initial certification and each regular recertification. If the value of the family's assets is more than $50,000, the family must identify each asset and the income derived from that asset. The PHA will conduct third party verification on assets when the combined family assets are in excess of $50,000.

6.2.12 Types of Assets

Checking and Savings Accounts

For regular checking accounts and savings accounts, *cash value* has the same meaning as *market value*.

If a checking account does not bear interest, the anticipated income from the account is zero.

PHA Policy

In determining the value of a checking account, the PHA will use the average monthly balance for the last three months.

In determining the value of a savings account, the PHA will use the current balance.

In determining the anticipated income from an interest-bearing checking or savings account, the PHA will multiply the value of the account by the current rate of interest paid on the account.

Investment Accounts Such as Stocks, Bonds, Saving Certificates, and Money Market Funds

Interest or dividends earned by investment accounts are counted as actual income from assets even when the earnings are reinvested. The cash value of such an asset is determined by deducting from the market value any broker fees, penalties for early withdrawal, or other costs of converting the asset to cash.

> PHA Policy
>
> In determining the market value of an investment account, the PHA will use the value of the account on the most recent investment report.
>
> How anticipated income from an investment account will be calculated depends on whether the rate of return is known. For assets that are held in an investment account with a known rate of return (e.g., savings certificates), asset income will be calculated based on that known rate (market value multiplied by rate of earnings).
>
> When the anticipated rate of return is not known (e.g., stocks), the PHA will calculate asset income based on the earnings for the most recent reporting period.

Equity in Real Property or Other Capital Investments

- Equity (cash value) in a property or other capital asset is the estimated current market value of the asset less the unpaid balance on all loans secured by the asset and reasonable costs (such as broker fees) that would be incurred in selling the asset [HCV GB, p. 5-25].

- Equity in real property and other capital investments is considered in the calculation of asset income except for the following types of assets:

- Equity accounts in HUD homeownership programs [24 CFR5.603(b)]

- The value of a home currently being purchased with assistance under the HCV program Homeownership Option for the first 10 years after the purchase date of the home [24 CFR 5.603(b)]

- Equity in owner-occupied cooperatives and manufactured homes in which the family lives [HCV GB, p. 5-25]

- Equity in real property when a family member's main occupation is real estate [HCV GB, p. 5-25]. This real estate is considered a business asset, and income related to this asset will be calculated as described in section regarding Business Income in CHAPTER 6.

- Interests in Indian Trust lands [24 CFR 5.603(b)]

- Real property and capital assets that are part of an active business or farming operation [HCV GB, p. 5-25]

A family may have real property as an asset in two ways: (1) owning the property itself and (2) holding a mortgage or deed of trust on the property. In the case of a property owned by a family member, the anticipated asset income generally will be in the form of rent or other payment for the use of the property. If the property generates no income, actual anticipated income from the asset will be zero. In the case of a mortgage or deed of trust held by a family member, the outstanding balance (unpaid principal) is the cash value of the asset. The interest portion only of payments made to the family in accordance with the terms of the mortgage or deed of trust is counted as anticipated asset income.

> PHA Policy
>
> In the case of capital investments owned jointly with others not living in a family's unit, a prorated share of the property's cash value will be counted as an asset unless the PHA determines that the family receives no income from the property and is unable to sell or otherwise convert the asset to cash.

Trusts

A *trust* is a legal arrangement generally regulated by state law in which one party (the creator or grantor) transfers property to a second party (the trustee) who holds the property for the benefit of one or more third parties (the beneficiaries).

- Revocable Trusts: If any member of a family has the right to withdraw the funds in a trust, the value of the trust is considered an asset [HCV GB, p. 5-25]. Any income earned as a result of investment of trust funds is counted as actual asset income, whether the income is paid to the family or deposited in the trust.

- Non-revocable Trusts: In cases where a trust is not revocable by, or under the control of, any member of a family, the value of the trust fund is not considered an asset. However, any income distributed to the family from such a trust is counted as a periodic payment or a lump-sum receipt, as appropriate [24 CFR 5.603(b)]. (See sections 6.2.13 Periodic Payments and Lump-Sum Payments for the Delayed Start of a Periodic Payment discussed in this Chapter.)

Retirement Accounts

- Company Retirement/Pension Accounts

In order to correctly include or exclude as an asset any amount held in a company retirement or pension account by an employed person, the PHA must know whether the money is accessible before retirement [HCV GB, p. 5-26].

While a family member is employed, only the amount the family member can withdraw without retiring or terminating employment is counted as an asset [HCV GB, p. 5-26].

After a family member retires or terminates employment, any amount distributed to the family member is counted as a periodic payment or a lump-sum receipt, as appropriate [HCV GB, p. 5-26], except to the extent that it represents funds invested in the account by the family member.

(For more on periodic payments, see 6.2.13: Periodic Payments). The balance in the account is counted as an asset only if it remains accessible to the family member.

- IRA, Keogh, and Similar Retirement Savings Accounts

IRA, Keogh, and similar retirement savings accounts are counted as assets even though early withdrawal would result in a penalty [HCV GB, p. 5-25].

Personal Property

Personal property held as an investment, such as gems, jewelry, coin collections, antique cars, etc., is considered an asset [HCV GB, p. 5-25].

> PHA Policy
>
> In determining the value of personal property held as an investment, the PHA will use the family's estimate of the value. However, the PHA also may obtain an appraisal if appropriate to confirm the value of the asset. The family must cooperate with the appraiser, but cannot be charged any costs related to the appraisal.
>
> Generally, personal property held as an investment generates no income until it is disposed of. If regular income is generated (e.g., income from renting the personal property), the amount that is expected to be earned in the coming year is counted as actual income from the asset.

Necessary items of personal property are not considered assets [24 CFR 5.603(b)].

> PHA Policy
>
> Necessary personal property consists of items such as clothing, furniture, household furnishings, jewelry that is not held as an investment, and vehicles, including those specially equipped for persons with disabilities.

Life Insurance

The cash value of a life insurance policy available to a family member before death, such as a whole life or universal life policy, is included in the calculation of the value of the family's assets [HCV GB 5-25].

The cash value is the surrender value. If such a policy earns dividends or interest that the family could elect to receive, the anticipated amount of dividends or interest is counted as income from the asset whether or not the family actually receives it.

6.2.13 Periodic Payments

Periodic payments are forms of income received on a regular basis. HUD regulations specify periodic payments that are and are not included in annual income.

Periodic Payments Included in Annual Income

Periodic payments from sources such as social security, unemployment and welfare assistance, annuities, insurance policies, retirement funds, and pensions. However, periodic payments from retirement accounts, annuities, and similar forms of investments are counted only after they exceed the amount contributed by the family [24 CFR 5.609(b)(4) and (b)(3)].

Disability or death benefits and lottery receipts paid periodically, rather than in a single lump sum [24 CFR 5.609(b)(4) and HCV, p. 5-14]

Lump-Sum Payments for the Delayed Start of a Periodic Payment

Most lump sums received as a result of delays in processing periodic payments, such as unemployment or welfare assistance, are counted as income. However, lump-sum receipts for the delayed start of periodic social security or supplemental security income (SSI) payments are not counted as income [CFR 5.609(b)(4)]. Additionally, any deferred disability benefits that are received in a lump sum or in prospective monthly amounts from the Department of Veterans Affairs are to be excluded from annual income [FR Notice 11/24/08].

> PHA Policy
>
> When a delayed-start payment is received and reported during the period in which the PHA is processing a regular reexamination, the PHA will adjust the family share and PHA subsidy retroactively for the period the payment was intended to cover. The family may pay in full any amount due or request to enter into a repayment agreement with the PHA.

Treatment of Overpayment Deductions from Social Security Benefits

The PHA must make a special calculation of annual income when the Social Security Administration (SSA) overpays and individual, resulting in a withholding or deduction from his or her benefit amount until the overpayment is paid in full. The amount and duration of the withholding will vary depending on the amount of the overpayment and the percent of the benefit rate withheld. Regardless of the amount withheld or the length of the withholding period, the PHA must use the reduced benefit amount after deducting only the amount of the overpayment withholding from the gross benefit amount [Notice PIH 2010-3].

Periodic Payments Excluded from Annual Income

- Payments received for the care of foster children or foster adults (usually persons with disabilities, unrelated to the assisted family, who are unable to live alone) [24 CFR 5.609(c)(2)]. Kinship guardianship assistance payments (Kin-GAP) and other similar guardianship payments are treated the same as foster care payments and are likewise excluded from annual income [Notice PIH 2008-30].

> PHA Policy
>
> The PHA will exclude payments for the care of foster children and foster adults only if the care is provided through an official arrangement with a local welfare agency [HCV GB, p. 5-18].

- Amounts paid by a state agency to a family with a member who has a developmental disability and is living at home to offset the cost of services and equipment needed to keep the developmentally disabled family member at home [24 CFR 5.609(c)(16)].

- Amounts received under the Low-Income Home Energy Assistance Program (42 U.S.C. 1626(c)) [24 CFR 5.609(c)(17)].

- Amounts received under the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858q) [24 CFR 5.609(c)(17)].

- Earned Income Tax Credit (EITC) refund payments (26 U.S.C. 32(j)) [24 CFR 5.609(c)(17)]. Note: EITC may be paid periodically if the family elects to receive the amount due as part of payroll payments from an employer.

- Lump sums received as a result of delays in processing Social Security and SSI payments [24 CFR 5.609(b)(4)].

- Lump-sums or prospective monthly amounts received as deferred disability benefits from the Department of Veterans Affairs (VA) [FR Notice 11/24/08].

6.2.14 Payments in Lieu of Earnings

Payments in lieu of earnings, such as unemployment and disability compensation, worker's compensation, and severance pay, are counted as income [24 CFR 5.609(b)(5)] if they are received either in the form of periodic payments or in the form of a lump-sum amount or prospective monthly amounts for the delayed start of a periodic payment. If they are received in a one-time lump sum (as a settlement, for instance), they are treated as lump-sum receipts [24 CFR 5.609(c)(3)]. (See also 6.2.13 Periodic Payments).

6.2.15 Welfare Assistance

Overview

Welfare assistance is counted in annual income. Welfare assistance includes Temporary Assistance for Needy Families (TANF) and any payments to individuals or families based on need that are made under programs funded separately or jointly by federal, state, or local governments [24 CFR 5.603(b)].

Sanctions Resulting in the Reduction of Welfare Benefits
[24 CFR 5.615]

The PHA must make a special calculation of annual income when the welfare agency imposes certain sanctions on certain families. The full text of the regulation at 24 CFR 5.615 is provided as Exhibit 6-5: The Effect of Welfare Benefit Reduction. The requirements are summarized below. This rule applies only if a family was receiving HCV assistance at the time the sanction was imposed.

Covered Families

The families covered by 24 CFR 5.615 are those "who receive welfare assistance or other public assistance benefits ('welfare benefits') from a State or other public agency ('welfare agency') under a program for which Federal, State or local law requires that a member of the family must participate in an economic self-sufficiency program as a condition for such assistance" [24 CFR 5.615(b)]

Imputed Income

When a welfare agency imposes a sanction that reduces a family's welfare income because the family commits fraud or fails to comply with the agency's economic self-sufficiency program or work activities requirement, the PHA must include in annual income "imputed" welfare income. The PHA must request that the welfare agency inform the PHA when the benefits of an HCV participant family are reduced. The imputed income is the amount the family would have received if the family had not been sanctioned.

This requirement does not apply to reductions in welfare benefits: (1) at the expiration of the lifetime or other time limit on the payment of welfare benefits, (2) if a family member is unable to find employment even though the family member has complied with the welfare agency economic self-sufficiency or work activities requirements, or (3) because a family member has not complied with other welfare agency requirements [24 CFR 5.615(b)(2)].

Offsets

The amount of the imputed income is offset by the amount of additional income the family begins to receive after the sanction is imposed. When the additional income equals or exceeds the imputed welfare income, the imputed income is reduced to zero [24 CFR 5.615(c)(4)].

6.2.16 Periodic and Determinable Allowances
[24 CFR 5.609(b)(7)]

Annual income includes periodic and determinable allowances, such as alimony and child support payments, and regular contributions or gifts received from organizations or from persons not residing with an assisted family.

Alimony and Child Support

The PHA must count alimony or child support amounts awarded as part of a divorce or separation agreement.

> PHA Policy
>
> To determine income from child support and alimony, the PHA will count only amounts that are actually being paid to the family.

Regular Contributions or Gifts

The PHA must count as income regular monetary and nonmonetary contributions or gifts from persons not residing with an assisted family [24 CFR 5.609(b)(7)]. Temporary, nonrecurring, or sporadic income and gifts are not counted [24 CFR 5.609(c)(9)].

> PHA Policy
>
> Examples of regular contributions include: (1) regular payment of a family's bills (e.g., utilities, telephone, rent, credit cards, and car payments), (2) cash or other liquid assets provided to any family member on a regular basis, and (3) "in-kind" contributions such as groceries and clothing provided to a family on a regular basis.
>
> Nonmonetary contributions will be valued at the cost of purchasing the items, as determined by the PHA. For contributions that may vary from month to month (e.g., utility payments), the PHA will include an average amount based upon past history.

6.2.17 Student Financial Assistance
[24 CFR 5.609(b)(9)]

In 2005, Congress passed a law (for Section 8 programs only) requiring that certain student financial assistance be included in annual income. Prior to that, the full amount of student financial assistance was excluded. For some students, the full exclusion still applies.

Student Financial Assistance Included in Annual Income
[24 CFR 5.609(b)(9) and FR 4/10/06]

The regulation requiring the inclusion of certain student financial assistance applies only to students who satisfy all of the following conditions:

- They are enrolled in an institution of higher education, as defined under the Higher Education Act (HEA) of 1965.

- They are seeking or receiving Section 8 assistance on their own—that is, apart from their parents—through the HCV program, the project-based certificate program, the project-based voucher program, or the moderate rehabilitation program.

- They are under 24 years of age OR they have no dependent children.

For students who satisfy these three conditions, any financial assistance in excess of tuition received: (1) under the 1965 HEA, (2) from a private source, or (3) from an institution of higher education, as defined under the 1965 HEA, must be included in annual income.

To determine annual income in accordance with the above requirements, the PHA will use the definitions of dependent child, institution of higher education, and parents in CHAPTER 3, along with the following definitions [FR 4/10/06, pp. 18148-18150]:

- Assistance under the Higher Education Act of 1965 includes Pell Grants, Federal Supplement Educational Opportunity Grants, Academic Achievement Incentive Scholarships, State Assistance under the Leveraging Educational Assistance Partnership Program, the Robert G. Byrd Honors Scholarship Program, and Federal Work Study programs.

- Assistance from private sources means assistance from nongovernmental sources, including parents, guardians, and other persons not residing with the student in an HCV assisted unit.

- Tuition will have the meaning given this term by the institution of higher education in which the student is enrolled.

<u>Student Financial Assistance Excluded from Annual Income</u>
[24 CFR 5.609(c)(6)]

Any student financial assistance not subject to inclusion under 24 CFR 5.609(b)(9) is fully excluded from annual income under 24 CFR 5.609(c)(6), whether it is paid directly to the student or to the educational institution the student is attending. This includes any financial assistance received by:

- Students residing with parents who are seeking or receiving Section 8 assistance

- Students who are enrolled in an educational institution that does not meet the 1965 HEA definition of institution of higher education

- Students who are over 23 AND have at least one dependent child, as defined in CHAPTER 3

- Students who are receiving financial assistance through a governmental program not authorized under the 1965 HEA

6.2.18 Additional Exclusions from Annual Income

Other exclusions contained in 24 CFR 5.609(c) that have not been discussed earlier in this chapter include the following:

- Reimbursement of medical expenses [24 CFR 5.609(c)(4)]
- Amounts received by participants in other publicly assisted programs which are specifically for or in reimbursement of out-of-pocket expenses incurred and which are made solely to allow participation in a specific program [24 CFR 5.609(c)(8)(iii)]
- Amounts received by a person with a disability that are disregarded for a limited time for purposes of Supplemental Security Income eligibility and benefits because they are set aside for use under a Plan to Attain Self-Sufficiency (PASS) [(24 CFR 5.609(c)(8)(ii)]
- Reparation payments paid by a foreign government pursuant to claims filed under the laws of that government by persons who were persecuted during the Nazi era [24 CFR 5.609(c)(10)]
- Adoption assistance payments in excess of $480 per adopted child [24 CFR 5.609(c)(12)]
- Refunds or rebates on property taxes paid on the dwelling unit [24 CFR 5.609(c)(15)]
- Amounts paid by a state agency to a family with a member who has a developmental disability and is living at home to offset the cost of services and equipment needed to keep the developmentally disabled family member at home [24 CFR 5.609(c)(16)]
- Amounts specifically excluded by any other federal statute [24 CFR 5.609(c)(17)]. HUD publishes an updated list of these exclusions periodically. It includes:
    - The value of the allotment provided to an eligible household under the Food Stamp Act of 1977 (7 U.S.C. 2017(b));
    - Payments to Volunteers under the Domestic Volunteer Services Act of 1973 (42 U.S.C. 5044(f)(1), 5058);
    - Payments received under the Alaska Native Claims Settlement Act (43 U.S.C. 1626(c));
    - Income derived from certain submarginal land of the United States that is held in trust for certain Indian tribes (25 U.S.C. 459e);
    - Payments or allowances made under the Department of Health and Human Services' Low-Income Home Energy Assistance Program (42 U.S.C. 8624(f));
    - Income derived from the disposition of funds to the Grand River Band of Ottawa Indians (Pub. L. 94-540, 90 Stat. 2503-04);

- The first $2000 of per capita shares received from judgment funds awarded by the Indian Claims Commission or the U.S. Claims Court, the interests of individual Indians in trust or restricted lands, including the first $2000 per year of income received by individual Indians from funds derived from interests held in such trust or restricted lands (25 U.S.C. 1407- 8);

- Amounts of scholarships funded under Title IV of the Higher Education Act of 1965, including awards under Federal work-study programs or under the Bureau of Indian Affairs student assistance programs (20 U.S.C. 1087uu). For Section 8 programs, the exception found in [Section] 237 of Public Law 109-249 applies and requires that the amount of financial assistance in excess of tuition shall be considered income in accordance with the provisions codified at 24 CFR 5.609(b)(9), except for those persons with disabilities as defined by 42 U.S.C. 1437a(b)(3)(E) (Pub. L. 109-247);

- Payments received from programs funded under Title V of the Older Americans Act of 1965 (42 U.S.C. 3056g);

- Payments received on or after January 1, 1989, from the Agent Orange Settlement Fund or any other fund established pursuant to the settlement in the In Re Agent Orange liability litigation, M.D.L. No. 381 (E.D.N.Y.) (Pub. L. 101-201 and 101-39);

- Payments received under the Maine Indian Claims Settlement Act of 1980 (Public Law 96-420, 25 U.S.C. 1721) pursuant to 25 U.S.C. 1728(c);

- The value of any child care provided or arranged (or any amount received as payment for such care or reimbursement for costs incurred for such care) under the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858q);

- Earned income tax credit (EITC) refund payments received on or after January 1, 1991 (26 U.S.C. 32(l));

- Payments by the Indian Claims Commission to the Confederated Tribes and Bands of Yakima Indian Nation or the Apache Tribe of Mescalero Reservation (Pub. L. 95-433);

- Allowances, earnings and payments to AmeriCorps participants under the National and Community Service Act of 1990 (42 U.S.C. 12637(d));

- Any amount of crime victim compensation (under the Victims of Crime Act) received through crime victim assistance (or payment or reimbursement of the cost of such assistance) as determined under the Victims of Crime Act because of the commission of a crime against the applicant under the Victims of Crime Act (42 U.S.C. 10602);

- Allowances, earnings and payments to individuals participating in programs under the Workforce Investment Act of 1998 (29 U.S.C. 2931);

- Any amount received under the School Lunch Act and the Child Nutrition Act of 1966 (42 U.S.C. 1780(b)), including reduced-price lunches and food under the Special Supplemental Food Program for Women, Infants, and Children (WIC);

- Payments, funds or distributions authorized, established, or directed by the Seneca Nation Settlement Act of 1990 (25 U.S.C. 1774f(b));

- Payments from any deferred Department of Veterans Affairs disability benefits that are received in a lump sum amount or in prospective monthly amounts as provided by an amendment to the definition of annual income in the U.S. Housing Act of 1937 (42 U.S.C. 1437) by Section 2608 of the Housing and Economic Recovery Act of 2008 (Pub. L. 110-289, 42 U.S.C. 4501);

- Compensation received by or on behalf of a veteran for service- connected disability, death, dependency, or indemnity compensation as provided by an amendment by the Indian Veterans Housing Opportunity Act of 2010 (Pub. L. 111-269) to the definition of income applicable to programs authorized under the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4101) and administered by the Office of Native American Programs; and

- A lump sum or a periodic payment received by an individual Indian pursuant to the Class Action Settlement Agreement in the case entitled Elouise Cobell et al. v. Ken Salazar et al., United States District Court, District of Columbia, as provided in the Claims Resolution Act of 2010 (Pub. L. 111-291).

6.3 ADJUSTED INCOME

6.3.1 Introduction

Overview

HUD regulations require PHAs to deduct from annual income any of five mandatory deductions for which a family qualifies. The resulting amount is the family's adjusted income. Mandatory deductions are found in 24 CFR 5.611.

Mandatory Deductions
[24 CFR 5.611]

In determining adjusted income, the responsible entity [PHA] must deduct the following amounts from annual income:

(1) $480 for each dependent;

(2) $400 for any elderly family or disabled family;

(3) The sum of the following, to the extent the sum exceeds three percent of annual income:

(i) Unreimbursed medical expenses of any elderly family or disabled family;

(ii) Unreimbursed reasonable attendant care and auxiliary apparatus expenses for each member of the family who is a person with disabilities, to the extent necessary to enable any member of the family (including the member who is a person with disabilities) to be employed. This deduction may not exceed the earned income received by family members who are 18 years of age or older and who are able to work because of such attendant care or auxiliary apparatus; and

(4) Any reasonable child care expenses necessary to enable a member of the family to be employed or to further his or her education.

This part covers policies related to these mandatory deductions. Verification requirements related to these deductions are found in CHAPTER 7.

Anticipating Expenses

PHA Policy

Generally, the PHA will use current circumstances to anticipate expenses. When possible, for costs that are expected to fluctuate during the year (e.g., child care during school and non-school periods and cyclical medical expenses), the PHA will estimate costs based on historic data and known future costs.

If a family has an accumulated debt for medical or disability assistance expenses, the PHA will include as an eligible expense the portion of the debt that the family expects to pay during the period for which the income determination is being made. However, amounts previously deducted will not be allowed even if the amounts were not paid as expected in a preceding period. The PHA may require the family to provide documentation of payments made in the preceding year.

6.3.2 Dependent Deduction

A deduction of $480 is taken for each dependent [24 CFR 5.611(a)(1)]. Dependent is defined as any family member other than the head, spouse, or co-head who is under the age of 18 or who is 18 or older and is a person with disabilities or a full-time student. Foster children, foster adults, and live-in aides are never considered dependents [24 CFR 5.603(b)].

6.3.3 Elderly or Disabled Family Deduction

A single deduction of $400 is taken for any elderly or disabled family [24 CFR 5.611(a)(2)]. An elderly family is a family whose head, spouse, co-head, or sole member is 62 years of age or older, and a disabled family is a family whose head, spouse, co-head, or sole member is a person with disabilities [24 CFR 5.403].

6.3.4 Medical Expenses Deduction

[24 CFR 5.611(a)(3)(i)]

Unreimbursed medical expenses may be deducted to the extent that, in combination with any disability assistance expenses, they exceed three percent of annual income.

The medical expense deduction is permitted only for families in which the head, spouse, or co-head is at least 62 or is a person with disabilities. If a family is eligible for a medical expense deduction, the medical expenses of all family members are counted [VG, p. 28].

Definition of Medical Expenses

HUD regulations define medical expenses at 24 CFR 5.603(b) to mean "medical expenses, including medical insurance premiums, that are anticipated during the period for which annual income is computed, and that are not covered by insurance."

PHA Policy

The most current IRS Publication 502, Medical and Dental Expenses, will be used to determine the costs that qualify as medical expenses.

Summary of Allowable Medical Expenses from IRS Publication 502	
• Services of medical professionals • Surgery and medical procedures that are necessary, legal, non-cosmetic • Services of medical facilities • Hospitalization, long-term care, and in-home nursing services • Prescription medicines and insulin, but not nonprescription medicines even if recommended by a doctor • Improvements to housing directly related to medical needs (e.g., ramps for a wheel chair, handrails)	• Substance abuse treatment programs • Psychiatric treatment • Ambulance services and some costs of transportation related to medical expenses • The cost and care of necessary equipment related to a medical condition (e.g., eyeglasses/lenses, hearing aids, crutches, and artificial teeth) • Cost and continuing care of necessary service animals • Medical insurance premiums or the cost of a health maintenance organization (HMO)
Note: This chart provides a summary of eligible medical expenses only. Detailed information is provided in IRS Publication 502. Medical expenses are considered only to the extent they are not reimbursed by insurance or some other source.	

Families That Qualify for Both Medical and Disability Assistance Expenses

> PHA Policy
>
> This policy applies only to families in which the head, spouse, or co-head is 62 or older or is a person with disabilities.
>
> When expenses anticipated by a family could be defined as either medical or disability assistance expenses, the PHA will consider them medical expenses unless it is clear that the expenses are incurred exclusively to enable a person with disabilities to work.

6.3.5 Disability Assistance Expenses Deduction

[24 CFR 5.603(b) and 24 CFR 5.611(a)(3)(ii)]

Reasonable expenses for attendant care and auxiliary apparatus for a disabled family member may be deducted if they:

- Are necessary to enable a family member 18 years or older to work;
- Are not paid to a family member or reimbursed by an outside source;
- In combination with any medical expenses, exceed three percent of annual income, and
- Do not exceed the earned income received by the family member who is enabled to work.

Earned Income Limit on the Disability Assistance Expense Deduction

A family can qualify for the disability assistance expense deduction only if at least one family member (who may be the person with disabilities) is enabled to work [24 CFR 5.603(b)].

The disability expense deduction is capped by the amount of "earned income received by family members who are 18 years of age or older and who are able to work" because of the expense [24 CFR 5.611(a)(3)(ii)]. The earned income used for this purpose is the amount verified before any earned income disallowances or income exclusions are applied.

> PHA Policy
>
> The family must identify the family members enabled to work as a result of the disability assistance expenses. In evaluating the family's request, the PHA will consider factors such as how the work schedule of the relevant family members relates to the hours of care provided, the time required for transportation, the relationship of the family members to the person with disabilities, and any special needs of the person with disabilities that might determine which family members are enabled to work.
>
> When the PHA determines that the disability assistance expenses enable more than one family member to work, the expenses will be capped by the sum of the family members' incomes.

Eligible Disability Expenses

Examples of auxiliary apparatus are provided in the *HCV Guidebook* as follows: "Auxiliary apparatus are items such as wheelchairs, ramps, adaptations to vehicles, or special equipment to enable a blind person to read or type, but only if these items are directly related to permitting the disabled person or other family member to work" [HCV GB, p. 5-30].

HUD advises PHAs to further define and describe auxiliary apparatus [VG, p. 30].

- Eligible Auxiliary Apparatus

> PHA Policy
>
> Expenses incurred for maintaining or repairing an auxiliary apparatus are eligible. In the case of an apparatus that is specially adapted to accommodate a person with disabilities (e.g., a vehicle or computer), the cost to maintain the special adaptations (but not maintenance of the apparatus itself) is an eligible expense. The cost of service animals trained to give assistance to persons with disabilities, including the cost of acquiring the animal, veterinary care, food, grooming, and other continuing costs of care, will be included.

- Eligible Attendant Care

  The family determines the type of attendant care that is appropriate for the person with disabilities.

> PHA Policy
>
> Attendant care includes, but is not limited to, reasonable costs for home medical care, nursing services, in-home or center-based care services, interpreters for persons with hearing impairments, and readers for persons with visual disabilities.
>
> Attendant care expenses will be included for the period that the person enabled to work is employed plus reasonable transportation time.
>
> The cost of general housekeeping and personal services is not an eligible attendant care expense. However, if the person enabled to work is the person with disabilities, personal services necessary to enable the person with disabilities to work are eligible.
>
> If the care attendant also provides other services to the family, the PHA will prorate the cost and allow only that portion of the expenses attributable to attendant care that enables a family member to work. For example, if the care provider also cares for a child who is not the person with disabilities, the cost of care must be prorated. Unless otherwise specified by the care provider, the calculation will be based upon the number of hours spent in each activity and/or the number of persons under care.

- Payments to Family Members

  No disability assistance expenses may be deducted for payments to a member of an assisted family [24 CFR 5.603(b)]. However, expenses paid to a relative who is not a member of the assisted family may be deducted if they are not reimbursed by an outside source.

Necessary and Reasonable Expenses

The family determines the type of care or auxiliary apparatus to be provided and must describe how the expenses enable a family member to work. The family must certify that the disability assistance expenses are necessary and are not paid or reimbursed by any other source.

> PHA Policy
>
> The PHA determines the reasonableness of the expenses based on typical costs of care or apparatus in the locality. To establish typical costs, the PHA will collect information from organizations that provide services and support to persons with disabilities. A family may present, and the PHA will consider, the family's justification for costs that exceed typical costs in the area.

Families That Qualify for Both Medical and Disability Assistance Expenses

See policies regarding families that qualify for both medical and disability assistance expenses in section 6.3.4 Medical Expenses Deduction.

6.3.6 Child Care Expense Deduction

HUD defines child care expenses at 24 CFR 5.603(b) as "amounts anticipated to be paid by the family for the care of children under 13 years of age during the period for which annual income is computed, but only where such care is necessary to enable a family member to actively seek employment, to be gainfully employed, or to further his or her education and only to the extent such amounts are not reimbursed. The amount deducted shall reflect reasonable charges for child care. In the case of child care necessary to permit employment, the amount deducted shall not exceed the amount of employment income that is included in annual income."

Clarifying the Meaning of Child for This Deduction

Child care expenses do not include child support payments made to another on behalf of a minor who is not living in an assisted family's household [VG, p. 26]. However, child care expenses for foster children that are living in the assisted family's household, are included when determining the family's child care expenses [HCV GB, p. 5-29].

Qualifying for the Deduction

- Determining Who Is Enabled to Pursue an Eligible Activity

> PHA Policy
>
> The family must identify the family member(s) enabled to pursue an eligible activity. The term eligible activity in this section means any of the activities that may make the family eligible for a child care deduction (seeking work, pursuing an education, or being gainfully employed).
>
> In evaluating the family's request, the PHA will consider factors such as how the schedule for the claimed activity relates to the hours of care provided, the time required for transportation, the relationship of the family member(s) to the child, and any special needs of the child that might help determine which family member is enabled to pursue an eligible activity.

- Seeking Work

> PHA Policy
>
> If the child care expense being claimed is to enable a family member to seek employment, the family must provide evidence of the family member's efforts to obtain employment at each reexamination. The deduction may be reduced or denied if the family member's job search efforts are not commensurate with the child care expense being allowed by the PHA.

- Furthering Education

> PHA Policy
>
> If the child care expense being claimed is to enable a family member to further his or her education, the member must be enrolled in school (academic or vocational) or participating in a formal training program. The family member is not required to be a full-time student, but the time spent in educational activities must be commensurate with the child care claimed.

- Being Gainfully Employed

> PHA Policy
>
> If the child care expense being claimed is to enable a family member to be gainfully employed, the family must provide evidence of the family member's employment during the time that child care is being provided. Gainful employment is any legal work activity (full- or part-time) for which a family member is compensated.

Earned Income Limit on Child Care Expense Deduction

When a family member looks for work or furthers his or her education, there is no cap on the amount that may be deducted for child care – although the care must still be necessary and reasonable.

However, when child care enables a family member to work, the deduction is capped by "the amount of employment income that is included in annual income" [24 CFR 5.603(b)].

The earned income used for this purpose is the amount of earned income verified after any earned income disallowances or income exclusions are applied.

When the person who is enabled to work is a person with disabilities who receives the earned income disallowance (EID) or a full-time student whose earned income above $480 is excluded, child care costs related to enabling a family member to work may not exceed the portion of the person's earned income that actually is included in annual income. For example, if a family member who qualifies for the EID makes $15,000 but because of the EID only $5,000 is included in annual income, child care expenses are limited to $5,000.

The PHA must not limit the deduction to the least expensive type of child care. If the care allows the family to pursue more than one eligible activity, including work, the cap is calculated in proportion to the amount of time spent working [HCV GB, p. 5-30].

PHA Policy

When the child care expense being claimed is to enable a family member to work, only one family member's income will be considered for a given period of time. When more than one family member works during a given period, the PHA generally will limit allowable child care expenses to the earned income of the lowest-paid member. The family may provide information that supports a request to designate another family member as the person enabled to work.

Eligible Child Care Expenses

The type of care to be provided is determined by the assisted family. The PHA may not refuse to give a family the child care expense deduction because there is an adult family member in the household that may be available to provide child care [VG, p. 26].

- Allowable Child Care Activities

> PHA Policy
>
> For school-age children, costs attributable to public or private school activities during standard school hours are not considered.
>
> Expenses incurred for supervised activities after school or during school holidays (e.g., summer day camp, after-school sports league) are allowable forms of child care.
>
> The costs of general housekeeping and personal services are not eligible. Likewise, child care expenses paid to a family member who lives in the family's unit are not eligible; however, payments for child care to relatives who do not live in the unit are eligible.
>
> If a child care provider also renders other services to a family or child care is used to enable a family member to conduct activities that are not eligible for consideration, the PHA will prorate the costs and allow only that portion of the expenses that is attributable to child care for eligible activities. For example, if the care provider also cares for a child with disabilities who is 13 or older, the cost of care will be prorated. Unless otherwise specified by the child care provider, the calculation will be based upon the number of hours spent in each activity and/or the number of persons under care.

- Juxtaposition of Child Care Expenses as Part of Medical Expenses

> PHA Policy
>
> Reasonable child care expenses for a qualified child (see subsection above) may be considered as a part of a participant's medical expenses if it is documented that the participant or an incapacitated household member, who otherwise would have provided such care, is unable to do so as a result of a medical condition or impairment. The medical condition or impairment must be documented with a medical care professional's letter that sufficiently indicates that due to a specific condition or impairment, provision of child care is a necessity.

- Necessary and Reasonable Costs

Child care expenses will be considered necessary if: (1) a family adequately explains how the care enables a family member to work, actively seek employment, or further his or her education, and (2) the family certifies, and the child care provider verifies, that the expenses are not paid or reimbursed by any other source.

> PHA Policy
>
> Only reasonable child care costs can be deducted. If an RAA determines in its discretion that circumstances warrant further scrutiny it may review measures/comparisons of costs for the type of care in the locality to ensure that the costs are reasonable. Following any such determination by the RAA, the family would be allowed an opportunity for response.
>
> If the family presents a justification for costs that exceed typical costs in the area through additional documentation that convinces the RAA that the higher cost is appropriate, the RAA must document the file accordingly.

6.4 CALCULATING FAMILY SHARE AND PHA SUBSIDY

6.4.1 Overview of Rent and Subsidy Calculations

TTP Formula
[24 CFR 5.628]

HUD regulations specify the formula for calculating the total tenant payment (TTP) for an assisted family. TTP is the highest of the following amounts, rounded to the nearest dollar:

- 30 percent of the family's monthly adjusted income (adjusted income is defined in Part II)
- 10 percent of the family's monthly gross income (annual income, as defined in Part I, divided by 12)
- The welfare rent (in as-paid states only)
- A minimum rent between $0 and $50 that is established by the PHA

The PHA has authority to suspend and exempt families from minimum rent when a financial hardship exists, as defined in CHAPTER 6 Section 6.4.2 Financial Hardships Affecting Minimum Rent.

The amount that a family pays for rent and utilities (the family share) will never be less than the family's TTP but may be greater than the TTP depending on the rent charged for the unit the family selects.

- Welfare Rent
  [24 CFR 5.628]

PHA Policy
Welfare rent does not apply in this locality.

- Minimum Rent
  [24 CFR 5.630]

PHA Policy
The minimum rent for this locality is $50.

Family Share
[24 CFR 982.305(a)(5)]

If a family chooses a unit with a gross rent (rent to owner plus an allowance for tenant-paid utilities) that exceeds the PHA's applicable payment standard: (1) the family will pay more than the TTP, and (2) at initial occupancy the PHA may not approve the tenancy if it would require the family share to exceed 40 percent of the family's monthly adjusted income. (See section 6.4.3 Applying Payment Standards later in this Chapter.)

PHA Subsidy
[24 CFR 982.505(b)]

The PHA will pay a monthly housing assistance payment (HAP) for a family that is equal to the lower of (1) the applicable payment standard for the family minus the family's TTP or (2) the gross rent for the family's unit minus the TTP. (See section 6.4.3 Applying Payment Standards later in this Chapter.)

Utility Reimbursement
[24 CFR 982.514(b)]

When the PHA subsidy for a family exceeds the rent to owner, the family is due a utility reimbursement. HUD permits the PHA to pay the reimbursement to the family or directly to the utility provider.

PHA Policy – Non-MTW

The PHA will make utility reimbursements to the family. However, the PHA may pay any utility reimbursement directly to the utility provider. Use of the latter is suggested when the family has a history of non-compliance with HQS due to non-payment of utilities.

PHA Policy - MTW

The PHA will make utility reimbursements to the family when and if such reimbursements are more than $25/month. The PHA will not make any utility reimbursement to a family if such reimbursement is $25 or less per month. However, the PHA may pay any utility reimbursement directly to the utility provider. Use of the latter is suggested when the family has a history of non-compliance with HQS due to non-payment of utilities.

6.4.2 Financial Hardships Affecting Minimum Rent
[24 CFR 5.630]

Overview

If the PHA establishes a minimum rent greater than zero, the PHA must grant an exemption from the minimum rent if a family is unable to pay the minimum rent because of financial hardship.

The financial hardship exemption applies only to families required to pay the minimum rent. If a family's TTP is higher than the minimum rent, the family is not eligible for a hardship exemption. If the PHA determines that a hardship exists, the family share is the highest of the remaining components of the family's calculated TTP.

HUD-Defined Financial Hardship

Financial hardship includes the following situations:

- The family has lost eligibility for or is awaiting an eligibility determination for a federal, state, or local assistance program. This includes a family member who is a noncitizen lawfully admitted for permanent residence under the Immigration and Nationality Act who would be entitled to public benefits but for Title IV of the Personal Responsibility and Work Opportunity Act of 1996.

> PHA Policy
>
> A hardship will be considered to exist only if the loss of eligibility has an impact on the family's ability to pay the minimum rent.
>
> For a family waiting for a determination of eligibility, the hardship period will end as of the first of the month following: (1) implementation of assistance, if approved, or (2) the decision to deny assistance. A family whose request for assistance is denied may request a hardship exemption based upon one of the other allowable hardship circumstances.

- The family would be evicted because it is unable to pay the minimum rent.

> PHA Policy
>
> For a family to qualify under this provision, the cause of the potential eviction must be the family's failure to pay rent to the owner or tenant-paid utilities.

- Family income has decreased because of changed family circumstances, including the loss of employment.

- A death has occurred in the family.

> PHA Policy
>
> In order to qualify under this provision, a family must describe how the death has created a financial hardship (e.g., because of funeral-related expenses or the loss of the family member's income).

Determination of Hardship

When a family requests a financial hardship exemption, the PHA must suspend the minimum rent requirement beginning the first of the month following the family's request.

> PHA Policy
>
> To qualify for a hardship exemption, a family must submit a request for a hardship exemption in writing. The request must explain the nature of the hardship and how the hardship has affected the family's ability to pay the minimum rent.
>
> The PHA will make the determination of hardship within 30 calendar days.

The PHA then determines whether the financial hardship exists and whether the hardship is temporary or long-term.

> PHA Policy
>
> The PHA defines temporary hardship as a hardship expected to last 90 days or less. Long-term hardship is defined as a hardship expected to last more than 90 days.

When the minimum rent is suspended, the family share reverts to the highest of the remaining components of the calculated TTP. The example that follows demonstrates the effect of the minimum rent exemption.

Example: Impact of Minimum Rent Exemption Assume the PHA has established a minimum rent of $50.	
Family Share – No Hardship	Family Share – With Hardship
$0 30% of monthly adjusted income $15 10% of monthly gross income N/A Welfare rent $50 Minimum rent	$0 30% of monthly adjusted income $15 10% of monthly gross income N/A Welfare rent $50 Minimum rent
Minimum rent applies. TTP = $50	Hardship exemption granted. TTP = $15

- No Financial Hardship

If the PHA determines there is no financial hardship, the PHA will reinstate the minimum rent and require the family to repay the amounts suspended.

> PHA Policy
>
> The PHA will require the family to repay the suspended amount within 30 calendar days of the PHA's notice that a hardship exemption has not been granted.

- Temporary Hardship

If the PHA determines that a qualifying financial hardship is temporary, the PHA must suspend the minimum rent for the 90-day period beginning the first of the month following the date of the family's request for a hardship exemption.

At the end of the 90-day suspension period, the family must resume payment of the minimum rent and must repay the PHA the amounts suspended. HUD requires the PHA to offer a reasonable repayment agreement, on terms and conditions established by the PHA. The PHA also may determine that circumstances have changed and the hardship is now a long-term hardship.

> PHA Policy
>
> The PHA will enter into a repayment agreement in accordance with the procedures found in CHAPTER 17 of this plan.

- Long-Term Hardship

If the PHA determines that the financial hardship is long-term, the PHA must exempt the family from the minimum rent requirement for so long as the hardship continues. The exemption will apply from the first of the month following the family's request until the end of the qualifying hardship. When the financial hardship has been determined to be long-term, the family is not required to repay the minimum rent.

> PHA Policy
>
> The hardship period ends when any of the following circumstances apply:
>
> - At an interim or regular reexamination, the family's calculated TTP is greater than the minimum rent.
>
> - For hardship conditions based on loss of income, the hardship condition will continue to be recognized until new sources of income are received that are at least equal to the amount lost. For example, if a hardship is approved because a family no longer receives a $60/month child support payment, the hardship will continue to exist until the family receives at least $60/month in income from another source or once again begins to receive the child support.

The chart below summarizes the HUD-Defined Financial Hardships and the corresponding circumstances that make a family no longer eligible for a financial hardship.

HUD- Defined Financial Hardship	Financial Hardship Ends
The family has lost eligibility for or is awaiting an eligibility determination for a federal, state, or local assistance program.	At an interim or regular reexamination, the family's calculated TTP is greater than the minimum rent.
The family would be evicted because it is unable to pay the minimum rent.	
A death has occurred in the family.	
Family income has decreased because of changed family circumstances, including the loss of employment.	For hardship conditions based on loss of income, the hardship condition will continue to be recognized until new sources of income are received that are at least equal to the amount lost.

6.4.3 Applying Payment Standards

[24 CFR 982.505]

Overview

The PHA's schedule of payment standards is used to calculate housing assistance payments for HCV families. This section covers the application of the PHA's payment standards. The establishment and revision of the PHA's payment standard schedule are covered in CHAPTER 17.

Payment standard is defined as "the maximum monthly assistance payment for a family assisted in the voucher program (before deducting the total tenant payment by the family)" [24 CFR 982.4(b)].

The payment standard for a family is the lower of (1) the payment standard for the family unit size, which is defined as the appropriate number of bedrooms for the family under the PHA's subsidy standards [24 CFR 982.4(b)], or (2) the payment standard for the size of the dwelling unit rented by the family.

If the PHA has established an exception payment standard for a designated part of an FMR area and a family's unit is located in the exception area, the PHA must use the appropriate payment standard for the exception area.

The PHA is required to pay a monthly housing assistance payment (HAP) for a family that is the lower of (1) the payment standard for the family minus the family's TTP or (2) the gross rent for the family's unit minus the TTP.

If during the term of the HAP contract for a family's unit, the rent for the unit is lowered, the PHA will recalculate the HAP using the lower of the initial payment standard or the gross rent for the unit [HCV GB, p. 7-8]. The family and landlord will be informed of the change.

Example:

A 6-person family is issued a 3BR voucher and rents a 2BR apartment, choosing to use the living area as a bedroom. The lower of the 2BR payment standard or gross rent must be used.

If the family rents a 4BR unit the lower of the 3BR payment standard or gross rent must be used.

Changes in Payment Standards

When the PHA revises its payment standards during the term of the HAP contract for a family's unit, it will apply the new payment standards in accordance with HUD regulations.

PHA Policy

See CHAPTER 17 for the PHA's policy for applying changes in payment standards when the published FMRs cause the current payment standard amounts to be outside the basic range.

Decreases

If the amount on the payment standard schedule is decreased during the term of the HAP contract, the lower payment standard generally will be used beginning at the effective date of the family's second regular reexamination following the effective date of the decrease in the payment standard.

The PHA will determine the payment standard for the family as follows:

Step 1: At the first regular reexamination following the decrease in the payment standard, the PHA will determine the payment standard for the family using the lower of the payment standard for the family unit size or the size of the dwelling unit rented by the family.

Step 2: The PHA will compare the payment standard from step 1 to the payment standard last used to calculate the monthly housing assistance payment for the family. The payment standard used by the PHA at the first regular reexamination following the decrease in the payment standard will be the higher of these two payment standards. The PHA will advise the family that the application of the lower payment standard will be deferred until the second regular reexamination following the effective date of the decrease in the payment standard.

Step 3: At the second regular reexamination following the decrease in the payment standard, the lower payment standard will be used to calculate the monthly housing assistance payment for the family unless the PHA has subsequently increased the payment standard, in which case the payment standard will be determined in accordance with procedures for increases in payment standards described below.

Increases

If the payment standard is increased during the term of the HAP contract, the increased payment standard will be used to calculate the monthly housing assistance payment for the family beginning on the effective date of the family's first regular reexamination on or after the effective date of the increase in the payment standard.

Families requiring or requesting interim reexaminations will not have their HAP payments calculated using the higher payment standard until their next regular reexamination [HCV GB, p. 7-8].

> PHA Policy – MTW
>
> The PHA will apply the current payment standard in effect on the effective date of the regular reexamination regardless of fluctuations in the payment standard from one year to the next.
>
> Families requiring or requesting interim reexaminations will have their HAP payments calculated using the payment standard in effect at their last regular reexamination.

Changes in Family Voucher Size

If there is a change in the family voucher size that would apply to a family during the HAP contract term, either due to a change in family composition, or a change in the PHA's subsidy standards (see CHAPTER 5), the family's new voucher size is used to determine the payment standard amount for the family at the family's first regular reexamination following the change in family composition [985.505].

Moves to a New Unit

If the family moves to a new unit, or a new HAP contract is executed due to changes in the lease (even if the family remains in place) the current payment standard applicable to the family will be used when the new HAP contract is processed.

Reasonable Accommodation

If a family requires a higher payment standard as a reasonable accommodation for a family member who is a person with disabilities, the PHA is allowed to establish a higher payment standard for the family within the basic range.

> PHA Policy – MTW
>
> The PHA may approve any documented and reasonable exception to payment standards as a reasonable accommodation for HCV households with disabled household members without HUD approval. This policy is utilized without regard to the percentage increase requested over the payment standard.

Low-Poverty & High-Opportunity Neighborhoods

> PHA Policy – MTW
>
> The PHA may approve other documented and reasonable exceptions to payment standards without seeking HUD approval if such requests will support participants' ability to find suitable rental housing in "low poverty, high-opportunity" neighborhoods, and clearly achieve the statutory objectives of the MTW program.

6.4.4 Applying Utility Allowances

[24 CFR 982.517]

Overview

A PHA-established utility allowance schedule is used in determining family share and PHA subsidy.

> PHA Policy
>
> The PHA will use the appropriate utility allowance for the lower of the size of dwelling unit leased by a family or the voucher size for which the family qualifies using the PHA subsidy standards.
>
> For example if a family has a 2 BR voucher and leases a 3BR unit, the PHA will apply the utility allowance for the 2 BR unit.
>
> For Project Based units, the PHA will apply the utility allowance for the unit size.

See CHAPTER 5 for information on the PHA's subsidy standards.

For policies on establishing and updating utility allowances, see 17.3.3 Utility Allowances in CHAPTER 17.

Reasonable Accommodation

HCV program regulations require a PHA to approve a utility allowance amount higher than shown on the PHA's schedule if a higher allowance is needed as a reasonable accommodation for a family member with a disability.

For example, if a family member with a disability requires such an accommodation, the PHA will approve an allowance for air-conditioning, even if the PHA has determined that an allowance for air-conditioning generally is not needed.

The family must request the higher allowance and provide the PHA with documentation of the need for the reasonable accommodation and information about the amount of additional allowance required [HCV GB, p. 18-8].

PHA Policy – Non-MTW

The PHA will follow HUD requirements regarding reasonable accommodation and utility allowances as stated above.

PHA Policy – MTW

The PHA may approve an additional utility allowance if an additional utility allowance is needed as a reasonable accommodation for a family member with a disability. For example, if a family member with a disability requires such an accommodation, the PHA may approve an allowance for air-conditioning, even if the PHA has determined that an allowance for air-conditioning generally is not needed.

In order to be considered for an additional utility allowance as a reasonable accommodation, the family must be responsible for payment of the utility. For example, if the owner pays for heat, the PHA will NOT approve a reasonable accommodation for an additional utility allowance for heat.

The family must request an additional allowance and provide the PHA with documentation of the need for the reasonable accommodation. Where applicable, the PHA will use the Department of Energy's (DOE) residential energy consumption survey data to determine the additional electricity utility allowance for households with approved reasonable accommodations. The PHA will determine reasonable accommodations for other utilities on a case by case basis.

Utility Allowance Revisions

At reexamination, the PHA must use the PHA current utility allowance schedule [24 CFR 982.517(d)(2)].

PHA Policy – Non- MTW

At regular and interim reexaminations, the PHA will use the PHA current utility allowance schedule [24 CFR 982.517(d)(2)].

The PHA may implement revised UA schedules on a specific date and time for all families provided the family has been given at least 60 days' notice of the change.

PHA Policy – MTW

At regular reexamination, the PHA will use the PHA current utility allowance schedule.

At interim reexamination, the PHA will use the utility allowance which was applied at the last regular reexamination.

The PHA may implement revised UA schedules on a specific date and time for all families provided the family has been given at least 60 days' notice of the change.

6.4.5 Prorated Assistance for Mixed Families

[24 CFR 5.520]

HUD regulations prohibit assistance to ineligible family members. A *mixed family* is one that includes at least one U.S. citizen or eligible immigrant and any number of ineligible family members. The PHA must prorate the assistance provided to a mixed family. The PHA will first determine assistance as if all family members were eligible and then prorate the assistance based upon the percentage of family members that actually are eligible.

For example, if the PHA subsidy for a family is calculated at $500 and two of four family members are ineligible, the PHA subsidy would be reduced to $250.

CHAPTER 7 : VERIFICATION

7.1 INTRODUCTION

The PHA must verify all information that is used to establish the family's eligibility and level of assistance and is required to obtain the family's consent to collect the information. Applicants and program participants must cooperate with the verification process as a condition of receiving assistance. The PHA must not pass on the cost of verification to the family.

The PHA will follow the verification guidance provided by HUD in Notice PIH 2010-19 and any subsequent guidance issued by HUD. This Chapter summarizes those requirements and provides supplementary PHA policies. The following are discussed in this Chapter:

- General verification process
- Verifying Family Information
- Verifying Income and Assets
- Verifying Mandatory Deductions

Verification policies, rules and procedures will be modified as needed to accommodate persons with disabilities. All information obtained through the verification process will be handled in accordance with the records management policies of the PHA.

7.2 GENERAL VERIFICATION REQUIREMENTS

7.2.1 Family Consent to Release of Information

[24 CFR 982.516 AND 982.551, 24 CFR 5.230]

The family must supply any information that the PHA or HUD determines is necessary to the administration of the program and must consent to PHA verification of that information [24 CFR 982.551].

Consent Forms

It is required that all adult applicants and participants sign form HUD-9886, Authorization for Release of Information. The purpose of form HUD-9886 is to facilitate automated data collection and computer matching from specific sources and provides the family's consent only for the specific purposes listed on the form. HUD and the PHA may collect information from State Wage Information Collection Agencies (SWICAs) and current and former employers of adult family members. Only HUD is authorized to collect information directly from the Internal Revenue Service (IRS) and the Social Security Administration (SSA). Adult family members must sign other consent forms as needed to collect information relevant to the family's eligibility and level of assistance.

Penalties for Failing to Consent
[24 CFR 5.232]

If any family member who is required to sign a consent form fails to do so, the PHA will deny admission to applicants and terminate assistance of participants. The family may request an informal review (applicants) or informal hearing (participants) in accordance with PHA procedures.

7.2.2 Overview of Verification Requirements

HUD's Verification Hierarchy
[Notice PIH 2010-19]

HUD authorizes the PHA to use six methods to verify family information and specifies the circumstances in which each method will be used. In general HUD requires the PHA to use the most reliable form of verification that is available and to document the reasons when the PHA uses a lesser form of verification.

PHA Policy

In order of priority, the forms of verification that the PHA will use are:

- Up-front Income Verification (UIV) using HUD's Enterprise Income Verification (EIV) system
- Up-front Income Verification (UIV) using a non-HUD system
- Written Third-Party Verification (may be provided by applicant or participant)
- Written Third-party Verification Form
- Oral Third-party Verification
- Self-Certification

Each of the verification methods is discussed in subsequent sections below.

Requirements for Acceptable Documents

PHA Policy

Any documents used for verification must be the original (not photocopies) and generally must be dated within sixty (60) days of the PHA request date. The documents must not be damaged, altered or in any way illegible.

The PHA will accept documents dated more than sixty (60) days after the PHA request date if the document represents the most recent scheduled report from a source. For example, if the holder of a pension annuity provides semi-annual reports, the PHA would accept the most recent report.

Print-outs from Web pages are considered original documents.

The PHA staff member who views the original document must make a photocopy, enter the date the original was viewed, and sign the copy.

Any family self-certifications must be made in a format acceptable to the PHA and must be signed by the household member whose information or status is being verified. The preferred method is to have the certification/statement signed in the presence of a PHA staff member. If not signed in the PHA's presence, then the self-certification must be under penalty of perjury. If in their sound discretion, the PHA staff member determines that it is necessary, the person who is making the declaration may be required to have the certification/statement signed before a Notary Public.

File Documentation

The PHA must document in the file how the figures used in income and rent calculations were determined. All verification attempts, information obtained, and decisions reached during the verification process will be recorded in the family's file in sufficient detail to demonstrate that the PHA has followed all of the verification policies set forth in this plan. The record should be sufficient to enable a staff member or HUD reviewer to understand the process followed and conclusions reached.

PHA Policy

The PHA will document, in the family file, the following:

- Reported family annual income
- Value of assets
- Expenses related to deductions from annual income
- Other factors influencing the adjusted income or income-based rent determination

When the PHA is unable to obtain 3rd party verification, the PHA will document in the family file the reason that the third-party verification was not available. [24 CFR 960.259(c) (1); Notice PIH 2010-19]

7.2.3 Up-Front Income Verification (UIV)

Up-front income verification (UIV) refers to the PHA's use of the verification tools available from independent sources that maintain computerized information about earnings and benefits. UIV will be used to the extent that these systems are available to the PHA.

There may be legitimate differences between the information provided by the family and UIV-generated information. If the family disputes the accuracy of UIV data, no adverse action can be taken until the PHA has independently verified the UIV information and the family has been granted an opportunity to contest any adverse findings through the informal review/hearing process of the PHA.

See CHAPTER 6 for the PHA's policy on the use of UIV/EIV in Section 6.2.4 Basis of Annual Income Projection.

7.2.4 Upfront Income Verification Using HUD's Enterprise Income Verification (EIV) System

HUD's EIV system contains data showing earned income, unemployment benefits, social security benefits, and SSI benefits for participant families. HUD requires the PHA to use the EIV system in its entirety. The following policies apply to the use of HUD's EIV system.

Safeguarding EIV Data Within the Tenant File

PHA Policy

To prevent prohibited disclosure to unauthorized viewers of EIV data RAAs (from the inception of RAA direct access on-line to EIV records and going forward) must take measures to retain all timely EIV record hard copies and electronic copies in a secure fashion. The PHA will maintain EIV records consistent with HUD EIV security requirements. It will be acceptable to maintain within the general contents of the Tenant File at the RAA the EIV records labeled as such in a separate folder (color-coded or marked "Confidential" or "For Official Use Only").

For electronic files, since Tracker Systems is a password enabled platform no separation of records is needed; however, the person whose income the EIV record is identified with should be the only family member to whom it is disclosed, unless there is a consent to disclose to other family members.

These specific measures are intended to avoid inadvertent disclosures, particularly where multiple adults are in the household and the data should be viewed only by the person with whom it is identified.

EIV Income Reports

The data shown on income reports is updated quarterly. Data may be between 3 and 6 months old at the time reports are generated.

PHA Policy

The PHA will obtain income reports for regular and interim reexams. The PHA will use EIV Income Reports, as required by HUD, to verify and calculate applicable income and expenses.

Income reports will be compared to family-provided information as part of the regular and interim reexamination process. EIV Income reports may be used to verify and calculate SS, SSI benefits and Medicare insurance premiums, but generally will not be used to calculate earned income and unemployment benefits. As applicable, Income reports may also be used to meet the regulatory requirement for third party verification. Income reports will be used to validate income from sources such as wages and unemployment benefits.

Income reports will be used during the regular and interim reexamination process to identify any discrepancies between tenant reported income and income shown in the EIV system. EIV will also be used to verify that families claiming zero income are not receiving income from any of the EIV reported sources.

Income reports will be retained in participant files with the applicable regular or interim reexamination documents.

Pursuant to PIH.RHIIP direction of October 13, 2010, if there is no EIV Income Report available -- or the EIV income report indicates “Failed EIV Prescreening” or “Pending Verification”, the PHA will print the “available” information and retain it in the file to document the use of EIV. The PHA will use other forms of verification as outlined in PIH Notice 2010-19”.

When the PHA determines through income reports and third-party verification that a family has concealed or under-reported income, corrective action will be taken pursuant to the policies in CHAPTER 15.

EIV Discrepancies

Discrepancies between tenant reported income and information reported on the EIV Income Report will be investigated by the PHA.

> PHA Policy
>
> EIV Income Reports will be compared to family-provided information in order to identify discrepancies.
>
> The PHA staff will review EIV discrepancies during regular and interim reexaminations.
>
> When it appears that a family may have concealed or under-reported income, the PHA will request written third-party verification of the income in question.
>
> In some circumstances, discrepancies between family-provided information and the EIV Income Report are not the result of families concealing or under-reporting income.
>
> When the PHA determines through file review and third party verification that a family has concealed or under-reported income, corrective action will be taken pursuant to the policies in CHAPTER 15.

EIV Identity Verification

The EIV system verifies tenant identities against SSA records. These records are compared to PIC data for a match on social security number, name, and date of birth.

PHAs are required to use EIV's Identity Verification Report on a monthly basis to improve the availability of income information in EIV [Notice PIH 2010-3]

When identity verification for a participant fails, a message will be displayed within the EIV system and no income information will be displayed.

> PHA Policy
>
> The PHA will identify participants whose identity verification has failed by reviewing EIV's Identity Verification Report on a monthly basis.
>
> The PHA will attempt to resolve PIC/SSA discrepancies by obtaining appropriate documentation from the participant. When the PHA determines that discrepancies exist due to PHA errors such as spelling errors or incorrect birth dates, the errors will be corrected promptly.

7.2.5 Third-Party Written and Oral Verification

HUD's current verification hierarchy defines two types of written third-party verification. The more preferable form, "written third-party verification," consists of an original document generated by a third-party source, which may be received directly from a third-party source or provided to the PHA by the family. If written third-party verification is not available, the PHA must attempt to obtain a "written third-party verification form." This is a standardized form used to collect information from a third party.

Written Third-Party Verification
[Notice PIH 2010-19]

Written third-party verification documents must be original and authentic and may be supplied by the family or received from a third-party source.

Examples of acceptable tenant-provided documents include, but are not limited to: pay stubs, payroll summary reports, employer notice or letters of hire and termination, SSA benefit verification letters, bank statements, child support payment stubs, welfare benefit letters and/or printouts, and unemployment monetary benefit notices.

The PHA is required to obtain at least two consecutive pay stubs for determining annual income from wages.

The PHA may reject documentation provided by the family if the document is not an original, if the document appears to be forged, or if the document is altered, mutilated, or illegible.

PHA Policy

Third-party documents provided by the family must be dated within 60 days of the PHA request date.

If the PHA determines that third-party documents provided by the family are not acceptable, the PHA will explain the reason to the family and request additional documentation.

As verification of earned income, the PHA will request pay stubs according to the pay frequencies identified below. Pay stubs must be dated within 60 days of the PHA request.

Frequency of Pay	**Number of Consecutive Pay Stubs**
Weekly	6
Bi Weekly	3
Monthly	2

Written Third-Party Verification Form

When upfront verification is not available and the family is unable to provide written third-party documents, the PHA must request a written third-party verification form. HUD's position is that this traditional third-party verification method presents administrative burdens and risks which may be reduced through the use of family-provided third-party documents.

A written third-party verification form is mandatory when there is an unreported source of income or a substantial difference in reported income ($2400 annually or more) and there is no UIV or tenant-provided documentation to support the income discrepancy.

The PHA has a library of forms to be used for written third party verifications.

PHAs may mail, fax, or e-mail third-party written verification form requests to third-party sources.

> PHA Policy
>
> The PHA will send third-party verification forms directly to the third party.
>
> Third-party verification forms will be sent when third-party verification documents are unavailable or are rejected by the PHA.

Oral Third-Party Verification
[Notice PIH 2010-19]

For third-party oral verification, PHAs contact sources, identified by UIV techniques or by the family, by telephone or in person.

Oral third-party verification is mandatory if neither form of written third-party verification is available.

Third-party oral verification may be used when requests for written third-party verification forms have not been returned within a reasonable time—e.g., 10 business days.

PHAs should document in the file the date and time of the telephone call or visit, the name of the person contacted, the telephone number, as well as the information confirmed.

> PHA Policy
>
> In collecting third-party oral verification, PHA staff will record in the family's file the name and title of the person contacted, the date and time of the conversation (or attempt), the telephone number used, and the facts provided.
>
> When any source responds verbally to the initial written request for verification, the PHA will accept the verbal response as oral verification.

When Third-Party Verification is Not Required
[Notice PIH 2010-19]

Third-party verification may not be available in all situations. HUD has acknowledged that it may not be cost-effective or reasonable to obtain third-party verification of income, assets, or expenses when these items would have a minimal impact on the family's total tenant payment.

> PHA Policy
>
> If the family cannot provide original documents, and there is a service charge for obtaining third party verification, the PHA will deem third party verification unavailable. The PHA will use other forms of verification according to the required verification hierarchy. The cost of verification will not be passed on to the family.
>
> The cost of postage and envelopes to obtain third-party verification of income, assets, and expenses is not an unreasonable cost [VG, p. 18].

- Primary Documents

Third-party verification is not required when legal documents are the primary source, such as a birth certificate or other legal documentation of birth.

- Imputed Assets

HUD permits PHAs to accept a self-certification from a family as verification of assets disposed of for less than fair market value [HCV GB, p. 5-28].

> PHA Policy
>
> The PHA will accept a self-certification from a family as verification of assets disposed of for less than fair market value.

7.2.6 Self-Certification

Self-certification, or "tenant declaration," is used as a last resort when the PHA is unable to obtain third-party verification.

When the PHA relies on a tenant declaration for verification of income, assets, or expenses, the family's file must be documented to explain why third-party verification was not available.

PHA Policy

When information cannot be verified by a third party or by review of documents, family members will be required to submit self-certifications attesting to the accuracy of the information they have provided to the PHA.

The PHA may require a family to certify that a family member does not receive a particular type of income or benefit.

All self-certifications must be made in a format acceptable to the PHA and must be signed by the household member whose information or status is being verified. The preferred method is to have the certification/statement signed in the presence of a PHA staff member. If not signed in the PHA's presence, then the self-certification must be under penalty of perjury. If in their sound discretion, the PHA staff member determines that it is necessary, the person who is making the declaration may be required to have the certification/statement signed before a Notary Public.

7.3 VERIFYING FAMILY INFORMATION

7.3.1 Verification of Legal Identity

PHA Policy

The PHA will require families to furnish verification of legal identity for each household member.

Verification of Legal Identity for Adults	Verification of Legal Identity for Children
• Certificate of birth, naturalization papers • Church issued baptismal certificate • Current, valid driver's license or Department of Motor Vehicles identification card • U.S. military discharge (DD 214) • U.S. passport • Employer Identification Card	• Certificate of birth • Adoption papers • Custody agreement • Health and Human Services ID • School records
If a document submitted by a family is illegible or otherwise questionable, more than one of these documents may be required. If none of these documents can be provided and at the PHA's discretion, a third party who knows the person may attest to the person's identity. The certification must be provided in a format acceptable to the PHA. The preferred method is to have the certification/statement signed in the presence of a PHA staff member. If not signed in the PHA's presence, then the self-certification must be under penalty of perjury. If in their sound discretion, the PHA staff member determines that it is necessary, the person who is making the declaration may be required to have certification/statement signed before a Notary Public. Legal identity will be verified on an as needed basis.	

7.3.2 Social Security Numbers

[24 CFR 5.216 and Notice PIH 2010-3]

The family must provide documentation of a valid social security number (SSN) for each member of the household, with the exception of individuals who do not contend eligible immigration status. Exemptions also include, existing program participants who were at least 62 years of age as of January 31, 2010, and had not previously disclosed an SSN.

Documents used to Verify Social Security Numbers

Social security numbers must be verified only once during continuously-assisted occupancy.

> PHA Policy
>
> The PHA will verify each disclosed SSN by:
>
> - Obtaining documentation from applicants and participants that is acceptable as evidence of social security numbers
> - Making a copy of the original documentation submitted, returning it to the individual, and retaining a copy in the file folder.

The PHA must accept the following documentation as acceptable evidence of the social security number:

- An original SSN card issued by the Social Security Administration (SSA)
- An original SSA-issued document, which contains the name and SSN of the individual
- An original document issued by a federal, state, or local government agency, which contains the name and SSN of the individual, along with other identifying information of the individual
- Such other evidence of the SSN as HUD may prescribe in administrative instructions

The PHA may only reject documentation of an SSN provided by an applicant or participant if the document is not an original document, if the original document has been altered, mutilated, or is not legible, or if the document appears to be forged.

> PHA Policy
>
> The PHA will explain to the applicant or participant the reasons the document is not acceptable and request that the individual obtain and submit acceptable documentation of the SSN to the PHA within 60 days.
>
> Once an individual's status is classified as "verified" in HUD's EIV system, the PHA will retain the SS number documentation in the tenant file.

Addition of a New Household Member

When the participant requests to add a new household member, who is at least 6 years of age, or who is under the age of 6 and has an SSN, the participant must provide the complete and accurate SSN assigned to each new member at the time of reexamination or recertification, in addition to the documentation required to verify it. The PHA may not add the new household member until such documentation is provided.

When a participant requests to add a new household member who is under the age of 6 and has not been assigned an SSN, the participant must provide the SSN assigned to each new child and the required documentation within 90 calendar days of the child being added to the household. If the family is unable to disclose and provide evidence of the SSN within 90 calendar days, the PHA will grant the family an additional 90-day period to comply with the SSN disclosure and documentation requirement, if the PHA determines that the participant's failure to comply was due to unforeseen circumstances and was outside of the participant's control. During the period the PHA is awaiting documentation of the SSN, the child will be counted as part of the assisted household and will be entitled to all of the benefits of being a household member during the time allotted for the family to comply with the SSN disclosure and documentation requirements. Upon expiration of the time period, if the family has not complied with the SSN disclosure and documentation requirements, the PHA will terminate the family's assistance.

7.3.3 Documentation of Age

A birth certificate or other official record of birth is the preferred form of age verification for all family members. For elderly family members an original document that provides evidence of the receipt of social security retirement benefits is acceptable.

> PHA Policy
>
> If an official record of birth or evidence of social security retirement benefits cannot be provided, the PHA will require the family to submit other documents that support the reported age of the family member (e.g., school records, driver's license if birth year is recorded).
>
> If a family asserts credibly that no form whatsoever of birth record exists for a member, then the PHA will require a self-certification detailing at minimum the reported member's full name, parent(s), precise date of birth, and actual place of birth.

Age must be verified only once during continuously-assisted occupancy.

7.3.4 Family Relationships

Applicants and program participants are required to identify the relationship of each household member to the head of household. Definitions of the primary household relationships are provided in the CHAPTER 3.

> PHA Policy
>
> Family relationships are verified only to the extent necessary to determine a family's eligibility and level of assistance. Certification by the head of household normally is sufficient verification of family relationships.

Marriage

PHA Policy

Certification by the head of household is normally sufficient verification.

If the PHA has reasonable doubts about a marital relationship, the PHA will require the family to document the marriage.

A marriage certificate generally is required to verify that a couple is married.

In the case of a common law marriage, the couple must demonstrate that they hold themselves to be married (e.g., by telling the community they are married, calling each other husband and wife, using the same last name, filing joint income tax returns).

Separation or Divorce

PHA Policy

Certification by the head of household is normally sufficient verification. If the PHA has reasonable doubts about a separation or divorce, the PHA will require the family to document the divorce, or separation.

A certified copy of a divorce decree, signed by a court officer, is required to document that a couple is divorced.

A copy of a court-ordered maintenance or other court record is required to document a separation.

If no court document is available, documentation from a community-based agency will be accepted.

Absence of Adult Member

PHA Policy

If an adult member who was formerly a member of the household is reported to be permanently absent, the family must provide evidence to support that the person is no longer a member of the family (e.g., documentation of another address at which the person resides such as a lease or utility bill). Under appropriate circumstances, such as incarceration of a family member, the certification of Head of Household may be sufficient in the discretion of the PHA if the “proof of a negative” becomes as a practical matter not reasonable to obtain.

Foster Children and Foster Adults

PHA Policy

The PHA will accept an official record subject to PHA discretion to seek third-party verification from the state or local government agency responsible for the placement of the individual with the family is required.

7.3.5 Verification of Student Status

General Requirements

PHA Policy

The PHA requires families to provide information about the student status of all students who are 18 years of age or older. This information will be verified only if:

- The family reports full-time student status for an adult other than the head, spouse, or co-head.
- The family reports child care expenses to enable a family member to further his or her education.
- The family includes a student enrolled in an institution of higher education.

Restrictions on Assistance to Students Enrolled in Institutions of Higher Education

This section applies only to students who are seeking assistance on their own, separately from their parents. It does not apply to students residing with parents who are seeking or receiving HCV assistance.

PHA Policy

In accordance with the verification hierarchy described in the section on 7.2.2 Overview of Verification Requirements, the PHA will determine whether the student is exempt from the restrictions in 24 CFR 5.612 by verifying any one of the following exemption criteria:

- The student is enrolled at an educational institution that does not meet the definition of institution of higher education in the Higher Education Act of 1965 (see Exhibit 3-2: Definition of Institution of Higher Education).
- The student is at least 24 years old.
- The student is a veteran, as defined 3.3.6 Students Enrolled in Institutions of Higher Education.
- The student is married.
- The student has at least one dependent child, as defined in 3.3.6 Students Enrolled in Institutions of Higher Education.
- The student is a person with disabilities, as defined in CHAPTER 3, and was receiving assistance prior to November 30, 2005.

If the PHA cannot verify at least one of these exemption criteria, the PHA will conclude that the student is subject to the restrictions on assistance at 24 CFR 5.612. In addition to verifying the student's income eligibility, the PHA will then proceed to verify either the student's parents' income eligibility (see Section 7.4.9 Parental Income of Students Subject to Eligibility Restrictions the student's independence from his/her parents (see Section on Independent Student below).

Independent Student

PHA Policy

The PHA will verify a student's independence from his/her parents to determine that the student's parents' income is not relevant for determining the student's eligibility by doing all of the following:

- Either reviewing and verifying previous address information to determine whether the student has established a household separate from his/her parents for at least one year or reviewing and verifying documentation relevant to determining whether the student meets the U.S. Department of Education's definition of independent student in section Independent Student of CHAPTER 3)
- Reviewing prior year income tax returns to verify whether a parent has claimed the student as a dependent
- Requesting and obtaining written certification directly from the student's parents identifying the amount of support they will be providing to the student, even if the amount of support is $0.

7.3.6 Documentation of Disability

The PHA must verify the existence of a disability in order to allow certain income disallowances and deductions from income. The PHA is not permitted to inquire about the nature or extent of a person's disability [24 CFR 100.202(c)]. The PHA may not inquire about a person's diagnosis or details of treatment for a disability or medical condition. If the PHA receives a verification document that provides such information, the PHA will not place this information in the generally accessible tenant file. Under no circumstances will the PHA request a participant's medical record(s). For more information on health care privacy laws, see the Department of Health and Human Services' website at www.os.dhhs.gov.

The above cited regulation does not prohibit the following inquiries, provided these inquiries are made of all applicants, whether or not they are persons with disabilities [VG, p. 24]:

- Inquiry into an applicant's ability to meet the requirements of ownership or tenancy
- Inquiry to determine whether an applicant is qualified for a dwelling available only to persons with disabilities or to persons with a particular type of disability
- Inquiry to determine whether an applicant for a dwelling is qualified for a priority available to persons with disabilities or to persons with a particular type of disability
- Inquiring whether an applicant for a dwelling is a current illegal abuser or addict of a controlled substance
- Inquiring whether an applicant has been convicted of the illegal manufacture or distribution of a controlled substance

Family Members Receiving SSA Disability Benefits

Verification of the receipt of disability benefits from the Social Security Administration (SSA) is sufficient verification of disability for the purpose of qualifying for waiting list preferences (if applicable) or certain income disallowances and deductions [VG, p. 23].

> PHA Policy
>
> For family members claiming disability who receive disability benefits from the SSA, the PHA will attempt to obtain information about disability benefits through the HUD Enterprise Income Verification (EIV) system.
>
> If documentation from HUD's EIV System is not available, the PHA will request a current (dated within 60 days of the PHA request date) SSA benefit verification letter from each family member claiming disability status. If the family is unable to provide the document(s), the PHA will ask the family to request a benefit verification letter by either calling SSA at 1-800-772-1213, or by requesting it from www.ssa.gov.
>
> Once the applicant or participant receives the benefit verification letter they will be required to provide it to the PHA.
>
> Verification of receipt of disability benefits under the Commonwealth of Massachusetts Emergency Aid to the Elderly, Disabled, and Children (EAEDC).

Family Members Not Receiving SSA Disability Benefits

Receipt of veteran's disability benefits, worker's compensation, or other non-SSA benefits based on the individual's claimed disability are not sufficient verification that the individual meets HUD's definition of disability in 24 CFR 5.603.

> PHA Policy
>
> For family members claiming disability who do not receive disability benefits from the SSA, a knowledgeable professional must provide third-party verification that the family member meets the HUD definition of disability. See Section 3.2.9 Persons with Disabilities and Disabled Family for the HUD definition of disability. The knowledgeable professional will verify whether the family member does or does not meet the HUD definition.

7.3.7 Citizenship or Eligible Immigration Status

[24 CFR 5.508]

Overview

Housing assistance is not available to persons who are not citizens, nationals, or eligible immigrants.

Prorated assistance is provided for "mixed families" containing both eligible and ineligible persons. A detailed discussion of eligibility requirements is in the Eligibility chapter. This Chapter discusses HUD and PHA verification requirements related to citizenship status.

The family must provide a certification that identifies each family member as a U.S. citizen, a U.S. national, an eligible noncitizen or an ineligible noncitizen and submit the documents discussed below for each family member. Once eligibility to receive assistance has been verified for an individual it need not be collected or verified again during continuously-assisted occupancy. [24 CFR 5.508(g)(5)]

U.S. Citizens and Nationals

HUD requires a declaration for each family member who claims to be a U.S. citizen or national. The declaration must be signed personally by any family member 18 or older and by a guardian for minors.

The PHA may request verification of the declaration by requiring presentation of a birth certificate, United States passport or other appropriate documentation.

> PHA Policy
>
> Family members who claim U.S. citizenship or national status will not be required to provide additional documentation unless the PHA receives information indicating that an individual's declaration may not be accurate.

Eligible Immigrants
[HCV GB, pp. 5-3 and 5-7]

All family members claiming eligible immigration status must declare their status in the same manner as U.S. citizens and nationals.

The documentation required for eligible noncitizens varies depending upon factors such as the date the person entered the U.S., the conditions under which eligible immigration status has been granted, age, and the date on which the family began receiving HUD-funded assistance. Exhibit 7-1: Summary of Documentation Requirements for Non-Citizens summarizes documents family members must provide.

For family members age 62 or older who claim to be eligible immigrants, proof of age is required in the manner described in the Section 7.3.3 Documentation of Age. No further verification of eligible immigration status is required.

For family members under the age of 62 who claim to be eligible immigrants, the PHA must verify immigration status with the United States Citizenship and Immigration Services (USCIS).

The PHA will follow all USCIS protocols for verification of eligible immigration status.

7.3.8 Verification of Preference Status

The PHA must verify any preferences claimed by an applicant.

> PHA Policy
>
> The PHA will offer a preference to any family that has been terminated from its HCV program due to insufficient program funding. The PHA will verify this preference using the PHA's termination records.

7.4 VERIFYING INCOME AND ASSETS

CHAPTER 6 of this plan describes in detail the types of income that are included and excluded and how assets and income from assets are handled. Any assets and income reported by the family must be verified. This part provides PHA policies that supplement the general verification procedures already specified in this Chapter.

7.4.1 Earned Income

Tips

> PHA Policy
>
> Unless tip income is included in a family member's W-2 by the employer, persons who work in industries where tips are standard will be required to sign a certified estimate of tips received for the prior year and tips anticipated to be received in the coming year.

Business and Self-Employment Income

PHA Policy

Business owners and self-employed persons will be required to provide:

- An audited financial statement for the previous fiscal year if an audit was conducted. If an audit was not conducted, a statement of income and expenses must be submitted and the business owner or self-employed person must certify to its accuracy.

- All schedules, including but not limited to Schedule C, completed for filing federal and local taxes in the preceding year.

- If accelerated depreciation was used on the tax return or financial statement, an accountant's calculation of depreciation expense, computed using straight-line depreciation rules.

The PHA will provide a format for any person who is unable to provide such a statement to record income and expenses for the coming year. The business owner/self-employed person will be required to submit the information requested and to certify to its accuracy at all future reexaminations.

At any reexamination the PHA may request documents that support submitted financial statements such as manifests, appointment books, cash books, or bank statements.

If a family member has been self-employed less than three (3) months, the PHA will accept the family member's certified estimate of income and schedule an interim reexamination in three (3) months.

If the family member has been self-employed for three (3) to twelve (12) months the PHA will require the family to provide documentation of income and expenses for this period and use that information to project income.

7.4.2 Periodic Payments and Payments in Lieu of Earnings

Social Security/SSI Benefits

PHA Policy

To verify the SS/SSI benefits of applicants, the PHA will request a current (dated within 60 days of the PHA request date) SSA benefit verification letter from each family member that receives social security benefits. If the family is unable to provide the document(s), the PHA will help the applicant request a benefit verification letter from SSA's Web site at www.socialsecurity.gov or ask the family to request one by calling SSA at 1-800-772-1213. Once the applicant has received the benefit verification letter they will be required to provide it to the PHA.

To verify the SS/SSI benefits of participants, the PHA will obtain information about social security/SSI benefits through the HUD EIV System, and confirm with the participant(s) that the current listed benefit amount is correct. If the participant disputes the EIV-reported benefit amount, or if benefit information is not available in HUD systems, the PHA will request a current (dated within 60 days from the date of receipt by the PHA) SSA benefit verification letter from each family member that receives social security benefits. If the family is unable to provide the document(s) the PHA will help the participant request a benefit verification letter from SSA's Web site at www.socialsecurity.gov or ask the family to request one by calling SSA at 1-800-772-1213. Once the participant has received the benefit verification letter they will be required to provide it to the PHA.

Alimony or Child Support

PHA Policy

PHA will verify child support or alimony using the hierarchy below:

- Printout of payment history or current benefit amount from DTA, DOR or other state or local child support enforcement agency
- Copy of the receipts and/or payment stubs
- Third-party verification form from the state or local child support enforcement agency
- Third-party verification from the person paying the support
- Family's self-certification of amount received and of the likelihood of support payments being received in the future, or that support payments are not being received.

Note: Families are not required to undertake independent enforcement action.

7.4.3 Assets and Income from Assets

Asset Self Certification

PHA Policy-MTW

The PHA will accept a self-certification from a family as verification of assets valued up to $50,000. Assets with a cash value greater than $50,000 will be subject to the verification requirements imposed under HUD regulations. See Section 6.2.11 Assets for guidance on calculating asset income for MTW households.

PHA Policy-Non-MTW

The PHA will accept a family's declaration of the amount of assets equal to or less than $5,000, and the amount of income expected to be received from those assets. Where the family has net family assets equal to or less than $5000, the PHA will not request supporting documentation (e.g. bank statements) from the family to confirm the assets or the amount of income expected to be received from those assets. Where the family has net family assets in excess of $5000, the PHA will obtain supporting documentation (e.g. bank statements) from the family to verify the assets. Any assets will continue to be reported on HUD Form 50058.

Assets Disposed of for Less than Fair Market Value

The family must certify whether any assets have been disposed of for less than fair market value in the preceding two years. The PHA needs to verify only those certifications that warrant documentation [HCV GB, p. 5-28].

PHA Policy

The PHA will verify the value of assets disposed of only if:

- The PHA does not already have a reasonable estimation of its value from previously collected information, or
- The amount reported by the family in the certification appears obviously in error.

Example 1: An elderly participant reported a $10,000 certificate of deposit at the last annual reexamination and the PHA verified this amount. Now the person reports that she has given this $10,000 to her son. The PHA has a reasonable estimate of the value of the asset; therefore, recertification of the value of the asset is not necessary.

Example 2: A family member has disposed of its 1/4 share of real property located in a desirable area and has valued her share at approximately 5,000. Based upon market conditions, this declaration does not seem realistic. Therefore, the PHA will verify the value of this asset.

7.4.4 Net Income from Rental Property

PHA Policy

The family must provide:

A current executed lease for the property that shows the rental amount or certification from the current tenant

A self-certification from the family members engaged in the rental of property providing an estimate of expenses for the coming year and the most recent IRS Form 1040 with Schedule E (Rental Income). If schedule E was not prepared, the PHA will require the family members involved in the rental of property to provide a self-certification of income and expenses for the previous year and may request documentation to support the statement including: tax statements, insurance invoices, bills for reasonable maintenance and utilities, and bank statements or amortization schedules showing monthly interest expense.

7.4.5 Retirement Accounts

PHA Policy

The PHA will accept written third-party documents supplied by the family as evidence of the status of retirement accounts.

The type of original document that will be accepted depends upon the family member's retirement status.

Before retirement, the PHA will accept an original document from the entity holding the account with a date that shows it is the most recently scheduled statement for the account but in no case earlier than 6 months from the effective date of the examination.

Upon retirement, the PHA will accept an original document from the entity holding the account that reflects any distributions of the account balance, any lump sums taken and any regular payments.

After retirement, the PHA will accept an original document from the entity holding the account dated no earlier than 12 months before that reflects any distributions of the account balance, any lump sums taken and any regular payments.

7.4.6 Income from Excluded Sources

A detailed discussion of excluded income is provided in CHAPTER 6.

The PHA must obtain verification for income exclusions only if, without verification, the PHA would not be able to determine whether the income is to be excluded. For example: If a family's 16 year old has a job at a fast food restaurant, the PHA will confirm that PHA records

verify the child's age but will not require third-party verification of the amount earned. However, if a family claims the earned income disallowance for a source of income, both the source and the income must be verified.

PHA Policy

The PHA will reconcile differences in amounts reported by the third party and the family only when the excluded amount is used to calculate the family share (as is the case with the earned income disallowance). In all other cases, the PHA will report the amount to be excluded as indicated on documents provided by the family.

7.4.7 Zero Annual Income Status

PHA Policy

As a practical matter, a family must have income from a finite source or from another party that is paying for its living expenses. Rent/utility payments paid on behalf of the family and other cash or non-cash contributions provided on a recurring basis may be counted as income depending on the duration and circumstances.

Families claiming no annual income will be required to execute verification forms to determine that certain forms of income such as public benefits (outside the realm of EIV) from State sources (e.g. TAFDC or EAEDC) are not being received by the household.

Zero Income Verification Requirements

PHA Policy

The PHA will require the following when the household first claims zero income and at each successive regular reexamination at which the family is claiming zero income:

- Completion of a Financial Hardship/Zero Income Worksheet
- Completion of a zero income self-certification by each adult household member;
- EIV check to confirm that no household member has any income;
- 3rd party DTA verification to confirm that no benefits are received;
- 3rd party verification from DOR to confirm that no child support/alimony is paid;
- Third party verification of taxes from the IRS (when EIV is not available); and
- Completion of a HUD Form 9886

Every 6 months after the claim of zero income, the PHA will run an EIV check on households and take action as required for unreported or underreported income. This process will continue until the family no longer reports zero income.

The PHA will require the following for zero income households at the one year anniversary date from the claim of zero income, assuming no changes in income or benefits has occurred:

- Completion of a Financial Hardship/Zero Income worksheet
- Completion of a zero income self-certification by each adult household member;
- EIV check to confirm that no household member has any income;
- Third party verification of taxes from the IRS (when EIV is not available); and
- Completion of a HUD Form 9886.

7.4.8 Student Financial Assistance

For a discussion of student financial assistance included and excluded in annual income, see 6.2.17 Student Financial Assistance in CHAPTER 6.

Excluded amounts are verified only if, without verification, the PHA would not be able to determine whether or to what extent the income is to be excluded.

PHA Policy

For a student subject to having a portion of his/her student financial assistance included in annual income in accordance with 24 CFR 5.609(b)(9), the PHA will request written third-party verification of both the source and the amount.

Family-provided documents from the educational institution attended by the student will be requested, as well as documents generated by any other person or entity providing such assistance, as reported by the student.

In addition, the PHA will request written verification of the student's tuition amount.

If the PHA is unable to obtain third-party written verification of the requested information, the PHA will pursue other forms of verification following the verification hierarchy.

7.4.9 Parental Income of Students Subject to Eligibility Restrictions

PHA Policy

If the PHA is required to determine the income eligibility of a student's parents, the PHA will request an income declaration and certification of income from the appropriate parent(s) (as determined in CHAPTER 3). The PHA will send the request directly to the parents, who will be required to certify to their income under penalty of perjury.

The parents will be required to submit the information directly to the PHA. The required information must be submitted (postmarked) within 15 business days of the date of the PHA's request or within any extended timeframe approved by the PHA.

The PHA reserves the right to request and review supporting documentation at any time if it questions the declaration or certification.

Supporting documentation may include, but is not limited to, Internal Revenue Service (IRS) tax returns, consecutive and original pay stubs, bank statements, pension benefit statements, benefit award letters, and other official and authentic documents from a federal, state, or local agency.

7.5 VERIFYING MANDATORY DEDUCTIONS

7.5.1 Dependent and Elderly/Disabled Household Deductions

The dependent and elderly/disabled family deductions require only that the PHA verify that the family members identified as dependents or elderly/disabled persons meet the statutory definitions. No further verifications are required.

Dependent Deduction

See Section 6.3.2 Dependent Deduction for a full discussion of this deduction. The PHA must verify that:

- Any person under the age of 18 for whom the dependent deduction is claimed is not the head, spouse, or co-head of the family and is not a foster child

- Any person age 18 or older for whom the dependent deduction is claimed is not a foster adult or live-in aide, and is a person with a disability or a full time student

Elderly/Disabled Family Deduction

See CHAPTER 3 Sections 3.2.8 Elderly and Near-Elderly Persons, and Elderly Family and 3.2.9 Persons with Disabilities and Disabled Family for a definition of elderly and disabled families and Section 6.3.3 Elderly or Disabled Family Deduction in CHAPTER 6 for a discussion of the deduction. The PHA must verify that the head, spouse, or co-head is 62 years of age or older or a person with disabilities.

7.5.2 Medical Expense Deduction

Policies related to the calculation of medical expenses are found in 6.3.4 Medical Expenses Deduction. The amount of the deduction will be verified following the standard verification procedures described in Section 7.2 General Verification Requirements.

Amount of Expense

PHA Policy

Medical expenses will be verified through:

- Written third-party documents provided by the family, such as pharmacy printouts or receipts.
- Written third-party verification forms, if the family is unable to provide acceptable documentation.
- Oral third-party verification if third party verification forms are not returned by the provider.
- If third-party or document review is not possible, written family certification as to costs anticipated to be incurred during the upcoming 12 months.

The PHA will make a best effort to determine what expenses from the past are likely to continue to occur in the future. The PHA will also accept evidence of monthly payments or total payments that will be due for medical expenses during the upcoming 12 months.

In addition, the PHA must verify that:

- The household is eligible for the deduction.
- The costs to be deducted are qualified medical expenses.
- The expenses are not paid for or reimbursed by any other source.
- Costs incurred in past years are counted only once.

Eligible Household

The medical expense deduction is permitted only for households in which the head, spouse, or co-head is at least 62, or a person with disabilities. The PHA must verify that the family meets the definition of an elderly or disabled family provided in the Eligibility chapter and as described in this Chapter in section 7.5.1 Dependent and Elderly/Disabled Household Deductions.

Qualified Expenses

To be eligible for the medical expenses deduction, the costs must qualify as medical expenses. See CHAPTER 6 for the PHA's policy on what counts as a medical expense.

Unreimbursed Expenses

To be eligible for the medical expenses deduction, the costs must not be reimbursed by another source.

> PHA Policy
>
> The family will be required to certify that the medical expenses are not paid or reimbursed to the family from any source.

Expenses Incurred in Past Years

> PHA Policy
>
> When anticipated costs are related to on-going payment of medical bills incurred in past years, the PHA will determine:
>
> - The anticipated repayment schedule
> - The amounts paid in the past, and
> - Whether the amounts to be repaid have been deducted from the family's annual income in past years

7.5.3 Disability Assistance Expenses

Policies related to the calculation of disability assistance expenses are found in CHAPTER 6. The amount of the deduction will be verified following the standard verification procedures described in the Verification Requirements section of this Chapter.

Amount of Expense

- Attendant Care

PHA Policy

The PHA will accept written third-party documents provided by the family.

If family-provided documents are not available, the PHA will provide a third-party verification form directly to the care provider requesting the needed information.

Expenses for attendant care will be verified through:

- Written third-party documents provided by the family, such as receipts or cancelled checks.
- Third-party verification form signed by the provider, if family-provided documents are not available.
- Oral third-party verification if third party verification forms are not returned by the provider.
- If third-party verification is not possible, written family certification as to costs anticipated to be incurred for the upcoming 12 months.

- Auxiliary Apparatus

PHA Policy

Expenses for auxiliary apparatus will be verified through:

- Written third-party documents provided by the family, such as billing statements for purchase of auxiliary apparatus, or other evidence of monthly payments or total payments that will be due for the apparatus during the upcoming 12 months.
- Third-party verification form signed by the provider, if family-provided documents are not available.
- Oral third-party verification if third party verification forms are not returned by the provider.
- If third-party verification is not possible, written family certification of estimated apparatus costs for the upcoming 12 months

In addition, the PHA must verify that:

- The family member for whom the expense is incurred is a person with disabilities
- The expense permits a family member, or members, to work
- The expense is not reimbursed from another source

Family Member is a Person with Disabilities

To be eligible for the disability assistance expense deduction, the costs must be incurred for attendant care or auxiliary apparatus expense associated with a person with disabilities. The PHA will verify that the expense is incurred for a person with disabilities (See 7.3.6 Documentation of Disability in this Chapter).

Family Member(s) Permitted to Work

The PHA must verify that the expenses claimed actually enable a family member, or members, (including the person with disabilities) to work.

> PHA Policy
>
> The PHA will request third-party verification from a rehabilitation agency or knowledgeable medical professional indicating that the person with disabilities requires attendant care or an auxiliary apparatus to be employed, or that the attendant care or auxiliary apparatus enables another family member, or members, to work. This documentation may be provided by the family.
>
> If third-party verification has been attempted and is either unavailable or proves unsuccessful, the family must certify that the disability assistance expense frees a family member, or members (possibly including the family member receiving the assistance), to work.

Unreimbursed Expenses

To be eligible for the disability expenses deduction, the costs must not be reimbursed by another source.

> PHA Policy
>
> The family will be required to certify that attendant care or auxiliary apparatus expenses are not paid by or reimbursed to the family from any source.

7.5.4 Child Care Expenses

Policies related to the calculation of child care expenses are found in CHAPTER 6. The amount of the deduction will be verified following the standard verification procedures described in 7.2 General Verification Requirements of this Chapter. In addition, the PHA must verify that:

- The child is eligible for care.
- The costs claimed are not reimbursed.
- The costs enable a family member to pursue an eligible activity.
- The costs are for an allowable type of child care and are reasonable.

Eligible Child

To be eligible for the child care deduction, the costs must be incurred for the care of a child under the age of 13. The PHA will verify that the child being cared for (including foster children) is under the age of 13 (See 7.3.3 Documentation of Age in this Chapter).

Unreimbursed Expense

To be eligible for the child care deduction, the costs must not be reimbursed by another source.

PHA Policy
The family will be required to certify that the child care expenses are not paid by or reimbursed to the family from any source.

Pursuing an Eligible Activity

The PHA must verify that the deduction of the unreimbursed child care expenses enable a family member(s) to seek work,-pursue education, or be gainfully employed.

PHA Policy

- Information to be Gathered

The PHA will evaluate how the schedule for the claimed activity relates to the hours of care provided and any special needs of the child that might help determine which family member is enabled to pursue an eligible activity.

- Seeking Work

Whenever possible the PHA will use documentation from a state or local agency that monitors work-related requirements (e.g., welfare or unemployment). In such cases the PHA will request documentation from the agency of the member's job seeking efforts to date and require the family to submit to the PHA any reports provided to the other agency.

In the event documentation is not available, the PHA will provide the family with a form on which the family member must record job search efforts. The PHA will review this information at each subsequent reexamination for which this deduction is claimed.

- Furthering Education

The PHA will request third-party documentation to verify that the person permitted to further his or her education by the child care is enrolled. The documentation may be provided by the family.

- Gainful Employment

The PHA will seek third-party verification of the work schedule of the person who is permitted to work by the child care. In cases in which two or more family members could be permitted to work, the employment status for all relevant family members may be verified. The documentation may be provided by the family.

Allowable Type of Child Care

The type of care to be provided is determined by the family, but must fall within certain guidelines, as discussed in CHAPTER 6.

> PHA Policy
>
> The PHA will verify that the type of child care selected by the family is allowable.
>
> The PHA will verify that the fees paid to the child care provider cover only child care costs (e.g., no housekeeping services or personal services) and are paid only for the care of an eligible child (e.g., prorate costs if some of the care is provided for ineligible family members).
>
> The PHA will verify that the child care provider is not an assisted family member. Verification will be made through the head of household's declaration of family members who are expected to reside in the unit.

Reasonableness of Expenses

Only reasonable child care costs can be deducted.

> PHA Policy
>
> The actual costs the family incurs will be evaluated by the PHA for reasonableness to ensure that the costs are allowable.
>
> If the family presents a justification for costs that exceed typical costs in the area, the PHA will request additional documentation, as required, to support a determination that the higher cost is appropriate.

CHAPTER 8 : HOUSING QUALITY STANDARDS

8.1 INTRODUCTION

HUD requires that all units occupied by families receiving Housing Choice Voucher (HCV) assistance meet HUD's Housing Quality Standards (HQS) and permits the PHA to establish additional requirements. The use of the term "HQS" in this plan refers to the combination of both HUD and PHA-established requirements. HQS inspections are required before the Housing Assistance Payments (HAP) Contract is signed and at least annually during the term of the contract.

This chapter explains HUD and PHA requirements related to housing quality as follows:

- The Inspection Process: This part describes the types of inspections the PHA will conduct and the steps that will be taken when units do not meet HQS.

- Marginal Unit Policy: This part describes the process for identifying and responding to marginal units.

- Inspection Requirements: This part outlines the physical standards for units occupied by HCV-assisted families and can be found in the HUD and DHCD Inspection Training Guide located on DHCD's website.

- Lead Paint – Owner Certification: This part describes the specific policies related to lead-based paint.

Special HQS requirements for homeownership, manufactured homes, and other special housing types are discussed in CHAPTER 16 to the extent that they apply in this jurisdiction.

8.2 REASONABLE ACCOMDATIONS & HQS

[24 CFR 100.203]

It shall be unlawful for any person to refuse to permit reasonable modifications of existing premises, occupied or to be occupied by a handicapped person, if the proposed modifications may be necessary to afford the handicapped person full enjoyment of the premises.

Owners must also comply with Massachusetts law. Pursuant to Massachusetts General Laws Chapter 151B, in the case of publicly assisted housing, multiple dwelling housing consisting of ten or more units, or contiguously located housing consisting of ten or more units (see M.G.L. c. 151B, § 1 for definitions), reasonable modification of existing premises occupied or to be occupied by a person with a disability shall *be at the expense of the owner* or other person having the right of ownership if such modification is necessary to afford the person with a disability full enjoyment of the premises. A modification which is paid for by the owner or other person having the right of ownership is not considered to be reasonable if it would impose an undue hardship upon the owner or other person having the right of ownership and shall therefore not be required. [M.G.L. c. 151B, § 4(7A)].

The landlord may not increase, for persons with disabilities, any customarily required security deposit.

In the case of other housing where modifications are not required to be at the expense of the owner or other person having the right of ownership, and where such housing is rental and the modification to be paid for by the handicapped person will materially alter the marketability of the housing, the landlord may, where it is reasonable to do so, condition permission for a modification on the renter agreeing to restore, or pay for the cost of restoring the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted. [24 CFR 100.203; M.G.L. c. 151B, § 4(7A)].

See also 24 CFR Part 8 for obligations of recipients of federal financial assistance pursuant to the Rehabilitation Act and 28 CFR Part 35 for obligations of public housing authorities pursuant to the Americans with Disabilities Act.

8.3 TYPES OF INSPECTIONS

[24 CFR 982.405]

The PHA conducts the following types of inspections as needed. Each type of inspection is discussed in the paragraphs that follow.

- Initial Inspections. The PHA conducts initial inspections in response to a request from the family to approve a unit for participation in the HCV program. The unit must pass the HQS inspection before the effective date of the HAP Contract.

- Annual Inspections. HUD requires the PHA to inspect each unit under lease at least annually to confirm that the unit still meets HQS. The inspection may be conducted in conjunction with the family's annual reexamination but also may be conducted separately.

- Biennial Inspections. See MTW Policy 8.3.1 Biennial HQS Inspections. Biennial inspections are conducted to confirm that the unit meets all HQS.

- Special Inspections. A special inspection may be requested by the owner, the family, or the RAA as a result of problems identified with a unit between annual inspections.

- Audit Inspections. HUD requires that a sample of units be re-inspected by a supervisor or other qualified individual to ensure that HQS are being enforced correctly and uniformly by all inspectors.

- Biennial Audit Inspections. A sample of units on the biennial inspection frequency will be inspected by a supervisor approximately 12 months from the date of the last regular biennial inspection.

8.3.1 Biennial HQS Inspections

PHA Policy-MTW

Using its MTW authority, the PHA will provide owners with incentive to maintain their units in compliance with Housing Quality Standards by offering the possibility of a biennial HQS inspection schedule based on the results of the unit's previous HQS inspections.

If a unit passes the regular HQS inspection on the first attempt, the unit may be placed on a biennial HQS inspection frequency. If a unit does not pass the regular HQS inspection on the first attempt, the unit will remain on an annual HQS inspection frequency. Each unit under HAP contract must have an annual or biennial inspection as applicable.

Units that are designated as "marginal" units are subject to the PHAs Marginal Unit Inspection Policy and will be inspected annually. Marginal units cannot be placed on a biennial inspection frequency whether due to owner or tenant caused HQS failures.

In the event of any rent suspension, the unit will remain on an annual inspection frequency.

New and existing units belonging to new HCV landlords will be retained on an annual HQS inspection frequency until the unit passes the annual HQS inspection on the first inspection attempt. The unit may be placed on a biennial HQS inspection frequency thereafter.

The inspection frequency policy relates both to owner and tenant caused HQS failures. Units placed on annual inspection frequency will remain on annual inspection frequency until the unit passes the next regular HQS inspection on the first attempt, assuming owner and tenant history comply with the biennial eligibility requirements.

The PHA reserves the right to change any HQS unit inspection frequency based upon management discretion. For example, if a unit is in a building with roof leaks, and capital repairs are not scheduled for another six months, DHCD may inspect more frequently than annually. Another example is where a unit fails inspection because the dumpster is overflowing and the garbage is strewn about. DHCD may still allow the owner to retain the biennial inspection frequency because the violation was as a result of a non-compliant tenant moving out.

If a unit has failed HQS inspection (non-emergency) as a result of a new HQS inspection requirement and corrects the deficiency within the required time period, the PHA reserves the right to allow the unit to be placed on a biennial inspection frequency. For example, a unit fails the HQS inspection and the only failed item is the lack of an anti-tip device on the stove. Within 30 days the anti-tip device is installed and the unit passes at reinspection. The PHA may place the unit a biennial inspection frequency or retain the unit on a biennial inspection frequency as applicable.

PHA Policy (cont'd)

The owner and tenant cannot opt to remain on an annual HQS inspection frequency; however, either party may request a complaint inspection at any time. Complaint inspections should not be requested until the owner/tenant has been contacted and given the opportunity to respond to the HQS issue.

Upon initial implementation of the biennial HQS policy, a portion of the units that are eligible for the biennial inspection frequency will undergo inspection in Year One and the remaining units eligible for biennial inspection will be inspected in Year 2. In subsequent years, RAAs reserve the right to change inspection frequencies to achieve load balancing and/or if the owner/tenant/unit history dictates.

8.4 NOTICE AND SCHEDULING OF INSPECTIONS

[24 CFR 982.551(d)]

The family must allow the PHA to inspect the unit at reasonable times with reasonable notice.

PHA Policy

Both the family and the owner will be given reasonable notice of all inspections. Except in the case of a life threatening emergency, reasonable notice is considered to be not less than 48 hours. In the case of a life threatening emergency, the PHA will give as much notice as possible, given the nature of the emergency.

8.5 OWNER AND FAMILY INSPECTION ATTENDANCE

HUD permits the PHA to set policy regarding family and owner presence at the time of inspection [HCV GB p. 10-27].

PHA Policy

When a family occupies the unit at the time of inspection, an adult must be present for the inspection. The presence of the owner or the owner's representative is encouraged but is not required.

8.6 RESCHEDULING AN INSPECTION

PHA Policy

The tenant is responsible for ensuring that an adult family member be present on the scheduled inspection date. If an adult family member is not available, the tenant should arrange for another adult and/or the owner to be present for the inspection. The tenant will only be allowed to reschedule with good cause. Requests to reschedule must be accompanied by oral or written verification of the good cause which dictates rescheduling of the inspection

The PHA and tenant may agree on a new inspection date that generally should take place within 5 business days of the originally-scheduled date. The PHA may schedule an inspection more than 5 business days after the original date for good cause.

Each RAA will review case history to determine the first action to be taken for HQS scheduling violations. Failure to provide documentation of good cause for the rescheduled inspection may result in a warning and termination subject to DHCD termination policies for additional offenses.

8.7 TENANT NO-SHOWS FOR HQS INSPECTIONS

PHA Policy

When the proper advance notice of the inspection has been provided by the RAA to the tenant, when a tenant does not provide access or arrange for access for the scheduled HQS inspection, DHCD will call this an “HQS No-Show” violation. Each RAA will review case history to determine the action to be taken for a HQS no-show violation. Failure to provide documentation of good cause for the no-show violation may result in a warning and termination subject to DHCD termination policies for additional offenses.

8.8 CONDUCTING AN INITIAL INSPECTION WHILE THE UNIT IS STILL OCCUPIED

PHA Policy

The PHA will not conduct an initial inspection on a unit unless the unit is vacant at the time of inspection. Exceptions may be made as a reasonable accommodation for an individual with disabilities.

8.9 TENANT SUPPLIED APPLIANCE(S)

PHA Policy

In the case of tenant-supplied appliances, such as a refrigerator or stove, the lease may begin and the housing assistance payment can be made the date the unit otherwise passes inspection. Verification by an on-site reinspection to confirm the presence and good working order of the appliance must be performed no later than 30 days after the lease start date. Failure to correct within 5 business days of notification may result in tenant termination from the program. The size of the appliances shall be appropriate for the family composition. Substituting a microwave oven for a stove shall not be acceptable unless approved by the RAA.

8.10 INCONCLUSIVE INSPECTIONS

At times the inspector cannot conclude whether an item passes inspection, and must classify an item as Inconclusive. The unit does not pass inspection if any item is Inconclusive. In certain cases a new lease may begin provided an on-site reinspection is performed once the tenant is in occupancy. In other cases, inspections are Inconclusive and subject to written approval by the appropriate, qualified professionals.

8.10.1 Utilities Not On During Initial Unit Inspection

PHA Policy

Frequently, at initial inspection the unit is vacant and the utilities are turned off. The RAA may require the owner to have utilities turned on during vacant unit inspections. In the event that the RAA allows the inspection and the utilities are not turned on, once the unit otherwise passes inspection, the lease may begin and HAP payment can be either released or withheld until verification by an on-site reinspection to confirm the good working order of the inconclusive utility. The on-site confirmation must be performed no later than 30 days after the lease start date. Failure to comply may result in HAP suspension or contract termination. Inspection result is inconclusive until verification of utility service has been made and confirmed at inspection.

8.10.2 Appliances not in the Unit

PHA Policy

If the refrigerator and/or stove are owner supplied and they are not in the unit during the inspection, the PHA will fail the unit. The lease effective date cannot be established until all owner supplied appliances are in the unit. If the refrigerator and/or stove are tenant supplied, the lease may begin and HAP payments may be made. In the case of tenant supplied appliances that are not in the unit, the inspection result is inconclusive until verification that the appliances are in the unit has been confirmed at inspection.

8.10.3 Subject to Approval

PHA Policy

An inspector may also fail or note an item Inconclusive subject to the inspection and approval by appropriate qualified professionals such as local health, building, plumbing, electrical or fire inspectors, licensed heating/plumbing contractors, local utility companies, licensed lead paint inspectors, state certified elevator inspectors or licensed elevator maintenance companies, and licensed extermination companies. Any such written approval must be dated after the date of the citation. If at any time the RAA disagrees with the decision rendered by the appropriate qualified professional or believes that the condition requires further evaluation, the RAA shall notify DHCD.

- Certification Regarding the Safe Operating Condition of the Heating System and/or All Heating Appliances - In accordance with HUD and DHCD Inspection Requirements (which can be found in the HUD & DHCD Inspection Training Guide located on DHCD's website) all heating systems must be certified as safe. The certificate may be posted on the heating unit.

- Written Approval from a Local Official or a Posted Building Permit may be required in situations where systemic or structural repairs or rehab are in progress. Approval may also be required when potential systemic or structural hazards or other questionable conditions may exist.

- A Building Permit may also verify the date the building was built. Properties built after 1978 do not require a Letter of Compliance with the Lead Law.

- A Letter of Compliance, a Letter of Re-Occupancy or a Letter of Interim Control or Certification of No Interior Dwelling Unit Violations is required in accordance with HUD and DHCD HQS Requirements (which can be found in the HUD and DHCD Inspection Training Guide located on DHCD's website).

- A Post Compliance Assessment Determination required in accordance with HUD and DHCD HQS Requirements (which can be found in the HUD and DHCD Inspection Training Guide located on DHCD's website).

- Fire Department approval of smoke detector or carbon monoxide detector systems and egress systems.

PHA Policy Continued

- An Elevator Inspection Certificate must be posted or on file. Frequently elevator inspections are not up to date. Follow up is required in accordance with HUD and DHCD HQS Requirements (which can be found in the HUD and DHCD Inspection Training Guide located on DHCD's website).
- Certification from a licensed Elevator Maintenance Company may be required to confirm the safety of an elevator that fails inspection.
- A receipt to verify professional extermination in cases of chronic infestation.
- Board of Health approval of appropriate low-flow devices and/or fixtures required for water submetering.

8.11 REGULAR AUDIT INSPECTIONS

PHA Policy

Three percent (3%) of all units under lease are audited each year. DHCD's Inspection Manager conducts audits and also requires each RAA to perform internal audits of units each quarter. DHCD includes an RAA's internal audit inspections as counting toward its 3% annual audit goal. The results are used to determine which RAAs need additional training, and when necessary which RAAs must be sanctioned for failure to improve in this area of program operation.

Audits are selected either from units recently brought onto the program or from units recently reinspected and passed inspection. Along with individual unit audit inspections, DHCD recommends regular "windshield tours" whereby individual unit selections can be made based on a preliminary viewing of building exterior, common areas and neighborhood conditions. DHCD fixes the number of unit audits that must be performed and the DHCD Inspection Manager may increase or decrease the required number for any RAA based on the previous year's performance. RAA unit audits must be conducted in the same manner and format as a DHCD unit audit.

To select units for the audit inspection each RAA must submit a complete list of units that have passed inspection each quarter to the DHCD Inspection Manager for random selection. Tenants who remain in the same unit previously audited may be excluded for up to 2 years so as not to create an imposition to the tenant. After DHCD has made selections the RAA may select from the remaining list for in-house audits.

All audit results by both DHCD and RAAs must be entered quarterly into the DHCD internet-based Audit Reporting System. All violations must show a designation for either "Staff Oversight" or "Maintenance Fail". RAAs are required to enter all follow-up reinspection results as a pass or termination date for both DHCD and themselves as the inspections close out. Both quarterly and annual audit reports of results are available from the system showing both staff and maintenance fail totals as a percentage of the units audited. The system also allows results to be generated for individual inspectors. Unit grades are required to be entered so that the quality of the housing stock participating in the program can be monitored.

PHA Policy Continued

All RAAs are required to furnish the following information for all selected audit inspections:

- The inspection checklist filled out with both tenant and owner information and address including zip code.
- A copy of the previous inspectors report and identity.
- The type of lead paint documentation and date issued if applicable.
- The current family composition of record.
- The specific program designation.

The inspection checklist and attendant correspondence must be maintained separately in an audit file.

The RAA must report its results on the DHCD Quarterly Management Report.

As with DHCD Inspection Audits, internal audits must be reviewed with staff inspectors and analyzed in order to determine areas of weakness, need for additional training or other administrative action.

All fail items must be categorized as "Staff Oversight" or "Maintenance Fail". (The number of fails due to staff oversight are the primary measure of an inspector's effectiveness.)

Overall and individual "S" and "M" failure rates are calculated within the audit reporting system.

Whenever poor audit results are a trend, the number of audit inspections must be increased.

Any comments disputing DHCD audit determinations should be submitted in writing within 7 days prior to the completion of the Quarter.

Sanctions Related To Audit Inspections

PHA Policy

HUD reserves the right to impose administrative fee sanctions on any RAA which receives greater than 25% audit failure rate on HUD audits. If HUD sanctions any DHCD RAA, DHCD will withhold the designated amount of money from the RAA, and will use the money to satisfy the HUD sanction. DHCD also reserves the right to impose administrative fee sanctions on any RAA maintaining consistently poor DHCD unit audit results (that is greater than 25% unit audit failure); that fails to follow the required inspection format established by DHCD; that consistently fails to respond to DHCD audit findings in a timely manner; or that fails to maintain current data in DHCD's Audit Reporting System. DHCD will provide prior notice to any RAA being considered for DHCD-imposed sanctions, and will provide a prescribed period of time in which the RAA can demonstrate improved performance.

8.12 BIENNIAL HQS AUDIT INSPECTIONS

PHA Policy – MTW

The PHA will conduct audit inspections on a 3% to 5% sample of units on the biennial inspection schedule. The audit inspections will be conducted twelve (12) months from the last regular biennial HQS inspection to confirm that units on the biennial inspection frequency continue to remain in compliance with HQS during the period between biennial inspections. The audit inspection will be completed using the same inspection process as the regular HQS inspection. Inspection frequency will not change at the time of an audit inspection. Inspection frequency will be reviewed and modified as needed at the time of regular HQS inspection.

To select units for the audit inspection each RAA must identify the units on the biennial inspection frequency that were inspected 12 months prior to month being audited. For example, the audit inspection, for a unit inspected in April 2012 that was scheduled for its next inspection in April 2014, would be in April 2013.

Units undergoing audit inspections will maintain their originally scheduled regular inspection date regardless of the audit inspection outcome. For example, if a unit undergoes a biennial inspection in April 2012, the next regular inspection will occur April 2014, regardless of the outcome of any audit inspections occurring between those two dates.

HQS enforcement policies apply to HQS findings identified during audit inspections

The RAA reserves the right to hold inspectors accountable for HQS violations identified during HQS audit inspections if the violations were obviously in place during the regular HQS inspection. DHCD reserves the right to make final determinations on inspector accountability for violations cited during HQS biennial audit inspections.

All other audit inspection and audit inspection reporting requirements apply to the biennial HQS audit inspection.

8.13 HQS TRAINING

PHA Policy

The DHCD Inspection Manager performs training programs throughout the year. These sessions will focus on those areas that the DHCD inspection audit results indicate additional follow-up is required as well as provide more advanced inspection training in significant areas of housing quality standards. Additionally, DHCD may request that the RAA inspector who performed the original (re)inspection of an audited unit, accompany DHCD during the audit. This time may be used to do one-on-one training, answer questions, and discuss issues. Periodically, DHCD may invite HUD staff to participate in training sessions in order to provide a HUD perspective and methodology.

DHCD will make an effort to be available upon request to train new RAA inspectors as they come on board. However, if the DHCD Inspection Manager is unavailable, it is the RAA's responsibility to train new inspection staff before they may do inspections on their own and it is the responsibility of each RAA to ensure that all new inspectors complete the required HUD Visual Assessment Training for Lead Based Paint.

8.14 ADDITIONS AND AMENDMENTS

PHA Policy

Additional DHCD Inspection Requirements, HUD's Housing Quality Standards, and amendments to this plan may be added from time to time. Further, modifications to existing DHCD Housing Quality Requirements may be made from time to time. Any additional unusual circumstances should be referred to DHCD in order that DHCD and the RAA can together make the most reasonable determination on how to resolve such matters.

8.15 INSPECTION RESULTS

8.15.1 Determining the Severity of the Violation(s)

Each unit must pass inspection once a year. At any other time, inspections can occur at the request of the tenant or owner, or as a result of unit audit inspections performed by the RAA, DHCD or HUD.

PHA Policy

When 24 hour violations are identified, upon DHCD approval, the RAA may be authorized to terminate the HAP contract immediately. When and if this happens, the tenant is responsible for the full contract rent and the RAA must immediately provide the tenant with a Sufferance Letter.

There are FOUR types of violations that could be discovered during a unit inspection:

- 24 Hour HQS Violations;
- Other HQS Violations;
- New HQS Violations; and
- Tenant Caused HQS Violations.

8.15.2 24-Hour HQS Violations

Violations that present an immediate threat to the health and life safety of the family must be corrected within twenty-four hours. 24 hour violations may be owner or tenant caused. The responsible party is subject to the requirements for correction of 24 hour violations. Tenants may be terminated for failure to correct tenant caused 24 hour violations. Owner HAP payments may be stopped and the HAP contract may be terminated for failure to correct owner caused 24 hour violations.

The RAA must contact the owner by phone within 24 hours of citing the violation. The phone call must be followed-up in writing. If the RAA is unable to contact the owner or agent by phone or in person, the written notice must be sent by certified mail. Owners are required to provide emergency contact information so the RAA can reach out to the emergency contact when and if 24 hour violations are identified and the owner cannot be reached. Owners may be subject to prorated rent penalties for the time that the RAA is unable to contact them or their designated emergency contact.

Confirmation that the owner or agent has proceeded to make corrective repairs or made a sufficient good faith effort to repair must take place within the required time frame for emergency repairs (24 hours from the time of the inspection). On-site reinspection at the next reasonable scheduling opportunity is the only acceptable definitive verification that the unit is in compliance with HQS.

The Inspection Form Addendum for 24 Hour Notice must be used to provide written notice to the owner with a copy to the tenant. Refer to HQS Compliance for more information regarding determining the severity of violations and the course of action when violations are discovered.

If the violations have not been corrected satisfactorily, the owner and family should be notified that the HAP payment will be suppressed/abated immediately, i.e., as of the date of the re-inspection. The notice will state that the HAP payment will resume only after repairs have been satisfactorily corrected; and, that the HAP payment will be pro-rated on the number of days the unit is non-compliant beginning with the date of a subsequent satisfactory re-inspection. If the unit is in compliance upon re-inspection and the owner can document an earlier repair completion date, the HAP payment may resume as of that actual compliance date. HAP termination occurs the 10th day after the failed reinspection for owner inaction.

8.15.3 Other HQS Violations

Other HQS violations include violations that could affect the family's health or safety if not corrected within a reasonable amount of time, or other violations that do not affect health or safety.

When units fail HQS inspection due to non-life threatening conditions, no later than five (5) business days from the date of the failed HQS, the PHA will provide the owner with written notification (which may be via e-mail) outlining the corrective action to be taken and possible penalties for failure to comply. If the owner is present at the inspection any fail items and the necessary corrective action should be discussed at that time.

The owner should be given a reasonable amount of time to make the necessary repairs, usually 30 days. During this time, the HAP payment continues without penalty.

Re-inspect the unit on, or immediately after, the required completion date. An on-site re-inspection is the only acceptable verification of HQS compliance.

If work has been completed no further action is necessary and the HAP payment will continue uninterrupted.

If work has not been completed, the inspector should attempt to determine why. Does the owner have a legitimate need for more time? Is the owner making a good faith effort to meet his obligations, but having difficulty meeting the RAA schedule? Are there seasonal considerations? Is the family cooperating? Depending upon the inspector's assessment of the situation, the RAA may elect to suspend rent or grant an extension.

8.15.4 New HQS Violations

New HQS violations are violations that are cited subsequent to the initial, failed annual, or other inspection. The new fail item(s) must be treated as a separate failed inspection, with all the ensuing remedies or sanctions, without impacting the prescribed course of action in progress.

It is extremely important that the RAA communicate to the owner that any new violations noted at each re-inspection must be cited. The RAA must make every effort to ensure that initial inspections are thorough, to minimize the possibility of finding new HQS violations upon re-inspection.

8.15.5 Tenant Caused HQS Violations

[24 CFR 982.404(b)]

Ultimately Housing Court not the RAA makes the final determination of tenant responsibility for damages and perimeters of normal wear and tear. RAAs may cite tenant caused conditions requiring the tenant to correct or face termination from the program. Owners may elect to correct the condition and seek remedy under Mass. Law or from any security deposit rather than absorb rent loss and possible eviction costs. RAAs may consider tenant responsibility within the interior of the unit but not in common areas or exterior, although upon verification of

tenant responsibility, if tenant belongings create HQS violations on the exterior or in common areas they may be cited as tenant caused HQS violations.

Owners are responsible for safe and compliant lead paint maintenance; however the tenant may be responsible for the expense to correct the lead issue where the damage is tenant caused.

The family is responsible for a breach of HUD's HQS that is caused by any of the following:

- Failure to pay for tenant supplied utilities;
- Failure to provide and maintain a stove and/or refrigerator if required in accordance with the lease;
- Improper storage of items inside or outside the unit;
- Malicious damage caused by the family or guest to unit or premises beyond ordinary wear and tear.
- Disabling smoke alarms and carbon monoxide detectors.

Families are responsible for any HQS violations that have been determined are family caused. If a family caused violation is not corrected within the required time period allowed by the PHA, including any extensions; the PHA will terminate the family's assistance in accord with the PHA's termination policies.

In instances where it is not clear or obvious that the violation is tenant caused, the burden of proof is on the owner. An owner is required by law to provide a Statement of Condition to the tenant whenever a security deposit is collected. Ask to review the Statement of Condition. If the Statement of Condition is not available, the initial inspection report may be helpful. An execution for eviction may also demonstrate that the court agrees that the tenant may be evicted and is responsible for damages to the unit. Also take into consideration whether the owner has a history or practice of violating HQS or DHCD Inspection Requirements.

The Inspection Form Addendum For Tenant Caused Violations must be used to provide written notice to the tenant. The owner must also receive a copy of the notice along with a letter of explanation.

8.15.6 Other Deficiencies or Comment Items

PHA Policy

Other deficiencies are those that are not HQS violations; are not life threatening; and, do not affect the family's health & safety. These deficiencies should be corrected at some reasonable future date or they could easily deteriorate into more serious violations. Other deficiencies should always be noted to help avoid security deposit claim issues that may arise when the family vacates.

There are no sanctions or penalties for these unit conditions. These conditions will likely negatively impact the unit grading and should be noted on the inspection form as comment items to give guidance to the owner. A copy should be given to both the family and owner for their records. Owners should be encouraged to make the repairs so that rent offers are not affected and they will not turn into violations at a later date.

8.16 HQS ENFORCEMENT

8.16.1 Course of Action When Violations are Discovered

This section addresses violations the owner is responsible for correcting. Treatment of tenant caused HQS violations is addressed in Section 8.15.5 Tenant Caused HQS Violations. An owner is not required to correct tenant caused HQS violations caused by any of the following:

- Failure to pay for tenant-supplied utilities
- Failure to provide and maintain tenant-supplied appliances
- Malicious damage caused by family or guest to unit or premises. Common areas are not considered. Housing Court is the final determiner of responsibility.

These procedures must be followed by the RAA at any time staff discovers that one or more HQS are not being met. When a unit is out of compliance several key factors should be collectively considered to determine an appropriate course of action:

- Severity of the violations;
- Number of violations;
- Length of time violations remain outstanding;
- Owner's or tenant's good faith effort to make repairs;
- Past repair history of owner, and/or tenant; and,
- Whether the non-compliance is tenant-caused.

8.16.2 New Violations Cited During a Re-inspection

PHA Policy

A violation that is cited for the first time at a re-inspection (regardless of whether it had previously been overlooked by an inspector or had occurred subsequent to the initial failed inspection) does not automatically trigger an extension. The owner and tenant must be notified, in writing, of the new fail item(s), the new fail repair deadline, and the new fail re-inspection date without impacting the progress of the initial fail.

8.16.3 Options When Work is not Completed Satisfactorily

All required work is expected to be completed in a workmanlike manner. Poor quality repairs may prevent the unit passing inspection.

Abate the HAP Payment

Abatement refers to the prorated reduction of the HAP payment for the period of non-compliance beginning on the day of the failed reinspection and ending upon on the date of the passed reinspection.

The RAA will notify the owner, in writing, that:

- The HAP payment will stop effective immediately;
- Payments will not resume until the repairs are completed; and,
- Retroactive payments may be made for the period of time the HAP payment is suppressed minus any abatement.

Work Plans and/or a "No-penalty" Extension of Time to Complete Repairs

PHA Policy

"No-Penalty" extensions may result in full payment of the HAP during the correction period or withholding of the full HAP with full reimbursement at the successful correction of all violations.

In very limited (RAA-predetermined) circumstances, an owner may continue to receive the full subsidy during the course of an approved "No Penalty" extension because some repairs require additional time for the owner to complete. It may be that the scope of the repair is beyond the owner's ability and a contractor is needed. The contractor's schedule then becomes a factor to consider when recognizing the good faith of the owner. In this instance the RAA may require the owner to provide a signed and accepted proposal from the contractor showing the approximate start and completion dates of the work. This allows the scheduled reinspections to be consistent with the approved work plan for efficiency and to avoid unnecessarily inconveniencing tenants.

The following factors are considered during "No Penalty Extensions".

- RAAs determine the acceptability of the timeframes of the plan.
- Temporary repairs to stabilize the condition can be required prior to acceptance of the plan.
- RAAs may reject a plan when the time frame is excessive. Other more available contractors may be needed.
- At Initial Inspection RAAs may halt the inspection and decline to lease the unit without offering a work plan option.
- At Annual Inspection the RAA may elect to terminate the contract if it is determined that occupancy would present a risk to the tenant during the work.
- Work plans may be used in conjunction with the Marginal Unit Policy outlined in Section 8.16.5 Marginal Unit Policy.

Other repairs may be within the owner's ability to complete without reliance on a contractor. Instead of an accepted proposal, the RAA may accept a Letter of Intent from the owner agreeing to complete the repairs within reasonable timeframes. This may also include seasonal repairs that require an extension until weather allows the work. In either scenario a reasonable schedule of reinspections to monitor progress and adherence to the plan may be required.

Letters of Intent may be used in conjunction with the Marginal Unit Policy in Section 8.16.5 Marginal Unit Policy.

PHA Policy Continued

During the extension period, the HAP payment may either continue uninterrupted OR be withheld until completion of repairs and paid retroactively. Failure of the owner to honor the agreement is grounds for contract termination. At the end of the extension period, if work is not completed, the RAA has the following options:

- Grant a "with penalty" extension; or
- Grant an additional "no penalty" extension; or
- Terminate the HAP Contract.

Generally, mitigating circumstances are the only reason for granting an additional “no-penalty” extension. The Owner must be able to document the mitigating circumstances. The documentation must be attached to the inspection supervisor’s approval, and maintained in the family’s file.

"With Penalty" Extension of Time to Complete Repairs

PHA Policy

During a "with penalty" extension period, the HAP payment must be withheld. Upon completion of repairs a partial, retroactive HAP payment will be made to the owner. If the owner does not complete the repairs, the HAP contract will be terminated.

Generally, per the 30-day cycle policy, the appropriate response to a failed re-inspection is to withhold and reduce the HAP payment during the extension period. The HAP payment reduction may range from 2% to 100%. When the repairs are complete, the RAA may make a partial retroactive payment. If the repairs are not completed by the end of the extension period, either the HAP contract will terminate or, if the owner can show cause as to why additional time is needed, the subsidy will continue to be withheld until the repairs are made.

Withholding HAP payment during an extension period is a good inducement for an owner to complete the repairs. It demonstrates that the RAA is serious about seeing the repairs are completed. Instead of rewarding the owner with the full HAP payment during an extension, the HAP payment is withheld and the owner is able to receive a reduced portion only when the repairs are made. This mechanism recognizes a "diminished value" of the rental property while the repairs are outstanding, consistent with Massachusetts state law.

When suppression/abatement of HAP payment occurs, the family should be immediately advised:

- To seek competent legal counsel with respect to appropriate rent withholding procedures under Massachusetts state law. RAA's must not attempt to provide legal advice to tenants.

- That the RAA may have to terminate the HAP contract and that if the HAP Contract is terminated, the RAA will issue the family a new subsidy and provide the family with access to a list of available units known to the RAA and a sufferance letter.

- That the family may assume responsibility for the full rent amount and lease the unit in question without further assistance by the RAA.

If the repairs are completed on or before the next HAP payment date, the payment should be reduced by the per diem amount of the rent that reflects that period of time in which the unit was not in compliance.

PHA Policy Continued

For example:

- April HAP payment of $300 has been paid.
- April 4, inspector verifies serious leak in ceiling from an upstairs apartment where pipe had burst.
- Owner notified, in person and in writing, to correct within 24 hours.
- On April 6, inspector returns and notes that only minimal work has been done to repair damage to family's unit, and leak still continues.
- Owner is sent a notice that the HAP payment will be suppressed, effective immediately, and continuing until the repairs are completed.
- Family is advised to seek legal counsel relative to their rent share.
- On April 15, unit is re-inspected and all work is completed.
- Owner is notified that the HAP payment for May will be reduced by $90.00, that is $10 per day ($300/30 =$10) for the 9 days the unit was in non-compliance (from April 6th up until but not including April 15th).
- Family's legal counsel should advise family of any further action on tenant's share.

If repairs are not completed before the next HAP payment check is to be mailed, no payment may be sent to the owner. When the owner indicates that repairs have been completed and the inspector can verify this, a pro-rated share of the subsidy may be paid from the date the inspector approved the unit. Depending upon the nature of the 24-hour violation, if repair(s) are not completed promptly, the RAA should terminate the HAP contract when it becomes apparent that the owner will not cooperate in making the necessary unit corrections. The RAA should not allow more than 10 days for a 24-hour HQS violations.

When considering whether to withhold the HAP payment, the RAA must consider the following:

There is no one formula to follow when making this determination. It is a good idea to check with the closest regional Housing Court to determine how judges make these same determinations. In addition, an owner who demonstrates a history of inspection non-compliance may be subject to a proportionately higher abatement percentage to promote client safety and ensure compliance. Each RAA must ensure that any schedule it develops is fair and that a consistent procedure is followed. Each RAA will outline its method for making these determinations. This method must be approved by DHCD and incorporated into the RAA's procedures.
PHA Policy Continued

Each DHCD Section 8 Program Director must ensure that these decisions are being thoughtfully, reasonably, and consistently implemented. Having more than one option to rely upon if required work is not completed in a timely manner is one of the key features of DHCD's Section 8 program. This option allows each RAA to comply with HUD and DHCD requirements without having to take a rigid, bureaucratic position each time repairs are not made as required. It allows RAAs to encourage owners to get their work done, without having to cut off their HAP payment entirely. This is consistent with the rental owner's expectations under Massachusetts's law.

Terminate the HAP Contract

PHA Policy

HAP Termination proceedings will begin 10 days after the failed reinspection for 24 hour HQS violations. With DHCD approval, the RAA may terminate the HAP contract immediately for 24 hour HQS violations.

For other HQS violations, HAP termination begins sixty days from the date of the initial fail, or approved extension, if the unit remains in non-compliance and an accepted work plan has not been implemented. The RAA must send written notice to both the family and the owner advising them of the date of the contract termination (give an effective date of not more than 30 days from the date of the notice), at which point the family will become a tenant-at-sufferance and the RAA will no longer be responsible for the rent. Again, the family needs to be made aware that once the contract is terminated, if they wish to retain their assistance, they must relocate to an approvable unit within the voucher term as stated in 5.3.5 Voucher Term, Extensions, and Suspensions or an approved extension of the termination effective date. They should also be again urged to seek legal counsel regarding their rights and responsibilities as a tenant-at-sufferance in a non-compliant unit.

Although the HAP payment is suspended, a 30-day notice of intent to terminate the HAP contract for non-compliance is recommended to alert the family to the impending condition of being "on the clock". The family must be issued a new subsidy and informed that in order to retain their rental assistance they must locate an approvable unit generally within the voucher clock term. The notice must also advise the family to seek legal counsel regarding their rights and responsibilities as a tenant-at-sufferance in a non-compliant unit. Provided that the HAP contract has not been terminated because the unit has passed inspection, the owner may receive a partial payment of the withheld subsidy pro-rated from the date of suspension. This is consistent with the PHA's recognition of the "diminished value" of the property.

The owner and family must be notified, in writing, of the selected course of action and the new repair deadline and re-inspection date, or contract termination date included therein.

8.16.4 HQS - Unit Remains in Extended Non-compliance

PHA Policy

- When a unit fails inspection, the RAA must notify the owner immediately of the time allotted to perform the repairs.
- The unit must be re-inspected to determine if the repairs have been done. On-site re-inspection is the only acceptable means of verification.
- If repairs have not been completed, the policies and procedures outlined under Section 8.16 HQS Enforcement should be followed. The owner must be notified in writing of any action being taken.
- The RAA must have an internal review system for cases where the unit has been in extended non-compliance (even if a no-penalty extension has been granted). The internal review system should allow certain decisions to be examined by someone in the RAA not previously involved in the case when non-compliance exceeds three months.
- All HAP suspensions of over three months must be listed on the quarterly report to DHCD.
- When a decision is made to suspend HAP payments, the case must be reviewed on a monthly basis. The person who originally made the decision to suspend the subsidy may complete the monthly review.
- After three months of suspended HAP payment, if the repairs have not been completed, the HAP Contract should be terminated. If there are mitigating circumstances or a work plan has been accepted and is being honored, a decision may be made not to terminate the HAP Contract. The decision should be discussed with a staff member not previously involved in the case, to strategize over future action if the suspension will be continued for longer than three months.
- After four months of suspended HAP payments, the case must be submitted to DHCD for review. A history of the case should be submitted, including what steps have been taken to review the case internally, and an explanation of why the HAP Contract has not been terminated. Extensions beyond four months should be reviewed on a case-by-case basis.

PHA Policy Continued

- Whenever the HAP payment is suspended the family must be notified in writing. The notice to the family must state that:

1. The HAP payment has been suspended.
2. If the owner continues to neglect the repairs, the RAA may terminate the HAP Contract.
3. If the HAP contract is terminated the RAA will cease to be responsible for the contract rent. If the family remains in place after the effective date of the HAP contract termination, it will be as a tenant-at-sufferance. The family will be issued a subsidy and given the maximum amount of time to find a new unit. If the family remains in place and the subsidy expires, they will lose all rental assistance benefits. The family must move in order to retain its assistance. The family may move prior to the effective date of the contract termination, provided proper notice is given to the owner and the RAA.
4. The family is advised to seek legal counsel on paying its rent share during the period of suspension. It is advisable that the family continues to pay rent if it chooses not to consult an attorney.
5. If the family pursues a court action against the owner instead of moving, it must notify the RAA. If the family chooses not to move because of a pending court action, and subsequently loses in court, the RAA should seek DHCD guidance on how to handle the case. If the family prevails in court, DHCD will reinstate the family in the unit in question, not in another unit (provided the unit passes inspection).
6. The family remains obligated to give proper notice to both the owner and the RAA before moving.

- When a decision is made to terminate a HAP Contract, the family should be issued a subsidy. The effective date of the subsidy should coincide with the effective date of the HAP Contract termination, although the subsidy may be issued prior to the termination date. The family should again be advised to seek legal counsel regarding payment of rent.

- If a case is in litigation, or if the Board of Health is taking action against the owner, but the HAP Contract would otherwise be terminated, DHCD will refer the case to its Counsel for a decision on whether to terminate the HAP Contract. The RAA should send written request for such referral to DHCD's Bureau of Rental Assistance. The referral should include a brief summary of the case.

8.16.5 Marginal Unit Policy

DHCD and its RAAs reserve the right to refuse to lease new units deemed marginal. A work plan may be required when correcting the problems in a marginal unit.

Responding to the Problems of Marginal Units Under Lease

HUD defines marginal units to be those that are likely to fall below HQS within a year. DHCD and its RAAs recognize the problem of maintaining marginal units on the Section 8 Program. Frequently, an inspector will return to a unit and note the same condition of one or more aspects of the unit that do not cause a fail condition outright, but clearly pose the likelihood of deterioration or where a fail condition could easily occur prior to the next annual inspection. Often, repairs are made, but are themselves marginal. Failure to maintain compliance may be due to inadequate attention on the part of the owner or management agent, excess or undue wear and tear on the part of the tenant, and/or the impact of neighborhood conditions.

Tackling the problem of marginal units is difficult for several reasons. A tight housing market limits the number of units available to Section 8 tenants. Imposing more stringent inspection standards may result in owners refusing to participate making it very difficult for tenants to find housing even when available.

The goal of this policy is to eliminate units that only barely meet HUD's Housing Quality Standards and DHCD Inspection Requirements. These are units that remain undesirable because of how quickly they are likely to fall out of compliance. RAAs may elect to terminate the HAP contract or conduct additional marginal unit inspections and may consider an owner or tenant history of non-compliance when making this decision.

8.16.6 Identifying Marginal Units

Under DHCD's grading system a "D" Unit identifies a combination of conditions that shall be used to identify and designate a unit as marginal (Exhibit 9-1: Grading System for Determining Unit Quality). These conditions are due to poor owner management and/or maintenance that must be improved by the owner. Each RAA shall add to the checklist whenever necessary to address specific conditions not listed. The RAA must also notify owners of the 2 additional required inspections that will be performed no more than 3 months apart. The consequences of repeated and regular non-compliance will be contract termination.

Annual or Audit Inspection

PASS - even though the unit passes inspection it may still be determined marginal. The tenant must be given a moving packet and counseled regarding relocation at this time. See Section "1st Marginal Unit Inspection" to proceed.

FAIL - owner is given the usual 30-day opportunity to correct. The quality and extent of improvement is unknown until reinspection.

Annual or Audit Reinspection

The reinspection must take place no more than 30 days after the Annual or Audit Inspection. Once the unit has passed the reinspection yet is determined to be marginal, the unit is subject to additional compliance inspections. The tenant must be given a moving packet and counseled regarding relocation at this time.

1st Marginal Unit Inspection

This inspection must be scheduled no more than 3 months after the Annual or Audit reinspection has passed. Use the regular Inspection Checklist. Indicate the inspection results in the space provided at the bottom. Note any improvements under comments on the Inspection Checklist. If no change - indicate no change.

1st Marginal Unit Reinspection

The reinspection must take place no more than 30 days after the first Marginal Unit inspection. Indicate the inspection results in the space provided at the bottom. Note any improvements under comments on the Inspection Checklist. If no change noted during the 1st Marginal Unit Inspection, use the regular Inspection Checklist to indicate no change. The RAA has the discretion to schedule the reinspection sooner, 10 or 15 days for example.

2nd Marginal Unit Inspection

This inspection must be scheduled no more than 3 months after the 1st Marginal Unit Reinspection has passed. Use the regular Inspection Checklist. Indicate the inspection results in the space provided at the bottom. Note any improvements under comments on the Inspection Checklist. If no change - indicate no change.

Termination or Additional Optional Marginal Unit Inspections

Finally, after the second Marginal Unit Inspection is complete, the RAA must assure a review by a designated staff member.

If the two additional inspections have FAILED with no change in marginal unit conditions and the owner has failed to respond or take action to the satisfaction of the RAA, the subsidy contract must be terminated with no follow-up reinspection.

However, if an owner can show good cause for failure to correct, termination at this time may be too extreme a result. An owner should not be unfairly penalized where violations are attributable to an abusive tenant and the owner can demonstrate efforts to work with the tenant. Units that show marked improvement, evidence of a more prompt management pattern, or where the owner submits a documented long-term improvement plan, further follow-up inspections may be allowed.

8.16.7 Illegal Units

Illegal Apartments/Conditions

An illegal apartment is an apartment which is not authorized by and/or does not have required permits from the local authority. Illegal apartments represent a public safety risk to all of the building occupants and to first responders in an emergency.

Regardless of whether the illegal unit(s) are occupied by assisted or unassisted tenants, all of the improper conditions, the building, and all systems must be restored to code compliance and recognized as habitable units by the local code authority.

An illegal condition is a condition which results from an illegal unit. Examples include, but are not limited to, utility theft through cross metering, shock/fire hazard wiring, lead paint hazards, unsanitary plumbing, and/or inadequate fire egress.

If an RAA suspects or is notified of a potentially illegal unit or illegal conditions, the RAA must check the tax assessors record to determine the number of legal units. Owners may be required to furnish the records. In the absence of or inability to obtain the correct unit count, the RAA must obtain the Occupancy Permit or Certificate of Fitness clearly identifying the suspect unit in question. Owner/Agents must always be afforded an opportunity to provide the documentation in a timely manner. RAAs may require the owner to do so within a specified timeframe.

Inspection of Buildings With Potentially Illegal Units

The RAA must conduct an inspection of the unit/building, including an inspection of the building systems. When conducting inspections of buildings with suspected illegal units, owners are required to provide access to all heating, plumbing and electrical systems. If access is not provided for all inspectable areas of the building in a timely manner, a fail rating, after thirty (30) days' notice, shall be required. In instances where the heating, plumbing and electrical systems are housed in another building, access may not be required by the RAA.

Corrective Action

If an illegal apartment is discovered the owner shall be given thirty (30) days to contact the local code enforcement authority. Under the authority's supervision, the owner must eliminate any and all improper conditions. An extension may be given beyond the thirty (30) days for work in progress. Documentation of the removal of the illegal unit and the safe restoration of any systems must be provided.

Violations that present an immediate threat to public safety or life safety are to be recorded as 24 hour violations in accordance with DHCD'S 24 hour HQS violations policy. Owners/agents must take immediate action to correct dangerous conditions. The RAA Inspection Manager or DHCD may elect to report conditions to the local code enforcement agency or fire department immediately.

Failure to Correct Illegal Conditions

At the RAA's discretion and in accordance with the Housing Assistance Payments Contract, any additional units under lease in the building are subject to HAP rent stop and contract termination for continued failure to correct illegal conditions. The tenant(s) occupying the affected unit(s) must be notified in accordance with DHCD policy regarding "HQS - Unit Remains in Extended Non-compliance". Additionally, all units terminated must be reported to the local code enforcement and to DHCD'S Inspection Manager.

8.17 LEAD BASED PAINT

Lead-based paint requirements apply to dwelling units built prior to 1978 that are occupied or can be occupied by families with children under six years of age, excluding zero bedroom dwellings. Owners must:

- Disclose known lead-based paint hazards to prospective tenants before the lease is signed,
- provide all prospective families with "Protect Your Family from Lead in Your Home",
- Stabilize deteriorated painted surfaces and conduct hazard reduction activities when identified by the PHA
- Notify tenants each time such an activity is performed
- Conduct all work in accordance with HUD safe practices
- As part of ongoing maintenance ask each family to report deteriorated paint.

For units occupied by environmental intervention blood lead level (lead poisoned) children under six years of age, a risk assessment must be conducted (paid for by the PHA). If lead hazards are identified during the risk assessment, the owner must complete hazard reduction activities.

For additional information on lead-based paint requirements see 24 CFR 35, Subparts A, B, M, and R. Specific HQS standards and requirements related to lead-based paint are in the HUD and DHCD Inspection Training Guide which can be found on DHCD's website.

8.18 LEAD COMPLIANCE DOCUMENTATION

Prior to conducting the initial HQS Inspection, if a child less than 6 years of age will be an occupant of the unit and the property was built prior to January 1, 1978, RAAs must collect and review the required lead compliance documents prior to scheduling an HQS inspection. RAAs may require the lead inspection report(s) as well as Letters of Compliance.

If the property was built on or after January 1, 1978, prior to scheduling the HQS inspection, the RAA must collect a building permit to document the time of initial construction of the building. If a pre-1978 building undergoes rehab or remodeling after January 1, 1978, this building is still subject to the pre-1978 lead-based paint compliance documentation requirements.

Owner/agents submitting documentation may be required to provide proof of the validity of the lead compliance documents. Instances of fraud or altered documents must be reported to DHCD. Any lead compliance documents determined to be altered or changed must be turned

over to the MA. Dept. of Public Health-Childhood Lead Poisoning Prevention Program for follow up action.

During the term of the lease, upon notification or knowledge of a new or additional child less than 6 years of age residing in the unit, the owner shall be given written notice allowing 90 days to submit the required lead compliance documents. A 30-day extension may be granted to accommodate an owner who demonstrates a good faith effort to comply.

8.19 SPECIAL REQUIREMENTS FOR CHILDREN WITH ENVIRONMENTAL INTERVENTION BLOOD LEAD LEVEL [24 CFR 35.1225]

If a PHA is notified by a public health department or other medical health care provider, or verifies information from a source other than a public health department or medical health care provider, that a child of less than 6 years of age, living in an HCV-assisted unit has been identified as having an environmental intervention blood lead level, the PHA must complete a risk assessment of the dwelling unit. The risk assessment must be completed in accordance with program requirements, and the result of the risk assessment must be immediately provided to the owner of the dwelling unit. In cases where the public health department has already completed an evaluation of the unit, this information must be provided to the owner.

Within 30 days after receiving the risk assessment report from the PHA, or the evaluation from the public health department, the owner is required to complete the reduction of identified lead-based paint hazards in accordance with the lead-based paint regulations [24 CFR 35.1325 and 35.1330]. If the owner does not complete the “hazard reduction” as required, the dwelling unit is in violation of HQS and the PHA will take action in accordance with the PHA policies.

8.20 INSPECTION REQUIREMENTS

HUD requires that all units occupied by families receiving Housing Choice Voucher (HCV), Project Based (PB) and/or Mod/Rehab assistance meet HUD's Housing Quality Standards (HQS) and permits the PHA to establish additional requirements. The use of the term "HQS" in this plan refers to the combination of both HUD and PHA-established requirements. The HUD and DHCD Inspection Training Guide, which can be found on DHCD’s website, contains HUD’s HQS and DCHD’s Inspection Requirements related to physical standards required of units occupied by HCV-assisted families.

CHAPTER 9 : RENT REASONABLENESS AND RENT INCREASES

9.1 INTRODUCTION

HUD requires PHAs to determine that units rented by families assisted under the HCV program have rents that are reasonable when compared to comparable unassisted units in the market area. This Chapter explains HUD and PHA requirements related to rent reasonableness.

9.1.1 Overview

[24 CFR 982.507]

No HAP contract can be approved until the PHA has determined that the rent for the unit is reasonable. The purpose of the rent reasonableness test is to ensure that a fair rent is paid for each unit rented under the HCV program.

HUD regulations define a reasonable rent as one that does not exceed the rent charged for comparable, unassisted units in the same market area. HUD also requires that owners not charge more for assisted units than for comparable units on the premises. This part explains the method used to determine whether a unit's rent is reasonable.

9.1.2 PHA-Owned Units

[24 CFR 982.352(b)]

In cases where an HCV family is receiving assistance in a PHA-owned unit, the PHA must obtain the services of an independent entity to determine rent reasonableness in accordance with program requirements, and to assist the family in negotiating the contract rent when the family requests assistance. A PHA-owned unit is defined as a unit that is owned by the PHA that administers the assistance under the consolidated ACC (including a unit owned by an entity substantially controlled by the PHA). The independent agency must communicate the results of the rent reasonableness determination to the family and the PHA. The independent agency must be approved by HUD, and may be the unit of general local government for the PHA jurisdiction (unless the PHA is itself the unit of general local government or an agency of such government).

9.1.3 When Rent Reasonableness Determinations are Required

<u>Owner-Initiated Rent Determinations</u>

The PHA must make a rent reasonableness determination at initial occupancy and whenever the owner requests a rent adjustment.

The owner and family first negotiate the rent for a unit. The PHA (or independent agency in the case of PHA-owned units) will assist the family with the negotiations upon request. At initial occupancy the PHA must determine whether the proposed rent is reasonable before a HAP Contract is signed. The owner must not change the rent during the initial lease term. Subsequent requests for rent adjustments must be consistent with the lease between the owner

and the family. Rent increases will not be approved until any failed items identified by the most recent HQS inspection have been corrected.

PHA Policy

After the initial occupancy period, the owner may request a rent adjustment in accordance with the owner's lease.

For rent increase requests, the PHA may request owners to provide information about the rents charged for other units on the premises, if the premises include more than 4 units. In evaluating the proposed rents in comparison to other units on the premises the PHA will consider unit size and length of tenancy in the other units.

The PHA will determine whether the requested increase is reasonable. The owner will be notified of the determination in writing.

All rents adjustments, that are approved, will be effective the first of the month following 60 days after the PHA's receipt of the owner's request or on the date specified by the owner, whichever is later.

If the requested rent is not found to be reasonable, the owner must either reduce the requested rent increase, or give the family notice in accordance with the terms of the lease.

PHA- and HUD-Initiated Rent Reasonableness Determinations

HUD requires the PHA to make a determination of rent reasonableness (even if the owner has not requested a change) if there is a 5 percent decrease in the Fair Market Rent that goes into effect at least 60 days before the contract anniversary date. HUD also may direct the PHA to make a determination at any other time. The PHA may decide that a new determination of rent reasonableness is needed at any time.

PHA Policy

PHA will complete reasonable rent determinations:

- When a unit is placed under HAP contract for the first time;
- If there is a 5 percent decrease in the Fair Market Rent that goes into effect at least 60 days before the contract anniversary date; and
- At any other time PHA or HUD deems it necessary.

PHA will terminate the existing contract for any unit where the landlord does not agree to a Reasonable Rent.

PHA Policy-MTW

PHA will complete reasonable rent determinations:

- When a unit is placed under HAP contract for the first time; and
- At any other time PHA deems it necessary.

PHA will terminate the existing contract for any unit where the landlord does not agree to a Reasonable Rent.

9.1.4 How Comparability is Established

Factors to Consider

HUD requires PHAs to take into consideration the factors listed below when determining rent comparability. The PHA may use these factors to make upward or downward adjustments to the rents of comparison units when the units are not identical to the HCV-assisted unit.

- Location and age
- Unit size including the number of rooms and square footage of rooms
- The type of unit including construction type (e.g., single family, duplex, garden, low-rise, high-rise)
- The quality of the units including the quality of the original construction, maintenance and improvements made.
- Amenities, services, and utilities included in the rent

Units that Must Not be Used as Comparables

Comparable units must represent unrestricted market rents. Therefore, units that receive some form of federal, state, or local assistance that imposes rent restrictions cannot be considered comparable units. These include units assisted by HUD through any of the following programs: Section 8 project-based assistance, Section 236 and Section 221(d) (3) Below Market Interest Rate (BMIR) projects, HOME or Community Development Block Grant (CDBG) program-assisted units in which the rents are subsidized; units subsidized through federal, state, or local tax credits; units subsidized by the Department of Agriculture rural housing programs, and units that are rent-controlled by local ordinance.

Note: Notice PIH 2010-18, issued May 10, 2010, provides further guidance on the issue of what constitutes an assisted unit.

Rents Charged for Other Units on the Premises

The Request for Tenancy Approval (HUD-52517) requires owners to provide information, on the form itself, about the rent charged for other unassisted comparable units on the premises if the premises include more than 4 units.

By accepting the PHA payment each month the owner certifies that the rent is not more than the rent charged for comparable unassisted units on the premises. If asked to do so, the owner must give the PHA information regarding rents charged for other units on the premises.

9.1.5 PHA Rent Reasonableness Methodology

How Market Data is Collected

> PHA Policy
>
> The PHA will collect and maintain data on market rents in the PHA's jurisdiction. The data will be maintained by bedroom size and market areas.
>
> Market areas may be defined by zip codes, census tract, neighborhood, and identifiable natural or man-made boundaries. The data will be updated on an ongoing basis.

How Market Data is Maintained

> PHA Policy
>
> The PHA must maintain records of comps in an orderly manner. The documentation of comparables can be either a PHA-updated database composed with consideration of reasonably available unit characteristics or a listing of specific units detailed in the tenant file.

How Rents are Determined

PHA Policy

The purpose of examining comparative rents is to approve only those contract rents that reasonably reflect the characteristics of the Section 8 contract unit and the valuation of comparable units in the private, unassisted market. A dollar range must be uniformly factored into the analysis.

The rent for a unit proposed for HCV assistance will be compared to the rent charged for comparable units in the same market area. The PHA will develop a range of prices for comparable units by bedroom size within defined market areas. Units proposed for HCV assistance will be compared to the units within this rent range. Because units may be similar, but not exactly like the unit proposed for HCV assistance, the PHA may make adjustments to the range of prices to account for those differences.

The PHA should value units so that the determination of reasonable rent rationally reflects the characteristics of the contract unit and the valuation of comparable unassisted units.

The PHA will notify the owner of the rent that the PHA will approve based upon its analysis of comparable units.

Relationship to HUD Fair Market Rent (FMR)

PHA Policy

The FMR is not an explicit measurement in the rent reasonableness determination. The PHA must not include the FMR figure in any grade and/or point value calculation used in its formula for a rent reasonableness determination. Moreover, even if there is an apparent substantial decline in the local unassisted market rents, signaled by a fall in the FMR, the rent to owner for the particular assisted unit is not reduced unless the comparability analysis shows that the current unit rent exceeds the rent for comparable unassisted units.

Adopting a Uniform Grading System for Determining Unit Quality

PHA Policy

Unit grading is a process that aids considerably in the determination of the value of a rental unit for the purpose of reasonable rent determination.

The PHA must incorporate a grade and/or point value leading to a rental value for the unit leased or to be leased (the “contract unit”). Inspectors assign grades in accordance with the policies outlined in Exhibit 9-1: Grading System for Determining Unit Quality.

Unit grades must be entered into the Internet Based Inspection Audit Reporting System. It is required that the PHA’s document and maintain this information on file.

Updating of Comparables

> PHA Policy
>
> The PHA must use comparable rents that are no more than 18 months old.

Owner Challenge to Rent Reasonableness Determination

If an owner disputes the reasonableness of the offered rent level, the owner can prove that a higher rent is reasonable by submitting documentation such as current leases for other unassisted units. A PHA does not need to accept information submitted by an owner that cannot be verified as accurate or genuine.

The burden of proof is on the owner to establish comparability. A PHA will in its discretion determine the measure of acceptable documentation. For example, a current lease executed by the owner within the past six months is the best documentation that an owner can provide. With respect to verifying rent made by unsubsidized tenants-at-will (with no written lease) the PHA may request that the owner obtain a certified copy of the federal income tax Schedule E for rental income in the most recent year. Up to three units can be entered on Schedule E. For owners with multiple units the owner may submit a verified statement by a tax preparer to document the rent paid on a particular unit.

9.1.6 Documenting Rent Reasonableness

Documentation of Methods

> PHA Policy
>
> The PHA must maintain a written description of the methods and forms for valuation of comparables

Requirement and Retention of RR Documentation

> PHA Policy
>
> The PHA must keep past records to document the basis for each rent reasonableness determination. In the tenant-based programs, the required rent reasonableness comparability determination must be kept for at least three years.

9.1.7 Contract Unit with Other Subsidies

In accordance with HUD Reg. 982.521, the PHA must also consider whether the contract unit is receiving other subsidies. These units may be subject to pertinent limits in addition to rent reasonableness.

9.1.8 Rent Increases in Subsidized Buildings

In all cases the requested rent must meet the PHA's rent reasonableness test. Historically subsidized units have rented below the published FMR with the result that a PHA had no issues around adhering to the HUD approved rent schedules. However, in some recent cases the approved rents have exceeded the published FMR and in those instances the HA must treat the request in exactly the same way as any other owner request for an exception rent. The owner must operate within the regulatory parameters of the building subsidy type and the Section 8 voucher regulations for in-place voucher tenants.

CHAPTER 10 : GENERAL LEASING POLICIES

10.1 INTRODUCTION

This Chapter covers the lease-up process from the family's submission of a Request for Tenancy Approval to execution of the HAP contract.

In order for the PHA to assist a family in a particular dwelling unit, or execute a Housing Assistance Payments (HAP) contract with the owner of a dwelling unit, the PHA must determine that all the following program requirements are met:

- The unit itself must qualify as an eligible unit [24 CFR 982.305(a)]
- The unit must be inspected by the PHA and meet the Housing Quality Standards (HQS) [24 CFR 982.305(a)]
- The lease offered by the owner must be approvable and must include the required Tenancy Addendum [24 CFR 982.305(a)]
- The rent to be charged by the owner for the unit must be reasonable [24 CFR 982.305(a)]
- The owner must be an eligible owner, approvable by the PHA, with no conflicts of interest [24 CFR 982.306]
- For families initially leasing a unit only: Where the gross rent of the unit exceeds the applicable payment standard for the family, the share of rent to be paid by the family cannot exceed 40 percent of the family's monthly adjusted income [24 CFR 982.305(a)]

10.1.1 Tenant Screening

The PHA has no liability or responsibility to the owner or other persons for the family's behavior or suitability for tenancy [24 CFR 982.307(a)(1)]. The owner is responsible for screening and selection of the family to occupy the owner's unit. At or before PHA approval of the tenancy, the PHA must inform the owner that screening and selection for tenancy is the responsibility of the owner [24 CFR 982.307(a)(2)]. The PHA must also inform the owner or manager or their responsibility to comply with VAWA [24 CFR 5.2007(3)(ii)]. See 3.3.2 Screening for a discussion of the PHA's policies on screening applicant families for program eligibility. Also see Section Screening for Suitability as a Tenant in CHAPTER 3 for the policies related to an owner's responsibility to screen tenants for suitability [24 CFR 982.307(a)(1)].

10.1.2 Owner Participation

The PHA does not formally approve an owner to participate in the HCV program. However, there are a number of criteria where the PHA may deny approval of an assisted tenancy based on past owner behavior, conflict of interest, or other owner-related issues. No owner has a right to participate in the HCV program [24 CFR 982.306(e)]

See CHAPTER 14 for a full discussion of owner qualification to participate in the HCV program (See 14.2.4 Owner Qualifications).

10.1.3 Eligible Units

There are a number of criteria that a dwelling unit must meet in order to be eligible for assistance under the voucher program. Generally, a voucher-holder family may choose any available rental dwelling unit on the market in the PHA's jurisdiction. This includes the dwelling unit they are currently occupying.

Ineligible Units
[24 CFR 982.352(a)]

The PHA may not assist a unit under the voucher program if the unit is a public housing or Indian housing unit; a unit receiving project-based assistance under section 8 of the 1937 Act (42 U.S.C. 1437f); nursing homes, board and care homes, or facilities providing continual psychiatric, medical, or nursing services; college or other school dormitories; units on the grounds of penal, reformatory, medical, mental, and similar public or private institutions; a unit occupied by its owner or by a person with any interest in the unit.

PHA-Owned Units
[24 CFR 982.352(b)]

Otherwise eligible units that are owned or substantially controlled by the PHA issuing the voucher may also be leased in the voucher program. In order for a PHA-owned unit to be leased under the voucher program, the unit must not be ineligible housing and the PHA must inform the family, both orally and in writing, that the family has the right to select any eligible unit available for lease and that the family is free to select a PHA-owned unit without any pressure or steering by the PHA.

> PHA Policy
>
> The PHA has eligible PHA-owned units available for leasing under the voucher program. The PHA will inform the family of this housing at the time of the briefing. The PHA will also inform the family, both orally and in writing, that the family has the right to select any eligible unit available for lease and that the family is free to select a PHA-owned unit without any pressure or steering by the PHA.

Special Housing Types
[24 CFR 982 Subpart M]

HUD regulations permit, but do not generally require, the PHA to permit families to use voucher assistance in a number of special housing types in accordance with the specific requirements applicable to those programs. These special housing types include single room occupancy (SRO) housing, congregate housing, group home, shared housing, manufactured home space (where the family owns the manufactured home and leases only the space), cooperative housing and homeownership option. See CHAPTER 16 for specific information and policies on any of these housing types that the PHA has chosen to allow.

The regulations do require the PHA to permit use of any special housing type if needed as a reasonable accommodation so that the program is readily accessible to and usable by persons with disabilities.

Duplicative Assistance
[24 CFR 982.352(c)]

A family may not receive the benefit of HCV tenant-based assistance while receiving the benefit of any of the following forms of other housing subsidy, for the same unit or for a different unit:

- Public or Indian housing assistance;
- Other Section 8 assistance (including other tenant-based assistance);
- Assistance under former Section 23 of the United States Housing Act of 1937 (before amendment by the Housing and Community Development Act of 1974);
- Section 101 rent supplements;
- Section 236 rental assistance payments;
- Tenant-based assistance under the HOME Program;
- Rental assistance payments under Section 521 of the Housing Act of 1949 (a program of the Rural Development Administration);
- Any local or State rent subsidy;
- Section 202 supportive housing for the elderly;
- Section 811 supportive housing for persons with disabilities; (11) Section 202 projects for non-elderly persons with disabilities (Section 162 assistance); or
- Any other duplicative federal, State, or local housing subsidy, as determined by HUD. For this purpose, 'housing subsidy' does not include the housing component of a welfare payment, a social security payment received by the family, or a rent reduction because of a tax credit.

Housing Quality Standards (HQS)
[24 CFR 982.305 and 24 CFR 982.401]

In order to be eligible, the dwelling unit must be in decent, safe and sanitary condition. This determination is made using HUD's Housing Quality Standards (HQS) and/or equivalent state or local standards approved by HUD. See CHAPTER 8 for a full discussion of the HQS standards, as well as the process for HQS inspection at initial lease-up.

Unit Size

In order to be eligible, the dwelling unit must be appropriate for the number of persons in the household. A family must be allowed to lease an otherwise acceptable dwelling unit with fewer bedrooms than the number of bedrooms stated on the voucher issued to the family, provided the unit meets the applicable HQS space requirements [24 CFR 982.402(d)]. The family must be allowed to lease an otherwise acceptable dwelling unit with more bedrooms than the number of bedrooms stated on the voucher issued to the family subject to the rent burden policy discussed below. See 5.3 Subsidy Standards and Voucher Issuance, for a full discussion of subsidy standards.

Rent Reasonableness
[24 CFR 982.305 and 24 CFR 982.507]

In order to be eligible, the dwelling unit must have a reasonable rent. The rent must be reasonable in relation to comparable unassisted units in the area and must not be in excess of rents charged by the owner for comparable, unassisted units on the premises. See CHAPTER 9 for a full discussion of rent reasonableness and the rent reasonableness determination process.

Rent Burden
[24 CFR 982.508]

Where a family is initially leasing a unit and the gross rent of the unit exceeds the applicable payment standard for the family, the dwelling unit rent must be at a level where the family's share of rent does not exceed 40 percent of the family's monthly adjusted income. See Section 6.4 Calculating Family Share and PHA Subsidy for a discussion of calculation of gross rent, the use of payment standards, and calculation of family income, family share of rent and HAP.

10.2 REQUIREMENTS FOR LEASING

After the family is issued a voucher, the family must locate an eligible unit, with an owner or landlord willing to participate in the voucher program. Once a family finds a suitable unit and the owner is willing to lease the unit under the program, the owner and the family must request the PHA to approve the assisted tenancy in the selected unit.

The owner and the family must submit two documents to the PHA:

- Completed Request for Tenancy Approval (RTA) – Form HUD-52517
- Copy of the proposed lease, including the HUD-prescribed Tenancy Addendum – Form HUD-52641-A.
- Both the RFTA and the proposed lease must be submitted no later than the expiration date stated on the voucher. [HCV GB p.8-15].

10.2.1 Request for Tenancy Approval
[Form HUD-52517]

The RFTA contains important information about the rental unit selected by the family, including the unit address, number of bedrooms, structure type, year constructed, utilities included in the rent, and the requested beginning date of the lease, necessary for the PHA to determine whether to approve the assisted tenancy in this unit.

Owners must certify that they are not the parent, child, grandparent, grandchild, sister or brother of any member of the family, unless the PHA has granted a request for reasonable accommodation for a person with disabilities who is a member of the tenant household.

For units constructed prior to 1978, owners must either 1) certify that the unit, common areas, and exterior have been found to be free of lead-based paint by a certified inspector; or 2) attach a lead-based paint disclosure statement.

PHA Policy

The RFTA must be signed by both the family and the owner.

The owner may submit the RFTA on behalf of the family.

Completed RFTA (including the proposed dwelling lease) must be submitted as hard copies, in-person, by mail, or by fax.

The family may not submit, and the PHA will not process, more than one (1) RFTA at a time.

When the family submits the RFTA the PHA will review the RFTA for completeness.

If the RFTA is incomplete (including lack of signature by family, owner, or both), or if the dwelling lease is not submitted with the RFTA, the PHA will notify the family and the owner of the deficiencies.

Missing information and/or missing documents will only be accepted as hard copies, in-person, by mail, e-mail or by fax. Corrections that are minor can be accepted by phone but must be followed by hard copies by fax or mail.

When the family submits the RFTA and proposed lease, the PHA will also review the terms of the RFTA for consistency with the terms of the proposed lease.

If the terms of the RFTA are not consistent with the terms of the proposed lease, the PHA will notify the family and the owner of the discrepancies.

Corrections to the terms of the RFTA and/or the proposed lease will only be accepted as hard copies, in-person, by mail, e-mail or by fax. The PHA will not accept corrections by phone.

Because of the time sensitive nature of the tenancy approval process, the PHA will attempt to communicate with the owner and family by phone, fax, or email. The PHA will use mail when the parties can't be reached by phone, fax, or email.

10.2.2 Lease and Tenancy Addendum

The family and the owner must execute and enter into a written dwelling lease for the assisted unit. This written lease is a contract between the tenant family and the owner; the PHA is not a party to this contract.

The tenant must have legal capacity to enter a lease under State and local law. 'Legal capacity' means that the tenant is bound by the terms of the lease and may enforce the terms of the lease against the owner [24 CFR 982.308(a)]

Lease Form and Tenancy Addendum
[24 CFR 982.308]

If the owner uses a standard lease form for rental to unassisted tenants in the locality or the premises, the lease must be in such standard form. If the owner does not use a standard lease form for rental to unassisted tenants, the owner may use another form of lease. The HAP contract prescribed by HUD contains the owner's certification that if the owner uses a standard lease form for rental to unassisted tenants, the lease is in such standard form.

All provisions in the HUD-required Tenancy Addendum must also be added word-for-word to the owner's standard lease form, for use with the assisted family. The Tenancy Addendum includes the tenancy requirements for the program and the composition of the household as approved by the PHA. As a part of the lease, the tenant shall have the right to enforce the Tenancy Addendum against the owner and the terms of the Tenancy Addendum shall prevail over any other provisions of the lease.

> PHA Policy
>
> The PHA has a model lease available for owners who do not use a standard lease for their unassisted tenants. The model lease contains the HUD-prescribed tenancy addendum.

Lease Information
[24 CFR 982.308(d)]

The assisted dwelling lease must contain all of the required information as listed below:

- The names of the owner and the tenant:
- The unit rented (address, apartment number, and any other information needed to identify the contract unit)
- The term of the lease (initial term and any provisions for renewal)
- The amount of the monthly rent to owner
- A specification of what utilities and appliances are to be supplied by the owner, and what utilities and appliances are to be supplied by the family

Term of Assisted Tenancy

The initial term of the assisted dwelling lease must be for at least one year [24 CFR 982.309]. The initial lease term is also stated in the HAP contract.

The HUD program regulations permit the PHA to approve a shorter initial lease term if certain conditions are met.

> PHA Policy
>
> A PHA generally may not approve a lease with an initial term of less than one year unless an exception exists as described below.
>
> - An exception will be made if the tenancy initially commences following the first of the month in which case the PHA should only approve the lease for an "annual" initial period that runs for 11 months plus the remaining days of the first month; e.g., lease commencing 2/2/08 shall have initial term through 1/31/09. Allowing this shorter initial term has in the past and will continue to improve housing opportunities for assisted households. Moreover, the calendaring of the next annual reexamination will not exceed 12 months. It is further noted that subsequent terms of such a tenancy will ordinarily be for one year periods unless the form of lease provides a different term.
>
> - The PHA will approve an initial lease term of less than one (1) year only where the PHA determines and can clearly document that: (i) Such shorter term would improve housing opportunities for the tenant; and (ii) the family would otherwise be unable to find housing in the particular rental market. A lease should be a minimum of 6 months in these cases.

During the initial term of the lease, the owner may not raise the rent to owner [24 CFR 982.309].

Any provisions for renewal of the dwelling lease will be stated in the dwelling lease [HCV Guidebook, pg. 8-22]. There are no HUD requirements regarding any renewal extension terms, except that they must be in the dwelling lease if they exist.

The PHA may execute the HAP contract even if there is less than one year remaining from the beginning of the initial lease term to the end of the last expiring funding increment under the consolidated ACC. [24 CFR 982.309(a)(4)].

Security Deposit
[24 CFR 982.313 (a) and (b)]

The owner may collect a security deposit from the tenant. The PHA may prohibit security deposits in excess of private market practice, or in excess of amounts charged by the owner to unassisted tenants. However, if the PHA chooses to do so, language to this effect must be added to Part A of the HAP contract [Form HUD-52641].

PHA Policy

The PHA will allow the owner to collect any security deposit amount the owner determines is appropriate provided that the security deposit is not in excess of private market practice or in excess of the amounts charged by the owner to unassisted tenants. Therefore, no modifications to the HAP contract will be necessary.

Separate Non-Lease Agreements between Owner and Tenant

Owners may not demand or accept any rent payment from the family in excess of the rent to the owner minus the PHA's housing assistance payments to the owner [24 CFR 982.451(b)(4)].

The owner may not charge the tenant extra amounts for items customarily included in rent in the locality, or provided at no additional cost to unsubsidized tenants in the premises [24 CFR 982.510(c)].

PHA Policy

The PHA permits owners and families to execute separate, non-lease agreements for services, appliances (other than range and refrigerator) and other items that are not included in the lease.

Any items, appliances, or other services that are customarily provided to unassisted families as part of the dwelling lease with those families, or are permanently installed in the dwelling unit must be included in the dwelling lease for the assisted family. These items, appliances or services cannot be placed under a separate non-lease agreement between the owner and family. Side payments for additional rent, or for items, appliances or services customarily provided to unassisted families as part of the dwelling lease for those families, are prohibited.

Any items, appliances, or other services that are not customarily provided to unassisted families as part of the dwelling lease with those families, are not permanently installed in the dwelling unit and where the family has the sole option of not utilizing the item, appliance or service, may be included in a separate non-lease agreement between the owner and the family.

The family is not liable and cannot be held responsible under the terms of the assisted dwelling lease for any charges pursuant to a separate non-lease agreement between the owner and the family. Non-payment of any charges pursuant to a separate non-lease agreement between the owner and the family cannot be a cause for eviction or termination of tenancy under the terms of the assisted dwelling lease.

Separate non-lease agreements that involve additional items, appliances or other services may be considered amenities offered by the owner and may be taken into consideration when determining the reasonableness of the rent for the property.

PHA Review of Lease

The PHA will review the dwelling lease for compliance with all applicable requirements.

> PHA Policy
>
> If the dwelling lease is incomplete or incorrect, the PHA will notify the family and the owner of the deficiencies. Missing and corrected lease information will only be accepted as hard copies, in-person, by mail, or by fax. The PHA will not accept missing and corrected information over the phone.
>
> Because the initial leasing process is time-sensitive, the PHA will attempt to communicate with the owner and family by phone, fax, or email. The PHA will use mail when the parties can't be reached by phone, fax, or email.

The PHA is permitted, but is not required, to review the lease to determine if the lease complies with State and local law and is permitted to decline to approve the tenancy if the PHA determines that the lease does not comply with State or local law [24 CFR 982.308(c)]

> PHA Policy
>
> The PHA will not review the owner's lease for compliance with state/local law.

10.2.3 Tenancy Approval

[24 CFR 982.305]

After receiving the family's Request for Tenancy Approval, with proposed dwelling lease, the PHA must promptly notify the family and owner whether the assisted tenancy is approved.

Prior to approving the assisted tenancy and execution of a HAP contract, the PHA must ensure that all required actions and determinations, discussed in this Chapter have been completed.

PHA Policy

The PHA will complete its determination within fifteen (15) business days after receiving all required information. Required information includes all documentation pertaining to lease review and eligibility of unit matters, review of agency conflicts of interest involving the owner/landlord or tenant, the approval of the landlord, the approval of the unit following HQS Inspection, and determinations of rent reasonableness.

As the unit inspection under DHCD's HQS Inspection standards is an integral stage in the approval of the tenancy, the initial unit inspection must occur within a reasonable time after the family and owner submit the RFTA. Fifteen (15) calendar days will be presumed to be reasonable and a greater period may be needed depending on individual agency inspection calendaring.

If the terms of the RFTA/proposed lease are changed for any reason, including but not limited to negotiation with the PHA, the PHA will obtain corrected copies of the RFTA and proposed lease, signed by the family and the owner. Corrections to the RFTA/proposed lease will only be accepted as hard copies, in-person, by mail, or by fax. The PHA will not accept corrections over the phone.

If the PHA determines that the tenancy cannot be approved for any reason, the owner and the family will be notified in writing and given the opportunity to address any reasons for disapproval. The PHA will instruct the owner and family of the steps that are necessary to approve the tenancy.

Where the tenancy is not approvable because the unit is not approvable, the family must continue to search for eligible housing within the timeframe of the issued voucher.

If the tenancy is not approvable due to rent affordability (including rent burden and rent reasonableness), the PHA will attempt to negotiate the rent with the owner.

If a new, approvable rent is negotiated, the tenancy will be approved. If the owner is not willing to negotiate an approvable rent, the family must continue to search for eligible housing within the timeframe of the issued voucher.

10.2.4 HAP Contract Execution

[24 CFR 982.305]

The HAP contract is a written agreement between the PHA and the owner of the dwelling unit occupied by a housing choice voucher assisted family. Under the HAP contract, the PHA agrees to make housing assistance payments to the owner on behalf of a specific family occupying a specific unit and obliges the owner to comply with all program requirements.

The HAP contract format is prescribed by HUD.

If the PHA has given approval for the family of the assisted tenancy, the owner and the PHA execute the HAP contract.

The term of the HAP contract must be the same as the term of the lease [24 CFR 982.451(a)(2)].

The PHA is permitted to execute a HAP contract even if the funding currently available does not extend for the full term of the HAP contract.

The PHA must make a best effort to ensure that the HAP contract is executed before the beginning of the lease term. Regardless, the HAP contract must be executed no later than 60 calendar days from the beginning of the lease term.
The PHA may not pay any housing assistance payment to the owner until the HAP contract has been executed. If the HAP contract is executed during the period of 60 calendar days from the beginning of the lease term, the PHA will pay housing assistance payments after execution of the HAP contract (in accordance with the terms of the HAP contract), to cover the portion of the lease term before execution of the HAP contract (a maximum of 60 days).

Any HAP contract executed after the 60 day period is void, and the PHA may not pay any housing assistance payment to the owner.

> PHA Policy
>
> The owner and the assisted family will execute the dwelling lease and the owner must provide a copy to the PHA. The PHA will ensure that both the owner and the assisted family receive copies of the dwelling lease.
>
> The owner and the PHA will execute the HAP contract. The PHA will not execute the HAP contract until the owner has demonstrated that he/she has met the program requirements. The PHA will ensure that the owner receives a copy of the executed HAP contract. See CHAPTER 14 for a discussion of owner responsibilities and the HAP contract and contract provisions.

10.2.5 Changes in Lease or Rent

[24 CFR 982.308]

If the tenant and the owner agree to any changes in the lease, such changes must be in writing, and the owner must immediately give the PHA a copy of such changes. The lease, including any changes, must remain in accordance with the requirements of this Chapter.

Generally, PHA approval of tenancy and execution of a new HAP contract are not required for changes in the lease. However, under certain circumstances, voucher assistance in the unit shall not be continued unless the PHA has approved a new tenancy in accordance with program requirements and has executed a new HAP contract with the owner. These circumstances include:

- Changes in lease requirements governing tenant or owner responsibilities for utilities or appliances
- Changes in lease provisions governing the term of the lease

- The family moves to a new unit, even if the unit is in the same building or complex

In these cases, if the HCV assistance is to continue, the family must submit a new Request for Tenancy Approval (RFTA) along with a new dwelling lease containing the altered terms. A new tenancy must then be approved in accordance with this Chapter.

For policies regarding changes in rent, see CHAPTER 9: RENT REASONABLENESS AND RENT INCREASES.

CHAPTER 11 : MOVING AND PORTABILITY

11.1 INTRODUCTION

Freedom of choice is a hallmark of the housing choice voucher (HCV) program; therefore, HUD regulations impose few restrictions on where families may live or move with HCV assistance. This chapter sets forth HUD regulations and PHA policies governing moves within or outside the PHA's jurisdiction in two parts:

- Moving with Continued Assistance. This part covers the general rules that apply to all moves by a family assisted under the PHA's HCV program, whether the family moves to another unit within the PHA's jurisdiction or to a unit outside the PHA's jurisdiction under portability.

- Portability. This part covers the special rules that apply to moves by a family under portability, whether the family moves out of or into the PHA's jurisdiction. This part also covers the special responsibilities that the PHA has under portability regulations and procedures.

11.2 MOVING WITH CONTINUED ASSISTANCE

11.2.1 Allowable Moves

HUD lists regulatory conditions and the statutory condition under VAWA in which an assisted family is allowed to move to a new unit with continued assistance. Permission to move is subject to the restrictions set forth in this Chapter under Restrictions on Moves. Outlined below are the conditions in which an assisted family is allowed to move to a new unit with continued assistance:

- When the family has a right to terminate the lease on notice to the owner (for the owner's breach or otherwise) and has given a notice of termination to the owner in accordance with the lease [24 CFR 982.314(b) (3)]. If the family terminates the lease on notice to the owner, the family must give the PHA a copy of the notice at the same time [24 CFR 982.314(d) (1)].

- When the family or a member of the family is or has been the victim of domestic violence, dating violence, sexual assault, or stalking and the move is needed to protect the health or safety of the family or family member [24 CFR 982.353(b)94)]. The Violence Against Women Reauthorization Act of 2005 and 2013 provides that "a family may receive a voucher from a public housing agency and move to another jurisdiction under the tenant-based assistance program if the family has complied with all other obligations of the Section 8 program and has moved out of the assisted dwelling unit in order to protect the health or safety of an individual who is or has been a victim of domestic violence, dating violence, sexual assault, or stalking and who reasonably believed he or she was imminently threatened by harm from further violence if he or she remained in the assisted dwelling unit" [24 CFR 982.353(b)]. This condition applies even when the family has moved out of its unit in violation of the lease, with or without prior notification to the PHA.

PHA Policy

If a family requests permission to move with continued assistance based on a claim that the move is necessary to protect the health of safety of a family member who is or has been the victim of domestic violence, dating violence, sexual assault, or stalking, the PHA will request documentation to support their claim in accordance with CHAPTER 17 of this plan.

- When the lease for the family's unit has been terminated by mutual agreement of the owner and the family [24 CFR 982.314(b) (1) (ii)].

PHA Policy

If the family and the owner mutually agree to terminate the lease for the family's unit, the family must give the PHA a copy of the termination agreement.

- When the owner has given the family a notice to vacate, has commenced an action to evict the family, or has obtained a court judgment or other process allowing the owner to evict the family [24 CFR 982.314(b) (2)]. The family must give the PHA a copy of any owner eviction notice [24 CFR 982.551(g)].

- When the PHA has terminated the assisted lease for the family's unit for the owner's breach [24 CFR 982.314(b) (1) (i)].

- When the PHA determines that the family's current unit does not meet the HQS space standards because of an increase in family size or a change in family composition. In such cases, the PHA must issue the family a new voucher, and the family and PHA must try to find an acceptable unit as soon as possible. If an acceptable unit is available for the family, the PHA must terminate the HAP contract for the family's old unit in accordance with the HAP contract terms and must notify both the family and the owner of the termination. The HAP contract terminates at the end of the calendar month that follows the calendar month in which the PHA gives notice to the owner. [24 CFR 982.403(a) and (c)]

11.2.2 Restrictions on Moves

A family's right to move is generally contingent upon the family's compliance with program requirements [24 CFR 982.1(b) (2)]. HUD specifies conditions under which a PHA may deny a family permission to move and ways in which a PHA may restrict moves by a family.

<u>Denial of Moves</u>

HUD regulations permit the PHA to deny a family permission to move under the following conditions:

- Insufficient Funding
  24 CFR 982.314(e) (1)

The PHA may only deny a family permission to move to a higher cost unit within the PHA's jurisdiction or to a higher cost area outside the PHA's jurisdiction if the PHA does not have funding for continued assistance. However, Notice PIH 2012-42 significantly restricts the ability of PHAs to deny permission to move under portability due to insufficient funding. The requirements found in this notice are mandatory.

The PHA will deny a family permission to move on grounds that the PHA does not have sufficient funding for continued assistance if the PHA would be unable to avoid termination of housing choice voucher assistance for current participants during the calendar year in order to remain within its budgetary allocation (including any available HAP reserves) for housing assistance payments;

The PHA must provide written notification to the local HUD Office when they determine it is necessary to deny moves to a higher cost unit based on insufficient funding.

The PHA must be able to demonstrate the following:

- The move will, in fact, result in higher subsidy costs; and
- It does not have sufficient funding in its annual budget to accommodate the higher subsidy costs.

PHA Policy

The PHA will create a list of families whose moves have been denied due to insufficient funding. A move request which has been denied due to insufficient funding will be deemed active for a period of 12 months from the date of the denial due to insufficient funding. When funds become available, the families on this list will take precedence over families on the waiting list. The PHA will use the same procedures for notifying families with open requests to move when funds become available as it uses for notifying families on the waiting list. The PHA will inform the family of its policy regarding moves denied due to insufficient funding in a letter to the family at the time the move is denied.

- Grounds for Denial or Termination of Assistance

The PHA may deny a family permission to move if it has grounds for denying or terminating the family's assistance [24 CFR 982.314(e) (2)]. However, protections afforded by the Violence Against Women Act of 2005 and 2013 (VAWA) apply.

PHA Policy

In general, the PHA will not deny a family permission to move if denial or termination is pending. However, if termination proceedings have commenced, the participant may not be considered a tenant in good standing and may not move with assistance.

The PHA should not accept or act upon any RFTAs submitted by the participant while an appeal is pending.

Restrictions on Elective Moves
[24 CFR 982.314(c)]

- HUD regulations permit the PHA to prohibit any elective move by a participant family during the family's initial lease term. They also permit the PHA to prohibit more than one elective move by a participant family during any 12-month period. Such prohibitions, if adopted, do not apply when the family or a member of the family is or has been the victim of domestic violence, dating violence, sexual assault, or stalking and the move is needed to protect the health or safety of the family or family member. For policy documentation of abuse, see 17.10.4 Victim Documentation in CHAPTER 17.

PHA Policy

- The PHA will deny a family permission to make an elective move during the family's initial lease term. This policy applies to moves within the PHA's jurisdiction or outside it under portability.

- The PHA will also deny a family permission to make more than one elective move during any 12-month period. This policy applies to all assisted families residing in the PHA's jurisdiction.

- The PHA will consider exceptions to these policies for the following reasons: to protect the health or safety of a family member (e.g., lead-based paint hazards, domestic violence, witness protection programs), to accommodate a change in family circumstances (e.g., new employment, school attendance in a distant area), or to address an emergency situation over which a family has no control. In addition, the PHA will allow exceptions to these policies for purposes of reasonable accommodation of a family member who is a person with disabilities (see CHAPTER 2)

- A participant family will not be permitted to move to a new unit if they are in non-compliance with a repayment agreement and have outstanding debt to the PHA. The family must make all overdue payments on the existing agreement before the PHA will issue a voucher to the family. A participant family will not be permitted to move out of state until the debt is paid in full.

11.2.3 Moving Process

Notification

If a family wishes to move to a new unit, the family must notify the PHA and the owner before moving out of the old unit or terminating the lease on notice to the owner [24 CFR 982.314(d)(2)]. If the family wishes to move to a unit outside the PHA's jurisdiction under portability, the notice to the PHA must specify the area where the family wishes to move [24 CFR 982.314(d) (2), Notice PIH2011-3]. The notices must be in writing [24 CFR 982.5].

Approval

> PHA Policy
>
> Upon receipt of a family's notification that it wishes to move, the PHA will determine whether the move is approvable in accordance with the regulations and policies set forth in this Chapter. The PHA will notify the family in writing of its determination within 15 business days following receipt of the family's notification.

Reexamination of Family Income and Composition

> PHA Policy
>
> For families approved to move to a new unit within the PHA's jurisdiction, the PHA will perform a new regular reexamination and reset the next recert date to coincide with the effective month of the new lease. For more information on reexaminations, see the policies set forth in CHAPTER 12 of this plan. A regular reexamination is necessary to ensure that the new unit meets the affordability standard.
>
> For families moving into or families approved to move out of the PHA's jurisdiction under portability, the PHA will follow the policies set forth in Section 11.3 Portability of this Chapter.

Voucher Issuance and Briefing

> PHA Policy
>
> For families approved to move to a new unit within the PHA's jurisdiction, the PHA will issue a voucher . No briefing is required for these families. The PHA will follow the policies set forth in CHAPTER 5 on voucher term, extension, and expiration. If a family does not locate a new unit within the term of the voucher and any extensions, the family may remain in its current unit with continued voucher assistance if the owner agrees and the PHA approves.
>
> For families moving into or families approved to move out of the PHA's jurisdiction under portability, the PHA will follow the policies set forth in the Section 11.3 Portability of this Chapter.

Housing Assistance Payments
[24 CFR 982.311(d)]

When a family moves out of an assisted unit, the PHA may not make any housing assistance payment to the owner for any month after the month the family moves out. The owner may keep the housing assistance payment for the month when the family moves out of the unit.

If a participant family moves from an assisted unit with continued tenant-based assistance, the term of the assisted lease for the new assisted unit may begin during the month the family moves out of the first assisted unit. Overlap of the last housing assistance payment (for the month when the family moves out of the old unit) and the first assistance payment for the new unit, is not considered to constitute a duplicative housing subsidy.

11.3 PORTABILITY

11.3.1 Overview

Within the limitations of the regulations and this plan, a participant family or an applicant family that has been issued a voucher has the right to use tenant-based voucher assistance to lease a unit anywhere in the United States providing that the unit is located within the jurisdiction of a PHA administering a tenant-based voucher program [24 CFR 982.353(b)]. The process by which a family obtains a voucher from one PHA and uses it to lease a unit in the jurisdiction of another PHA is known as portability. The first PHA is called the *initial PHA*. The second is called the *receiving PHA*.

The receiving PHA has the option of administering the family's voucher for the initial PHA or absorbing the family into its own program. Under the first option, the receiving PHA bills the initial PHA for the family's housing assistance payments and the fees for administering the family's voucher. Under the second option, the receiving PHA pays for the family's assistance out of its own program funds, and the initial PHA has no further relationship with the family.

The same PHA commonly acts as the initial PHA for some families and as the receiving PHA for others. Each role involves different responsibilities. The PHA will follow the rules and policies outlined in the Section 11.3.2 Initial PHA Role when it is acting as the initial PHA for a family. It will follow the rules and policies outlined in the Section 11.3.3 Receiving PHA Role when it is acting as the receiving PHA for a family.

Transfers between PHAs and Massachusetts PHAs

PHA Policy

In 1993, Federal District Court determined that all Massachusetts PHAs have statewide jurisdiction; therefore, any family issued a Housing Choice Voucher from a Massachusetts PHA has the right to lease a unit anywhere within the Commonwealth of Massachusetts.

The PHA 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.

Given this unique statewide jurisdiction, a RAA may not administer or absorb any transfers from a Massachusetts PHA unless approved in advance. Typically, approval will not be given when the PHA in the community to which the tenant wishes to move administers a Section 8 program. Exceptions for special circumstances such as conflict of interest or reasonable accommodation issues must be approved by the RAA.

CORI & Portability

PHA Policy

Without exception, the PHA will not accept transfers from Massachusetts PHAs under the provisions of statutory and regulatory portability, when the PHA in the community to which the tenant wishes to move administers a Section 8 program and the transfer family has been rejected by that PHA as the result of a CORI.

11.3.2 Initial PHA Role

Allowable Moves under Portability

A family may move with voucher assistance only to an area where there is at least one PHA administering a voucher program [24 CFR 982.353(b)]. If there is more than one PHA in the area, the initial PHA may choose the receiving PHA [24 CFR 982.355(b)].

Applicant families that have been issued vouchers as well as participant families may qualify to lease a unit outside the PHA's jurisdiction under portability. The initial PHA, in accordance with HUD regulations and PHA policy, determines whether a family qualifies.

Applicant Families

Under HUD regulations, most applicant families qualify to lease a unit outside the PHA's jurisdiction under portability. However, HUD gives the PHA discretion to deny a portability move by an applicant family for the same reasons that it may deny any move by a participant family: insufficient funding and grounds for denial or termination of assistance.

PHA Policy

The initial PHA will follow the policies established in the Section 11.2.2 Restrictions on Moves when determining whether or not to deny an applicant family permission to move under portability because the PHA lacks sufficient funding or has grounds for denying assistance to the family.

In addition, the PHA may establish a policy denying the right to portability to nonresident applicants during the first 12 months after they are admitted to the program [24 CFR 982.353(c)].

PHA Policy

If neither the head of household nor the spouse/co-head of an applicant family had a domicile (legal residence) in the PHA's jurisdiction at the time the family's application for assistance was submitted, the family must live in the PHA's jurisdiction with voucher assistance for at least 12 months before requesting portability.

The PHA will consider exceptions to this policy for purposes of reasonable accommodation (see CHAPTER 2). However, any exception to this policy is subject to the approval of the receiving PHA [24 CFR 982.353(c) (3)]

Participant Families

The initial PHA must not provide portable assistance for a participant if a family has moved out of its assisted unit in violation of the lease [24 CFR 982.353(b)]. VAWA creates an exception to this prohibition for families who are otherwise in compliance with program obligations but have moved to protect the health or safety of an individual who is or has been a victim of domestic violence, dating violence, sexual assault, or stalking and who reasonably believed he or she was imminently threatened by harm from further violence if they remained in the unit [24 CFR 982.353(b)].

PHA Policy

The PHA will determine whether a participant family may move out of the PHA's jurisdiction with continued assistance in accordance with the regulations and policies set forth here and in Section 11.2.1 Allowable Moves and 11.2.2 Restrictions on Moves of this Chapter. The PHA will notify the family of its determination in accordance with the approval policy set forth in Section 11.2.3 Moving Process of this Chapter.

Determining Income Eligibility

- Applicant Families

  An applicant family may lease a unit in a particular area under portability only if the family is income eligible for admission to the voucher program in that area [24 CFR 982.353(d) (3)]. The family must specify the area to which the family wishes to move [Notice 2011-3].

The initial PHA is responsible for determining whether the family is income eligible in the area to which the family wishes to move [24 CFR 982.355(c) (1)]. If the applicant family is not income eligible in that area, the PHA must inform the family that it may not move there and receive voucher assistance [Notice 2011-3].

- Participant Families

  The income eligibility of a participant family is not re-determined if the family moves to a new jurisdiction under portability [24 CFR 982.353(d) (2), 24 CFR 982.355(c) (1)].

Reexamination of Family Income and Composition

No new reexamination of family income and composition is required for an applicant family. A new recertification of family income and composition is not required for a participant family who is approved to move out of its jurisdiction under portability.

> PHA Policy
>
> For a participant family approved to move out of its jurisdiction under portability, the PHA generally will conduct a reexamination of family income and composition only if the family's regular reexamination must be completed before 30 days following the initial billing deadline specified on form HUD-52665, Family Portability Information.
>
> The PHA will make any exceptions to this policy necessary to remain in compliance with HUD regulations.

Briefing

The regulations and policies on briefings set forth in CHAPTER 5 of this plan require the PHA to provide information on portability to all applicant families that qualify to lease a unit outside the PHA's jurisdiction under the portability procedures. Therefore, no special briefing is required for these families.

PHA Policy

No formal briefing will be required for a participant family wishing to move outside the PHA's jurisdiction under portability. However, the PHA will provide the family with the same oral and written explanation of portability that it provides to applicant families selected for admission to the program (see CHAPTER 5). The PHA will provide the name, address, and phone of the contact for the PHA in the jurisdiction to which they wish to move. The PHA will advise the family that they will be under the receiving PHA's policies and procedures, including subsidy standards and voucher extension policies.

If a participant wants to move to another unit outside the area served by the PHA, they must be given the Required Notice for Participants Wishing to Move or Withdraw found in Exhibit 5-1: Important Information For Section 8 Voucher Program Participants Who Want To Move Or Who Want To Give Up Their Section 8 Voucher.

If a participant wants to withdraw from the Section 8 program (i.e., give up his/her subsidy), they must be given this notice. If the participant withdraws from the Section 8 program, the participant must be given a standard termination notice.

Use by PHAs of this notice will be in addition to, and not be a substitute for, compliance with any other notice requirements contained in state or federal law or regulations governing administration of the Section 8 program; e.g. the initial PHA is required to provide an explanation of portability at the applicant's first briefing session and all PHAs must advise an outgoing portable family how to contact and request assistance from a designated receiving PHA.

Voucher Issuance and Term

An applicant family has no right to portability until after the family has been issued a voucher [24 CFR 982.353(b)]. In issuing vouchers to applicant families, the PHA will follow the regulations and procedures set forth in Chapter 5. A new voucher is not required for portability purposes.

PHA Policy

For participant families approved to move under portability, the PHA will issue a new voucher.

The initial term of the voucher will be 60 days.

Voucher Extensions and Expiration

PHA Policy

The PHA will not approve extensions to a voucher issued to an applicant or participant family porting out of the PHA's jurisdiction except under the following circumstances:

- The initial term of the voucher will expire before the portable family will be issued a voucher by the receiving PHA;
- The family decides to return to the initial PHA's jurisdiction and search for a unit there, or
- The family decides to search for a unit in a third PHA's jurisdiction. In such cases, the policies on voucher extensions set forth in CHAPTER 5 of this plan will apply, including the requirement that the family apply for an extension in writing prior to the expiration of the initial voucher term.
- In order to continue receiving assistance under the initial PHA's voucher program, a family that moves to another PHA's jurisdiction under portability must be under HAP contract in the receiving PHA's jurisdiction within 60 days following the expiration date of the voucher issued to the family by the initial PHA. (See the below Section Initial Billing Deadline for one exception to this policy.)

Preapproval Contact with the Receiving PHA

Prior to approving a family's request to move under portability, the initial PHA must contact the receiving PHA via e-mail or other confirmed delivery method to determine whether the receiving PHA will administer or absorb the family's voucher. Based on the receiving PHA's response, the initial PHA must determine whether it will approve or deny the portability request [Notice 2011-3].

Initial Notification to the Receiving PHA

After approving a family's request to move under portability, the initial PHA must promptly notify the receiving PHA to expect the family [24 CFR 982.355(c) (2)]. The initial PHA must contact the receiving PHA directly on the family's behalf [Notice PIH 2011-3]. The initial PHA must also advise the family how to contact and request assistance from the receiving PHA [24 CFR 982.355(c) (2)].

PHA Policy

Because the portability process is time-sensitive, the PHA will notify the receiving PHA by phone, fax, or e-mail to expect the family.

The initial PHA will also ask the receiving PHA to provide any information the family may need upon arrival, including the name, fax, E-mail and telephone number of the staff member responsible for business with incoming portable families and procedures related to appointments for voucher issuance.

The PHA will pass this information along to the family. The PHA will also ask for the name, address, telephone number, fax and email of the person responsible for processing the billing information.

Sending Documentation to the Receiving PHA

The initial PHA is required to send the receiving PHA the following documents:

- Form HUD-52665, Family Portability Information, with Part I filled out [Notice PIH 2011-3]
- A copy of the family's most recent form HUD-50058, Family Report, or, if necessary in the case of an applicant family, family and income information in a format similar to that of form HUD-50058 [24 CFR 982.355(c)(4), Notice PIH 2011-3]
- Copies of the income verifications backing up the form HUD-50058 including a copy of the family's current EIV data [24 CFR 982.355(c)(4), Notice PIH 2011-3]
- A copy of the family's voucher [Notice PIH 2011-3]

PHA Policy

The PHA will notify the family in writing regarding any information provided to the receiving PHA [HCV GB, p. 13-3]. In addition to the above documents, it is suggested that the PHA provide the following information, if available, to the receiving PHA:

- Documentation of Social security numbers (SSNs)
- Documentation of legal identity
- Documentation of citizenship or eligible immigration status
- Documentation of participation in the earned income disallowance (EID) benefit
- Documentation of participation in a family self-sufficiency (FSS) program

Initial Billing Deadline
[Notice PIH 2011-3]

When the initial PHA sends form HUD-52665 to the receiving PHA, it specifies in Part I the deadline by which it must receive the initial billing notice from the receiving PHA. This deadline is 60 days following the expiration date of the voucher issued to the family by the initial PHA. If the initial PHA does not receive a billing notice and does not intend to honor a late billing submission, it must contact the receiving PHA to determine the status of the family. If the receiving PHA reports that the family is not yet under HAP contract, the initial PHA may refuse to accept a late billing submission. If the receiving PHA reports that the family is under HAP contract and the receiving PHA cannot absorb the family, the initial PHA must accept a late billing submission; however, it may report to HUD the receiving PHA's failure to comply with the deadline.

PHA Policy

If the PHA has not received an initial billing notice from the receiving PHA by the deadline specified on form HUD-52665, it will contact the receiving PHA by phone, fax, or e-mail. If the PHA reports that the family is not yet under HAP contract, the PHA will inform the receiving PHA that it will not honor a late billing submission and will return any subsequent billings that it receives on behalf of the family. The PHA will send the receiving PHA a written confirmation of its decision by mail.

The PHA will allow an exception to this policy if the family includes a person with disabilities and the late billing is a result of a reasonable accommodation granted to the family by the receiving PHA.

Monthly Billing Payments
[24 CFR 982.355(e), Notice PIH 2011-3]

If the receiving PHA is administering the family's voucher, the initial PHA is responsible for making billing payments in a timely manner. The first billing amount is due within 30 calendar days after the initial PHA receives Part II of form HUD-52665 from the receiving PHA. Subsequent payments must be received by the receiving PHA no later than the fifth business day of each month. The payments must be provided in a form and manner that the receiving PHA is able and willing to accept.

The initial PHA may not terminate or delay making payments under existing portability billing arrangements as a result of overleasing or funding shortfalls. The PHA must manage its tenant-based program in a manner that ensures that it has the financial ability to provide assistance for families that move out of its jurisdiction under portability and are not absorbed by receiving PHAs as well as for families that remain within its jurisdiction.

PHA Policy

The PHA will utilize direct deposit to ensure that the payment is received by the deadline unless the receiving PHA notifies the PHA that direct deposit is not acceptable to them.

Annual Updates of Form HUD-50058

If the initial PHA is being billed on behalf of a portable family, it should receive an updated form HUD-50058 each year from the receiving PHA. The Form HUD-50058 should be sent to the initial PHA as soon as the family's annual reexamination is complete but no later than 10 working days following the effective date of the annual reexamination. If the initial PHA fails to receive an updated 50058 within 30 days after the effective date of the annual recertification date, it must send a letter to the receiving PHA to verify the status of the family and copy of the letter must be sent to the Director (or the staff member designated by the Director) of the Office of Public Housing (OPH) in the HUD Area Office with jurisdiction over the initial PHA.

> PHA Policy
>
> Port-out families are subject to the receiving agency's policies. Thus, the family may be subject to an annual reexamination cycle.

Denial or Termination of Assistance
[24 CFR 982.355(c) (9)]

If the initial PHA has grounds for denying or terminating assistance for a portable family that has not been absorbed by the receiving PHA, the initial PHA may act on those grounds at any time. (For PHA policies on denial and termination, see CHAPTER 3 and CHAPTER 13, respectively.)

11.3.3 Receiving PHA Role

If a family has a right to lease a unit in the receiving PHA's jurisdiction under portability, the receiving PHA must provide assistance for the family [24 CFR 982.355(10)].

The receiving PHA's procedures and preferences for selection among eligible applicants do not apply, and the receiving PHA's waiting list is not used [24 CFR 982.355(10)]. However, the family's unit, or voucher, size is determined in accordance with the subsidy standards of the receiving PHA [24 CFR 982.355(7)], and the amount of the family's housing assistance payment is determined in the same manner as for other families in the receiving PHA's voucher program [24 CFR 982.355(e)(2)].

Responding to the Initial PHA's Request

The receiving PHA must respond via e-mail or other confirmed delivery method to the initial PHA's inquiry to determine whether the family's voucher will be bill or absorbed. If the receiving PHA informs the initial PHA that it will be absorbing the voucher, the receiving PHA cannot reverse its decision at a later date unless approved by the other PHA. [Notice 2011-3].

PHA Policy

The PHA will use e-mail, when possible, to promptly notify the initial PHA of its decision. Generally, the PHA will not absorb. See section Absorbing a Portable Family.

Initial Contact with Family

When a family moves into the PHA's jurisdiction under portability, the family is responsible for promptly contacting the PHA and complying with the PHA's procedures for incoming portable families [24 CFR 982.355(c) (3)].

If the voucher issued to the family by the initial PHA has expired, the receiving PHA does not process the family's paperwork but instead refers the family back to the initial PHA [Notice PIH 2011-3].

If for any reason the receiving PHA refuses to process or provide assistance to a family under the portability procedures, the family must be given the opportunity for an informal review or hearing [PIH 2011-3].

Briefing

The receiving PHA may conduct a briefing for an incoming portable family as long as the requirement does not unduly delay the family's search [Notice PIH 2011-3].

PHA Policy

The PHA will not require the family to attend a briefing. The PHA will provide the family with a briefing packet (as described in CHAPTER 5) and, in an individual briefing, will orally inform the family about the PHA's payment and subsidy standards, procedures for requesting approval of a unit, the unit inspection process, and the leasing process.

Income Eligibility and Reexamination

HUD allows the receiving PHA to conduct its own income reexamination of a portable family [24 CFR 982.355(c) (4)]. However, the receiving PHA may not delay voucher issuance or unit approval until the reexamination process is complete unless the reexamination is necessary to determine that an applicant family is income eligible for admission to the program in the area where the family wishes to lease a unit [Notice PIH 2011-3, 24 CFR 982.201(b)(4)]. The receiving PHA does not re-determine income eligibility for a portable family that was already receiving assistance in the initial PHA's voucher program [24 CFR 982.355(c) (1)].

PHA Policy

For any family moving into its jurisdiction under portability, the PHA will conduct a new reexamination of family income and composition.

However, the PHA will not delay issuing the family a voucher for this reason, nor will the PHA delay approving a unit for the family until the reexamination process is complete unless the family is an applicant and the PHA cannot otherwise confirm that the family is income eligible for admission to the program in the area where the unit is located.

In conducting its own reexamination, the PHA will rely upon any verifications provided by the initial PHA to the extent that they (a) accurately reflect the family's current circumstances and (b) were obtained within the last 120 days. Any new information may be verified by documents provided by the family and adjusted, if necessary, when third party verification is received.

Voucher Issuance

When a family moves into its jurisdiction under portability, the receiving PHA is required to issue the family a voucher [24 CFR 982.355(b) (6)]. The family must submit a request for tenancy approval to the receiving PHA during the term of the receiving PHA's voucher [24 CFR 982.355(c) (6)].

- Timing of Voucher Issuance

  HUD expects the receiving PHA to issue the voucher within two weeks after receiving the family's paperwork from the initial PHA if the information is in order, the family has contacted the receiving PHA, and the family complies with the receiving PHA's procedures [Notice PIH 2011-3].

  PHA Policy

  When a family ports into its jurisdiction, the PHA will issue the family a voucher based on the paperwork provided by the initial PHA unless the family's paperwork from the initial PHA is incomplete, the family's voucher from the initial PHA has expired or the family does not comply with the PHA's procedures. The PHA will update the family's information when verification has been completed.

- Voucher Term

  The term of the receiving PHA's voucher may not expire before the term of the initial PHA's voucher [24 CFR 982.355(c) (6)].

  PHA Policy

  The receiving PHA's voucher will expire on the same date as the initial PHA's voucher.

- Voucher Extensions
  [24 CFR 982.355(c) (6), Notice 2011-3]

  The receiving PHA may provide additional search time to the family beyond the expiration date of the initial PHA's voucher; however, if it does so, it must inform the initial PHA of the extension. It must also bear in mind the billing deadline provided by the initial PHA. Unless willing and able to absorb the family, the receiving PHA should ensure that any voucher expiration date would leave sufficient time to process a request for tenancy approval, execute a HAP contract, and deliver the initial billing to the initial PHA.

  PHA Policy

  Generally, the PHA will not extend the term of the voucher that it issues to an incoming portable family.

  The PHA will consider an exception to this policy as a reasonable accommodation to a person with disabilities (see CHAPTER 2).

Notifying the Initial PHA

The receiving PHA must promptly notify the initial PHA if the family has leased an eligible unit under the program or if the family fails to submit a request for tenancy approval for an eligible unit within the term of the receiving PHA's voucher [24 CFR 982.355(c) (8)]. The receiving PHA is required to use Part II of form HUD-52665, Family Portability Information, for this purpose [24 CFR 982.355(e) (5), Notice PIH 2011-3].

If an incoming portable family ultimately decides not to lease in the jurisdiction of the receiving PHA but instead wishes to return to the initial PHA's jurisdiction or to search in another jurisdiction, the receiving PHA must refer the family back to the initial PHA. In such a case the voucher of record for the family is once again the voucher originally issued by the initial PHA. Any extension of search time provided by the receiving PHA's voucher is only valid for the family's search in the receiving PHA's jurisdiction. [Notice PIH 2011-3]

- Initial Billing Deadline

  If a portable family's search for a unit is successful and the receiving PHA intends to administer the family's voucher, the receiving PHA must submit its initial billing notice (Part II of form HUD-52665) (a) no later than 10 business days following the date the receiving PHA executes a HAP contract on behalf of the family and (b) in time that the notice will be received no later than 60 days following the expiration date of the family's voucher issued by the initial PHA [Notice PIH 2011-3]. A copy of the family's form HUD-50058, Family Report, completed by the receiving PHA must be attached to the initial billing notice. The receiving PHA may send these documents by mail, fax, or e-mail.

PHA Policy

The PHA will send its initial billing notice by fax or E-mail, if necessary, to meet the billing deadline but will also send the notice by regular mail.

If the receiving PHA fails to send the initial billing within 10 business days following the date the HAP contract is executed, it is required to absorb the family into its own program unless (a) the initial PHA is willing to accept the late submission or (b) HUD requires the initial PHA to honor the late submission (e.g., because the receiving PHA is overleased) [Notice PIH 2011-3].

- Annual Reexamination

The receiving PHA must send the initial PHA a copy of a portable family's updated form HUD-50058 after each annual reexamination for the duration of time the receiving PHA is billing the initial PHA on behalf of the family, regardless of whether there is a change in the billing amount.

PHA Policy

The PHA will send a copy of the updated HUD-50058 by regular mail at the same time the PHA and owner are notified of the reexamination results, so that it will be received within 10 business days of the effective date of the reexamination.

All port-in clients will be subject to an annual reexamination cycle.

- Change in Billing Amount

The receiving PHA is required to notify the initial PHA, using form HUD-52665, of any change in the billing amount for the family as a result of:

- A change in the HAP amount (because of a reexamination, a change in the applicable payment standard, a move to another unit, etc.)
- An abatement or subsequent resumption of the HAP payments
- Termination of the HAP contract
- Payment of a damage/vacancy loss claim for the family
- Termination of the family from the program

The timing of the notice of the change in the billing amount should correspond with the notification to the owner and the family in order to provide the initial PHA with advance notice of the change. Under no circumstances should the notification be later than 10 business days following the effective date of the change in the billing amount. If the

receiving PHA fails to send Form HUD-52665 within 10 days of effective date of billing changes, the initial PHA is not responsible for any increase prior to notification.

- Overpayments
  [Notice PIH 2011-3]

  In all cases where the receiving PHA has received billing payments for billing arrangements no longer in effect, the receiving PHA is responsible for returning the full amount of the overpayment (including the portion provided for administrative fees) to the initial PHA.

  In the event that HUD determines billing payments have continued for at least three months because the receiving PHA failed to notify the initial PHA that the billing arrangement was terminated, the receiving PHA must take the following steps:

  - Return the full amount of the overpayment, including the portion provided for administrative fees, to the initial PHA.

  - Once full payment has been returned, notify the Office of Public Housing in the HUD area office with jurisdiction over the receiving PHA of the date and the amount of reimbursement to the initial PHA.

  At HUD's discretion, the receiving PHA will be subject to the sanctions spelled out in Notice PIH 2011-3.

- Denial or Termination of Assistance

  At any time, the receiving PHA may make a determination to deny or terminate assistance to a portable family for family action or inaction [24 CFR 982.355(c) (9), 24 CFR 982.355(c) (10)].

  In the case of a termination, the PHA should provide adequate notice of the effective date to the initial PHA to avoid having to return a payment. In no event should the receiving PHA fail to notify the initial PHA later than 10 business days following the effective date of the termination of the billing arrangement. [Notice PIH 2011-3]

  PHA Policy

  If the PHA elects to deny or terminate assistance for a portable family, the PHA will notify the initial PHA within 10 business days after the informal review or hearing if the denial or termination is upheld.

  The PHA will base its denial or termination decision on the policies set forth in CHAPTER 3 or CHAPTER 11, respectively. The informal review or hearing will be held in accordance with the policies in CHAPTER 17. The receiving PHA will furnish the initial PHA with a copy of the review or hearing decision.

- Late Payments
  [Notice PIH 2011-3]

  If the initial PHA fails to make a monthly payment for a portable family by the fifth business day of the month, the receiving PHA must promptly notify the initial PHA in writing of the deficiency. The notice must identify the family, the amount of the billing payment, the date the billing payment was due, and the date the billing payment was received (if it arrived late). The receiving PHA must send a copy of the notification to the Office of Public Housing (OPH) in the HUD area office with jurisdiction over the receiving PHA. If the initial PHA fails to correct the problem by the second month following the notification, the receiving PHA may request by memorandum to the director of the OPH with jurisdiction over the receiving PHA that HUD transfer the unit in question. A copy of the initial notification and any subsequent correspondence between the PHAs on the matter must be attached. The receiving PHA must send a copy of the memorandum to the initial PHA. If the OPH decides to grant the transfer, the billing arrangement on behalf of the family ceases with the transfer, but the initial PHA is still responsible for any outstanding payments due to the receiving PHA.

Absorbing a Portable Family

The receiving PHA may absorb an incoming portable family into its own program when the PHA executes a HAP contract on behalf of the family or at any time thereafter providing that (a) the PHA has funding available under its annual contributions contract (ACC) and (b) absorbing the family will not result in overleasing [24 CFR 982.355(d) (1), Notice PIH 2011-3].

> PHA Policy
>
> Receiving PHAs are not required to absorb incoming vouchers. Given the limited supply of vouchers available for Massachusetts residents, PHAs are not authorized to absorb incoming vouchers from an out-of state PHA. In order to ensure that PHAs are not forced [by HUD] to absorb incoming vouchers, PHA staff must ensure that critical reporting and billing deadlines as established in HUD Notice 2011-3 are met.
>
> PHAs may absorb incoming vouchers in cases where the initial PHA absorbs an equal number of the PHA's outgoing vouchers or as otherwise directed by the PHA.

If the receiving PHA absorbs a family from the point of admission, the admission will be counted against the income targeting obligation of the receiving PHA [24 CFR 982.201(b) (2) (vii)].

If the receiving PHA absorbs a family after providing assistance for the family under a billing arrangement with the initial PHA, HUD encourages the receiving PHA to provide adequate advance notice to the initial PHA to avoid having to return an overpayment. The receiving PHA must specify the effective date of the absorption of the family. [Notice PIH 2011-3]

PHA Policy

If the PHA decides to absorb a portable family upon the execution of a HAP contract on behalf of the family, the PHA will notify the initial PHA by the initial billing deadline specified on form HUD-52665. The effective date of the HAP contract will be the effective date of the absorption.

If the PHA decides to absorb a family subsequent to the initial lease up, it will provide the initial PHA with 30 days' advance notice.

Following the absorption of an incoming portable family, the family is assisted with funds available under the consolidated ACC for the receiving PHA's voucher program [24 CFR 982.355(d)], and the receiving PHA becomes the initial PHA in any subsequent moves by the family under portability.

CHAPTER 12 : REEXAMINATIONS

12.1 INTRODUCTION

The PHA is required to reexamine each family's income and composition regularly, and to adjust the family's level of assistance accordingly. Generally, for MTW households, the PHA conducts reexaminations biennially, but some households will complete reexaminations annually. Interim reexaminations are also needed in certain situations. This Chapter discusses both regular and interim reexaminations, and the recalculation of family share and subsidy that occurs as a result. HUD regulations and PHA policies concerning reexaminations are presented in three parts:

- Regular Reexaminations: This part discusses the process for conducting annual and biennial reexaminations.

- Interim Reexaminations: This part details the requirements for families to report changes in family income and composition between regular reexaminations.

- Recalculating Family Share and Subsidy Amount: This part discusses the recalculation of family share and subsidy amounts based on the results of regular and interim reexaminations.

Policies governing reasonable accommodation, family privacy, required family cooperation, and program abuse, as described elsewhere in this plan, apply to both regular and interim reexaminations.

12.2 REGULAR REEXAMINATIONS

12.2.1 Overview

The PHA must conduct a regular reexamination of family income and composition. This includes gathering and verifying current information about family composition, income, and expenses. Based on this updated information, the family's income and rent must be recalculated. This part discusses the schedule for regular reexaminations, the information to be collected and verified, and regular reexamination effective dates. Regular reexaminations refer to both biennial and annual reexaminations.

12.2.2 Reexamination Cycle

Annual Cycle
[24 CFR 982.516]

Households assisted under the programs outlined below will have reexaminations conducted annually. The annual reexamination policy applies to families in the following programs:

- Residents living in Mod-Rehab and Mod-Rehab SRO units

- Mainstream 5 Vouchers

- Port-In Vouchers administered by DHCD
- VASH Vouchers
- Enhanced Vouchers – Year One

Biennial Cycle

PHA Policy – MTW

Households assisted under DHCD's MTW program will have reexaminations conducted biennially. The biennial reexamination policy applies to families in the following programs:

- Tenant Based Vouchers
- Project Based Vouchers
- Raising the Next Generation Vouchers
- Greater Plymouth Areas Supportive Housing Vouchers
- Housing Options Program
- Enhanced Vouchers – In Year 2
- Mainstream 1 Vouchers
- Family Unification Vouchers
- Designated Housing Vouchers
- FSS participants with MTW vouchers

12.2.3 Scheduling Regular Reexaminations

The PHA must establish a policy to ensure that the regular reexamination for each family is completed within the applicable period, either annually [HCV GB p. 12-1] or biennially.

PHA Policy

The PHA will begin the regular reexamination process 120 days in advance of its scheduled effective date. Generally, the PHA will schedule regular reexamination effective dates to coincide with the family's anniversary date.

Anniversary date is defined as: 12 or 24 months from the effective date of the family's last regular reexamination; or, during a family's first year in the program, from the effective date of the family's initial examination (admission).

If the family moves to a new unit, the PHA will perform a new regular reexamination.

When a family moves to a new unit and thereby establishes a new HAP contract anniversary date, if the family's latest regular reexamination took effect within 4 months prior to the new HAP contract anniversary, the PHA may simply ascertain whether there has been any change in the family's adjusted income since the last regular reexamination and, if so, obtain acceptable verification of only the change. The PHA must then use any new verified information together with information from the last regular reexamination to redetermine the family share of rent and the subsidy payment. (See 7.2 General Verification Requirements)

The PHA also may schedule a regular reexamination for completion prior to the anniversary date for administrative purposes.

12.2.4 Notification of and Participation in the Regular Reexamination Process

The PHA is required to obtain the information needed to conduct regular reexaminations. How that information will be collected is left to the discretion of the PHA. However, PHAs should give tenants who were not provided the opportunity the option to complete Form HUD-92006 at this time [Notice PIH 2009-36].

PHA Policy

Families generally are required to participate in a regular reexamination interview, which must be attended by the head of household, spouse, or co-head. If participation in an in-person interview poses a hardship because of a family member's disability, the family should contact the PHA to request a reasonable accommodation (see CHAPTER 2).

Notification of regular reexamination interviews will be sent by first-class mail and will contain the date, time, and location of the interview. In addition, it will inform the family of the information and documentation that must be brought to the interview.

If the family is unable to attend a scheduled interview, the family should contact the PHA in advance of the interview to schedule a new appointment. If a family does not attend the scheduled interview, the PHA will send a second notification with a new interview appointment time.

If a family fails to attend two scheduled interviews without PHA approval, or if the notice is returned by the post office with no forwarding address, a notice of termination (see CHAPTER 13) will be sent to the family's address of record, and to any alternate address provided in the family's file.

An advocate, interpreter, or other assistant may assist the family in the interview process. The family and the PHA must execute a certification attesting to the role and assistance of any such third party.

PHAs may conduct this process through the mail. The regular reexamination notice must be modified accordingly.

12.2.5 Conducting Regular Reexaminations

As part of the regular reexamination process, families are required to provide updated information to the PHA regarding the family's income, expenses, and composition [24 CFR 982.551(b)].

> PHA Policy
>
> Families will be asked to bring (or mail) all required information (as described in the reexamination notice) to the reexamination appointment.
>
> The required information will include a PHA-designated reexamination form, an Authorization for the Release of Information/Privacy Act Notice, as well as supporting documentation related to the family's income, expenses, and family composition.
>
> Any required documents or information must be provided by the family within 15 business days from the date of the PHA request. If the family is unable to obtain the information or materials within the required time frame, the family may request an extension. If the family does not provide the required documents or information within the required time frame (plus any extensions), the family will be sent a notice of termination (See CHAPTER 13).

The information provided by the family generally must be verified in accordance with the policies in CHAPTER 7. Unless the family reports a change, or the agency has reason to believe a change has occurred in information previously reported by the family, certain types of information that are verified at admission typically do not need to be re-verified on a regular basis. These include:

- Legal identity
- Age
- Social security numbers
- A person's disability status
- Citizenship or immigration status

12.2.6 Effective Dates

The PHA must establish policies concerning the effective date of changes that result from a regular reexamination [24 CFR 982.516].

PHA Policy

In general, an increase in the family share of the rent that results from a regular reexamination will take effect on the family's anniversary date, and the family will be notified at least 30 days in advance.

If less than 30 days remain before the scheduled effective date, the increase will take effect on the first of the month following the end of the 30-day notice period.

If a family moves to a new unit, the increase will take effect on the effective date of the new lease and HAP contract, and no 30-day notice is required

If the PHA chooses to schedule a regular reexamination for completion prior to the family's anniversary date for administrative purposes, the effective date will be determined by the PHA, but will always allow for the 30-day notice period.

If the family causes a delay in processing the regular reexamination, increases in the family share of the rent will be applied retroactively, to the scheduled effective date of the regular reexamination. The family will be responsible for any overpaid subsidy and may be offered a repayment agreement in accordance with the policies in CHAPTER 17.

In general, a decrease in the family share of the rent that results from a regular reexamination will take effect on the family's anniversary date.

If a family moves to a new unit, the decrease will take effect on the effective date of the new lease and HAP contract.

If the PHA chooses to schedule a regular reexamination for completion prior to the family's anniversary date for administrative purposes, the effective date will be determined by the PHA.

If the family causes a delay in processing the regular reexamination, decreases in the family share of the rent will be applied prospectively, from the first day of the month following completion of the reexamination processing.

Delays in reexamination processing are considered to be caused by the family if the family fails to participate in the reexamination process and/or to provide information requested by the PHA by the date specified, and this delay prevents the PHA from completing the reexamination as scheduled.

12.2.7 Determining Ongoing Eligibility of Certain Students

[24 CFR 982.552(b)(5)]

Section 327 of Public Law 109-115 established new restrictions on the ongoing eligibility of certain students (both part- and full-time) who are enrolled in institutions of higher education.

If a student enrolled in an institution of higher education is under the age of 24, is not a veteran, is not married, does not have a dependent child, and is not a person with disabilities receiving HCV assistance as of November 30, 2005, the student's eligibility must be reexamined along with the income eligibility of the student's parents on a regular basis. In these cases, both the student and the student's parents must be income eligible for the student to continue to receive HCV assistance. If, however, a student in these circumstances is determined independent from his or her parents in accordance with PHA policy, the income of the student's parents will not be considered in determining the student's ongoing eligibility.

Students who reside with parents in an HCV assisted unit are not subject to this provision. It is limited to students who are receiving assistance on their own, separately from their parents.

PHA Policy

During the regular reexamination process, the PHA will determine the ongoing eligibility of each student who is subject to the eligibility restrictions in 24 CFR 5.612 by reviewing the student's individual income as well as the income of the student's parents.

If the student has been determined "independent" from his/her parents based on the policies in CHAPTER 3 and CHAPTER 7, the parents' income will not be reviewed.

If the student is no longer income eligible based on his/her own income or the income of his/her parents, the student's assistance will be terminated in accordance with the policies in CHAPTER 13.

If the student continues to be income eligible based on his/her own income and the income of his/her parents (if applicable), the PHA will process a reexamination in accordance with the policies in this Chapter.

12.2.8 State Lifetime Sex Offender Registration

[Notice 2009-35, 2012-28]

PHA Policy

The PHA will require households at each regular reexamination to answer questions related to criminal activity and sex offender registration requirement.

If it is revealed that a household member admitted after June 25, 2001 is subject to a lifetime sex offender registration requirement, or that the tenant has falsified information or otherwise failed to disclose his or her criminal history on their application and or reexamination forms, the PHA will pursue termination of assistance to the extent currently allowed by law. See CHAPTER 13: TERMINATIONS.

All tenants determined not suitable and/or ineligible have a right to a hearing to present extenuating circumstances and have a right to legal representation, prior to termination.

12.2.9 Household Member Turning 18 Between When the Reexamination Documents are Completed and Provided to the PHA & the Effective Date of Reexamination

Income & Deductions

PHA Policy

When a household member will turn 18 between the date the reexamination documents are completed and the effective date of the reexamination, the PHA will include the household member's income in the calculation of annual income.

For example, a household has a reexamination effective date of November 1st. The household completed the reexamination documents and provided them to the PHA on August 1st. At the time the reexamination documents were completed and provided to the PHA, one of the household members was still 17; however, he/she will turn 18 on September 30th. The PHA will calculate the income of that household member as if s/he was an adult, since the household member will be 18 by the effective date of the reexamination. Deductions will also be applied as if the household member was an adult.

Release Forms

PHA Policy

When a household member will turn 18 between the date the reexamination documents are completed and provided to the PHA and the effective date of the reexamination, the PHA will have a parent/legal guardian sign any consent/release forms on behalf of that household member in order to authorize PHA to obtain their income verification.

12.2.10 Household Member Turning 18 Between Regular Reexaminations

PHA Policy

If a household member turns 18 between regular reexaminations, a CORI and applicable consent forms will be completed at the next interim or regular reexamination. Changes in household income resulting from a household member turning 18 between regular reexaminations will not be applied until the next interim or regular reexamination.

A household member who turns 18 between regular reexaminations will be required to report applicable changes in income if the household is a zero income household, is on minimum rent, has had an interim rent reduction, or is a household experiencing a financial hardship exemption from minimum rent. See Section "Required Reporting". Under these circumstances, an interim reexamination will be conducted when the household member turns 18.

12.3 INTERIM REEXAMINATIONS

12.3.1 Overview

Family circumstances may change throughout the period between regular reexaminations. HUD and PHA policies dictate what kinds of information about changes in family circumstances must be reported, and under what circumstances the PHA must process interim reexaminations to reflect those changes. HUD regulations also permit the PHA to conduct interim reexaminations of income or family composition at any time. When an interim reexamination is conducted, only those factors that have changed are verified and adjusted [HCV GB, p. 12-10].

In addition to specifying what information the family must report, HUD regulations permit the family to request an interim determination if other aspects of the family's income or composition changes. The PHA must complete the interim reexamination within a reasonable time after the family's request.

This part includes HUD and PHA policies describing what changes families are required to report, what changes families may choose to report, and how the PHA will process both PHA- and family-initiated interim reexaminations.

12.3.2 Processing the Interim Reexamination

Method of Reporting

> PHA Policy
>
> The family may notify the PHA of changes either orally or in writing. If the family provides oral notice, the PHA may also require the family to submit the changes in writing.
>
> Generally, the family will not be required to attend an interview for an interim reexamination. However, if the PHA determines that an interview is warranted, the family may be required to attend.
>
> Based on the type of change reported, the PHA will determine the documentation the family will be required to submit. The family must submit any required information or documents within 15 business days of receiving a request from the PHA. This time frame may be extended for good cause with PHA approval. The PHA will accept required documentation by mail, by fax, or in person.

Effective Dates

The PHA must establish the time frames in which any changes that result from an interim reexamination will take effect [24 CFR 982.516(d)]. The changes may be applied either retroactively or prospectively, depending on whether there is to be an increase or a decrease in the family share of the rent, and whether the family reported any required information within the required time frames [HCV GB, p. 12-10].

PHA Policy

- If the family share of the rent is to increase:

The increase generally will be effective on the first of the month following 30 days' notice to the family.

If a family fails to report a change within the required time frames, or fails to provide all required information within the required time frames, the increase will be applied retroactively, to the date it would have been effective had the information been provided on a timely basis. The family will be responsible for any overpaid subsidy and may be offered a repayment agreement in accordance with the policies in CHAPTER 17.

- If the family share of the rent is to decrease:

The decrease will be effective on the first day of the month following the month in which the change was reported and all required documentation was submitted.

If the family fails to report a change within the required time frames, the decrease will not be applied retroactively, to the date it would have been effective had the information been provided on a timely basis.

In cases where the change cannot be verified until after the date the change would have become effective, the change will be made retroactively.

12.3.3 Changes Affecting Income or Expenses

Interim reexaminations can be scheduled either because the PHA has reason to believe that changes in income or expenses may have occurred, or because the family reports a change. When a family reports a change, the PHA may take different actions depending on whether the family reported the change voluntarily, or because it was required to do so.

Seasonal Income

Generally, interim reexaminations will not be conducted for seasonal or cyclic employment. The PHA will review and analyze historical data for patterns of employment, paid benefits, and receipt of other income and use the results of this analysis to establish annual income.

PHA Policy

Interim reexaminations may be conducted when and if past annual income does not accurately reflect household income. In all such cases the family may present information and documentation to the PHA to show why the historic pattern does not represent the family's anticipated income.

The specific circumstances of an interim reexamination for a household with seasonal income will dictate whether the reexamination will count toward the MTW interim reexamination limit. See section "Limit on Voluntary Reexaminations".

12.3.4 Family-Initiated Interim Reexaminations

Required Reporting

HUD regulations give the PHA the freedom to determine the circumstances under which families will be required to report changes affecting income. These interim reexaminations will not be considered "voluntary" and therefore will not be subject to the limit on voluntary reexaminations. For more details, See section "Limit on Voluntary Reexaminations".

Certain circumstances under which families will be required to report changes only require reporting of increases in earned income.

- Earned income includes new employment or income from a business.
- Earned income does NOT include Unemployment, SSI, Child Support, TAFDC, pension, or Social Security.

PHA Policy

The PHA will conduct interim reexaminations when families report increases in income which are required.

The following are circumstances under which the family is required to report changes:

- If the family's last interim reexamination resulted in a rent reduction, families are required to report all increases in **earned** income, i.e. new employment, within 15 business days of the date the change takes effect

For example, if a family member lost a job and the family's income and rent went down at an interim reexam, the family would be required to report any increase in earned income within 15 days from the date the change took effect.

- Families reporting zero income are required to report all increases in **monetary** income and **non-monetary** income within 15 business days of the date the change takes effect.

- Families paying minimum rent are required to report all increases in **earned income**, including new employment, within 15 business days of the date the change takes effect.

- Families who are on an interim rent reduction due to recoupment of a SS or SSI overpayment are required to report the increase in SS and/or SSI benefit when the repayment is complete and the full benefit restored.

- Families with a financial hardship exemption from minimum rent are required to report any changes in household income/expenses and/or changes in circumstances that caused the financial hardship within 15 business days of the date the change takes effect.

- Families experiencing a change in family composition including the death of a household member are required to report all changes in family composition within 15 business days from the date the change took place. See Section 12.3.5 Changes in Family and Household Composition and Section 12.3.6 Deceased Tenant for more details.

- If an adult household member with full time student status, other than the head of household, co-head, or spouse, loses full time student status between regular reexaminations, the family must notify the agency within 15 business days of the change.

Voluntary Reporting

HUD regulations give the PHA the freedom to determine the circumstances under which families may voluntarily report changes affecting income.

PHA Policy

The following interim reexaminations will be considered "voluntary":

- Decrease in income for any reason, except for decrease that is subject to Imputed Welfare Income Rules. The decrease must be expected to last more than 60 days in order for the PHA to conduct the interim reexamination (See section below "Decrease in Income due to Imputed Welfare Income").

- Increase in unreimbursed child care expenses (subject to the eligibility requirements for this deduction)

- Increase in unreimbursed medical expenses (for elderly and disabled households only)

If a family reports a change that it was not required to report and that would result in a decrease in the family share of rent, the PHA will conduct an interim reexamination.

If a family reports a change that it was not required to report and that would result in an increase in the family share of the rent, the PHA will not conduct an interim reexamination.

Limit on Voluntary Reexaminations

PHA Policy-Non-MTW

For families holding Non-MTW vouchers, voluntary interim reexaminations may be requested at any time. There is no limit on the number of voluntary interim reexaminations which may be requested. [24 CFR 982.516].

PHA Policy – MTW

For families holding MTW vouchers, two voluntary interim reexaminations are permitted between regular reexaminations. Elderly and disabled MTW households and FSS participants will be exempt from the limit on interim reexaminations

Exceptions to the Limit:

PHA Policy-MTW

The following types of interims do NOT count toward the limit on interim reexaminations for MTW households:

- Interim reexaminations required due to changes in family composition;
- Interim reexaminations requested by families as part of the FSS program;
- Interim reexaminations required by the PHA for any reason.

Additionally to respond to hardships which are beyond the tenant's control (no-fault hardships), MTW households who have exceeded the limit on interim reexaminations may request an emergency interim reexamination if the loss of income is greater than thirty percent (30%).

Decrease in Income due to Imputed Welfare Income

If a family reports a decrease in income from the loss of welfare benefits due to fraud or non-compliance with a welfare agency requirement to participate in an economic self-sufficiency program, the family's share of the rent will not be reduced [24 CFR 5.615]. For more information regarding the requirement to impute welfare income see Section 6.2.15 Welfare Assistance.

Summary of Income/Expense Changes and Related Actions

The table below includes both MTW and Non-MTW situations and related PHA actions

SITUATION	PHA ACTION
a) Decrease in income for any reason, except for decrease that is subject to Imputed Welfare Income Rules • Voluntary • MTW and Non-MTW	o The PHA will process an interim reduction in the rent if the income decrease is expected to last more than 60 days. o For MTW households, the PHA action is subject to the limit on interim reexaminations.
b) Increase in unreimbursed medical expenses (for elderly and disabled households only) • Voluntary • MTW and Non-MTW	o The PHA will process an interim reduction in the rent.
c) Increase in unreimbursed child care expenses (subject to the eligibility requirements for this deduction) • Voluntary • MTW and Non-MTW	o The PHA will process an interim reduction in the rent. o For MTW households, the PHA action is subject to the limit on interim reexaminations.
d) Increase or Decrease in income due to a change in Family Composition • Required • MTW and Non-MTW	o The PHA will process an interim reexamination. o For MTW households, this interim reexamination will not count toward the limit on interim reexaminations.
e) Increase in earned income following the PHA granting a rent decrease at an interim reexamination • Required • MTW and Non-MTW	o The PHA will process an interim rent increase for earned income increases that follow any rent reductions at interim reexamination. o Households do not have to report the next increase in earned income until the next regular reexamination. o For MTW households, the PHA action will not count toward the limit on interim reexaminations.
f) Increase in earned income for a family on minimum rent • Required • MTW and Non-MTW	o The PHA will process an interim reexamination and rent increase. o Households do not have to report the next increase in earned income until the next regular reexamination o For MTW households, the PHA action will not count toward the limit on interim reexaminations.

SITUATION	PHA ACTION
g) Increase in any monetary or non-monetary income after family claimed zero income • Required • MTW and Non-MTW	o The PHA will process an interim reexamination and rent increase. o Households do not have to report the next increase in monetary or non-monetary income until the next regular reexamination. o For MTW households, the PHA action will not count toward the limit on interim reexaminations.
h) After twelve months at zero income • Required • MTW and Non-MTW	o The PHA will process an interim reexamination to re-certify zero income status. o For MTW households, the PHA action will not count toward the limit on interim reexaminations.
i) The end of the exclusion period of earned income disallowance • Required • MTW and Non-MTW	o The PHA will process an interim reexamination. o For MTW households, the PHA action will not count toward the limit on interim reexaminations.
j) Any changes in household income/expenses and/or changes in circumstances for a family with a financial hardship exemption from minimum rent • Required • MTW and Non-MTW	o The PHA will process an interim reexamination and rent increase. o For MTW households, the PHA action will not count toward the limit on interim reexaminations.
k) An adult household member with full-time student status, other than the HOH, co-head, or spouse, ceases to be a full-time student. • Required • MTW and Non-MTW	o The PHA will process an interim reexamination. o For MTW households, this interim reexamination will not count toward the limit on interim reexaminations.

12.3.5 Changes in Family and Household Composition

The PHA must adopt policies prescribing when and under what conditions the family must report changes in family composition. However, due to family obligations under the program, the PHA has limited discretion in this area.

> PHA Policy
>
> The PHA will conduct interim reexaminations to account for any changes in household composition that occur between regular reexaminations.

> PHA Policy – MTW
>
> The PHA will conduct interim reexaminations to account for any changes in household composition that occur between regular reexaminations. Interim reexaminations required as a result of a change in family composition will not count against the limit on "voluntary" reexaminations for MTW households.

When any new family member is added, the PHA must conduct a reexamination to determine any new income or deductions associated with the additional family member, and to make appropriate adjustments in the family share of the rent and the HAP payment [24 CFR 982.516(e)]. See the Section 12.4.2 Applying Payment Standards, Subsidy Standards and Utility Allowances for the policy on applying payment standards when a change in family composition requires a change in family voucher size.

If a change in family size causes a violation of Housing Quality Standards (HQS) space standards (see CHAPTER 8), the PHA must issue the family a new voucher, and the family and PHA must try to find an acceptable unit as soon as possible. If an acceptable unit is available for rental by the family, the PHA must terminate the family's HAP contract in accordance with its terms [24 CFR 982.403].

<u>New Family Members Not Requiring Approval</u>

The addition of a family member as a result of birth, adoption, or court-awarded custody does not require PHA approval. However, the family is required to promptly notify the PHA of the addition [24 CFR 982.551(h)(2)].

> PHA Policy
>
> The family must inform the PHA of the birth, adoption or court-awarded custody of a child within 15 business days.

New Family and Household Members Requiring Approval

With the exception of children who join the family as a result of birth, adoption, or court-awarded custody, a family must request PHA approval to add a new family member [24 CFR 982.551(h)(2)] or other household member (live-in aide or foster child) [24 CFR 982.551(h)(4)].

PHA Policy

Families must request PHA and Owner approval to add a new family member, live-in aide, foster child, or foster adult.

This includes any person not on the lease who is expected to stay in the unit for more than 30 consecutive days or 90 cumulative days within a 12-month period and therefore no longer qualifies as a "guest."

Requests must be made to both the PHA and Owner in writing and approved by both prior to the individual moving into the unit. It is the responsibility of the family, not the PHA, to initially request and obtain the owner's written approval for the addition of family members.

Upon receipt of the family's request, the PHA will obtain the necessary documentation from the individual[s] to be added to the household, and will perform a standard eligibility check that includes determination of eligible immigration status and a CORI.

The PHA will not approve the addition of a new family or household member unless the individual meets the PHA's eligibility criteria (see CHAPTER 3) and documentation requirements (see CHAPTER 7).

The PHA will not approve the addition of a foster child or foster adult if it will cause a violation of HQS space standards. The PHA will not approve the addition of new household members in the first year of the lease if it will cause a violation of HQS space standards. However, if the owner and the family agree to a mutual termination and the additional occupant is approved by the PHA, the PHA will issue a new voucher and the family may move.

If the PHA determines an individual meets the PHA's eligibility criteria and documentation requirements, the PHA will provide written approval to both the family and Owner.

The notice to the owner must state that failure to respond to the notice within 15 business days will constitute approval, and will have the effect of amending both the lease and the HAP contract. The owner must send his written decision to both the family and the PHA.

If approved, a copy of the PHA approval and the owner approval, if received, will be attached to the HAP contract.

In the Event of Conflict

PHA Policy

Should the owner not agree to the addition of family members, the PHA will abide by that decision while the assisted family remains in that unit. If the owner denies the request, the family's options are as follows:

- Move by terminating the lease in accordance with its terms; or
- Seek mutual termination if the family is in the first year of the lease; or
- Remain in unit with the family composition unchanged.

If the owner approves the request to add family members but the PHA does not; e.g. unacceptable CORI, the family must abide by the PHA decision and the individual(s) may not move in. If the family allows the individual(s) to move in, the PHA will terminate assistance to the family.

If the PHA determines that an individual does not meet the PHA's eligibility criteria or documentation requirements, the PHA will notify the family in writing of its decision to deny approval of the new family or household member and the reasons for the denial.

The PHA will make its determination within 15 business days of receiving all information required to verify the individual's eligibility.

Departure of a Family or Household Member

Families must promptly notify the PHA if any family member no longer lives in the unit [24 CFR 982.551(h)(3)]. Because household members are considered when determining the family unit (voucher) size [24 CFR 982.402], the PHA also needs to know when any live-in aide, foster child, or foster adult ceases to reside in the unit.

PHA Policy

If a household member ceases to reside in the unit, the family must inform the PHA within 15 business days. This requirement also applies to a family member who has been considered temporarily absent at the point that the family concludes the individual is permanently absent. If a live-in aide, foster child, or foster adult ceases to reside in the unit, the family must inform the PHA within 15 business days.

12.3.6 Deceased Tenant

[HUD Notice 2010-19, 2011-25, 2012-04]

Monitoring Deceased Tenant Report

The PHA will use the Deceased Tenant Report to assist in identifying families with deceased household members.

Notifying the Owner and the Remaining Household Members

The PHA must immediately contact the head of household or emergency contact person (if the head of household is deceased and there is no other adult household member) to confirm the death of the listed household member.

The PHA must immediately contact the owner and notify them of the death. If the deceased tenant was a single member household, the PHA must notify the owner that the death will result in termination of the HAP contract and housing assistance payments.

Actions Required by PHAs

The PHA will complete transactions consistent with PIH Notice 2012-04 including data entry requirements.

- Death of a Sole Household Member

  Once the PHA has confirmed the death of the Head of Household, the PHA will immediately terminate program assistance. The effective date of termination will be the first of the month following the death of the tenant.

  The owner is not entitled to HAP for any month following the month in which the death occurred. If an owner receives HAP for any month in which the owner is ineligible to receive HAP because of a deceased tenant, the PHA must immediately notify the owner in writing of the ineligible HAP and require the owner to repay the overpayment to the PHA within 30 days.

- When the Remaining Household Member is a Live-in Aide

  The PHA must notify the live-in aide that s/he is required to vacate the unit at the end of the month.

- Deceased Household Member of a Multiple Member Household- Surviving Adult Household Members

  Example #1: Tenant Rent Decrease

  If a family member dies on September 9th and there is a surviving adult household member, the surviving adult household member is required to report the death within 15 business days of the death. If the death would cause the tenant rent to owner to decrease,

the interim reexamination will be effective the first of the month following the month in which the change was reported and all required documentation was submitted. In this example, if the family reported the death by September 30th, the rent decrease would be effective October 1st. If the family reported the death on November 5th, the rent reduction and interim reexamination to remove the deceased household member would be effective on December 1st. The PHA will not retroactively apply the rent decrease if the family fails to timely report the death.

Example #2: Tenant Rent Increase

In a number of situations a death would cause the tenant rent to owner to increase. For example, if a dependent hh member died then the household would lose the dependent deduction and the rent would increase, or if a hh member with a number of medical expenses (properly verified and deducted) died then the rent to owner would increase. In these cases where the death would cause the tenant rent to owner to increase, the interim reexamination will be effective the first of the month following 30 days' notice to the family. In this example, if the family reported the death by September 30th, the rent increase would be effective on November 1st (1st of the month following 30 days' notice). If the family failed to report the change by September 30th, the effective date of the rent increase would be applied retroactively to November 1st. Rent increases are applied retroactively, to the date the rent increase would have been effective had the information been provided on a timely basis.

- Deceased Household Member of a Multiple Member Household- No Surviving Adult Household Members

  Once the PHA has confirmed the death, the PHA will complete an interim reexamination. The effective date of action will be consistent with the PHA policy on reporting requirements and processing interim reexaminations. See the example above.

  At the interim reexamination, the PHA will remove the deceased household member's information and enter the adult household member's information of the temporary or permanent guardian consistent with data entry requirements of Notice PIH 2012-4. See Caretakers for a Child in CHAPTER 3 and Caretakers for a Child in CHAPTER 6.

12.3.7 PHA-Initiated Interim Reexaminations

PHA-initiated interim reexaminations are those that are scheduled based on circumstances or criteria defined by the PHA. They are not considered "voluntary" interim reexaminations.

PHA Policy

The PHA will conduct interim reexaminations in each of the following instances:

- For families receiving the Earned Income Disallowance (EID) on or before December 31, 2011, the PHA will conduct an interim reexamination at the start and conclusion of the second 12 month exclusion period (50 percent phase-in period).
- For families receiving the Earned Income Disallowance (EID) on or after January 1, 2012, the PHA will conduct an interim reexamination at the conclusion of the 24 month exclusion period.
- If at the time of the regular reexamination, tenant-provided certifications were used on a provisional basis due to the lack of third-party verification, and third-party verification becomes available, the PHA will conduct an interim reexamination if there is a substantial difference between the income used and that received from the third party.
- If the family has reported zero income, the PHA will conduct an interim reexamination after 12 months to re-certify the family's zero income status if the family did not report any increases in income.
- The PHA may conduct an interim reexamination at any time in order to correct an error in a previous reexamination, or to investigate a tenant fraud complaint.

12.4 RECALCULATING FAMILY SHARE AND SUBSIDY AMOUNT

12.4.1 Overview

After gathering and verifying required information for a regular or interim reexamination, the PHA must recalculate the family share of the rent and the subsidy amount, and notify the family and owner of the changes [24 CFR 982.516(d)(2), HCV 12-6 and 12-10]. While the basic policies that govern these calculations are provided in CHAPTER 6, this part lays out policies that affect these calculations during a reexamination.

12.4.2 Applying Payment Standards, Subsidy Standards and Utility Allowances

In order to calculate the family share of the rent and HAP amount correctly, changes in payment standards, subsidy standards, or utility allowances may need to be updated and included in the PHA's calculations.

Specific policies governing how subsidy standards, payment standards, and utility allowances are applied are discussed below.

Payment Standards
[24 CFR 982.505]

When determining the family share of the rent and HAP calculations, the PHA must use the correct payment standard for the family, taking into consideration the family voucher size, the size of unit, and the area in which the unit is located [HCV GB, p. 12-5]. See Section 6.4.3 Applying Payment Standards for information on how to select the appropriate payment standard.

> PHA Policy
>
> At an interim reexamination, the PHA will apply the payment standard in effect at the last regular reexamination.

Subsidy Standards
[24 CFR 982.505(c)(4)]

If there is a change in the family voucher size that would apply to a family during the HAP contract term, either due to a change in family composition, or a change in the PHA's subsidy standards (see CHAPTER 5), the family's new voucher size is used to determine the payment standard amount for the family at the family's first regular reexamination following the change in family composition. This includes departure of live-in aides.

Utility Allowances
[24 CFR 982.517(d)]

The family share of the rent and HAP calculations must reflect any changes in the family's utility arrangement with the owner, or in the PHA's utility allowance schedule [HCV GB, p. 12-5]. CHAPTER 17 discusses how utility allowance schedules are established.

When there are changes in the utility arrangement with the owner, the PHA must use the utility allowances in effect at the time the new lease and HAP contract are executed.

For policies on applying Utility Allowances and utility allowance revisions, see Section 6.4.4 Applying Utility Allowances.

PHA Policy – Non- MTW

At regular and interim reexaminations, the PHA will use the PHA current utility allowance schedule [24 CFR 982.517(d)(2)].

The PHA may implement revised UA schedules on a specific date and time for all families provided the family has been given at least 60 days' notice of the change.

PHA Policy – MTW

At regular reexamination, the PHA will use the PHA current utility allowance schedule.

At interim reexamination, the PHA will use the utility allowance schedule in effect at the last regular reexamination.

The PHA may implement revised UA schedules on a specific date and time for all families provided the family has been given at least 60 days' notice of the change.

12.4.3 Notification of New Family Share and HAP Amount

The PHA must notify the owner and family of any changes in the amount of the HAP payment [HUD-52641, HAP Contract]. The notice must include the following information [HCV GB, p. 12-6]:

- The amount and effective date of the new HAP payment
- The amount and effective date of the new family share of the rent
- The amount and effective date of the new tenant rent to owner

The family must be given an opportunity for an informal hearing regarding the PHA's determination of their annual or adjusted income, and the use of such income to compute the housing assistance payment [24 CFR 982.555(a)(1)(i)] (see 17.4.3 Informal Hearings for Participants in CHAPTER 17).

PHA Policy

The notice to the family will include the annual and adjusted income amounts that were used to calculate the family share of the rent and the housing assistance payment. The notice also will state the procedures for requesting an informal hearing.

12.4.4 Discrepancies

During a regular or interim reexamination, the PHA may discover that information previously reported by the family was in error, or that the family intentionally misrepresented information. In addition, the PHA may discover errors made by the PHA. When errors resulting in the overpayment or underpayment of subsidy are discovered, corrections will be made in accordance with the policies in CHAPTER 14.

12.4.5 Fraud Prevention

After two (2) or more instances of job loss or income reduction within one hundred and twenty (120) days of the effective date of a regular reexamination, the household's rent will be determined using past, rather than prospective income data. The PHA also reserves the right to conduct an investigation regarding the changes in income or expenses. In instances of job loss or income reduction within one hundred and twenty days of the effective date of a regular reexamination, rent may be determined using the following:

- The past year's W2 or EIV;
- If a W2 is unattainable or non-existent, household rent is determined using other past income information as available.
- The prior year's income information may not be used if the household can provide verifiable evidence that the two (2) or more instances of job loss or income reduction within one hundred and twenty (120) days of a regular or interim reexamination are reasonable.
- If the household disagrees with the PHA, they have the right to request an informal hearing.

CHAPTER 13 : TERMINATIONS

13.1 INTRODUCTION

HUD regulations specify the reasons for which a PHA can terminate a family's assistance, and the ways in which such terminations must take place. They also dictate the circumstances under which an owner may terminate the tenancy of an assisted family. This Chapter presents the policies that govern voluntary and involuntary terminations of assistance, and termination of tenancy by the owner. It is presented in three parts:

- Grounds for Termination of Assistance: This part discusses various reasons that a family's assistance may be terminated, including voluntary termination by the family, termination because the family no longer qualifies to receive subsidy, and termination by the PHA based on the family's behavior.

- Approach to Termination of Assistance: This part describes the policies that govern how an involuntary termination takes place. It specifies the alternatives that the PHA may consider in lieu of termination, the criteria the PHA must use when deciding what action to take and the steps the PHA must take when terminating a family's assistance.

- Termination of Tenancy by the Owner: This part presents the policies that govern the owner's right to terminate an assisted tenancy.

13.2 GROUNDS FOR TERMINATION OF ASSISTANCE

13.2.1 Overview

HUD requires the PHA to terminate assistance for certain offenses and when the family no longer requires assistance. HUD permits the PHA to terminate assistance for certain other actions family members take or fail to take. In addition, a family may decide to stop receiving HCV assistance at any time by notifying the PHA.

13.2.2 Family No Longer Requires Assistance

[24 CFR 982.455]

As a family's income increases, the amount of PHA subsidy goes down. If the amount of HCV assistance provided by the PHA drops to zero and remains at zero for 180 consecutive calendar days the family's assistance terminates automatically.

> PHA Policy
>
> If a participating family receiving zero assistance experiences a change in circumstances that would cause the HAP payment to rise above zero, the family must notify the PHA of the changed circumstances and request an interim reexamination before the expiration of the 180-day period.

13.2.3 Family Chooses to Terminate Assistance

The family may request that the PHA terminate the family's assistance at any time.

> PHA Policy
>
> The request to terminate assistance should be made in writing and signed by the head of household, spouse, or co-head. Before terminating the family's assistance, the PHA will follow the policies outlined in Section 13.3.6 Termination Notice.

13.2.4 Mandatory Termination of Assistance

HUD requires the PHA to terminate assistance in the following circumstances.

Eviction
[24 CFR 982.552(b) (2), Pub.L. 109-162]

The PHA must terminate assistance whenever a family is evicted from a unit assisted under the HCV program for a serious or repeated violation of the lease. Incidents of actual or threatened violence, dating violence, sexual assault, or stalking may not be construed as serious or repeated violations of the lease by the victim or threatened victim of such violence or stalking.

> PHA Policy
>
> A family will be considered evicted if the family moves after a legal eviction order has been issued, whether or not physical enforcement of the order was necessary.
>
> If a family moves after the owner has given the family an eviction notice for serious or repeated lease violations but before a legal eviction order has been issued, termination of assistance is not mandatory. However, the PHA will determine whether the family has committed serious or repeated violations of the lease based on available evidence and may terminate assistance or take any of the alternative measures described in Section on Alternatives to Termination of Assistance and other factors as described in the section 13.3.5 Terminating the Assistance of Domestic Violence, Dating Violence, Sexual Assault, or Stalking Victims and Perpetrators [24 CFR 5.2005]. Upon consideration of such alternatives and factors, the PHA may, on a case-by-case basis, choose not to terminate assistance.
>
> Serious and repeated lease violations will include, but not be limited to, nonpayment of rent, disturbance of neighbors, destruction of property, or living or housekeeping habits that cause damage to the unit or premises and criminal activity. Generally, the criterion to be used is whether the reason for the eviction was through no fault of the tenant or guests.

Failure to Provide Consent
[24 CFR 982.552(b) (3)]

The PHA must terminate assistance if any family member fails to sign and submit any consent form they are required to sign for a reexamination. See Section 7.2.1 Family Consent to Release of Information for a complete discussion of consent requirements.

Failure to Document Citizenship
[24 CFR 982.552(b) (4) and [24 CFR 5.514(c)]

The PHA must terminate assistance if (1) a family fails to submit required documentation within the required timeframe concerning any family member's citizenship or immigration status; (2) a family submits evidence of citizenship and eligible immigration status in a timely manner, but United States Citizenship and Immigration Services (USCIS) primary and secondary verification does not verify eligible immigration status of the family; or (3) a family member, as determined by the PHA, has knowingly permitted another individual who is not eligible for assistance to reside (on a permanent basis) in the unit.

For (3) above, such termination must be for a period of at least 24 months. This does not apply to ineligible noncitizens already in the household where the family's assistance has been prorated. See CHAPTER 7 for a complete discussion of documentation requirements.

Failure to Disclose and Document Social Security Numbers
[24 CFR 5.218(c), Notice PIH 2010-3]

The PHA must terminate assistance if a participant family fails to disclose the complete and accurate social security numbers of each household member and the documentation necessary to verify each social security number.

However, if the family is otherwise eligible for continued program assistance, and the PHA determines that the family's failure to meet the SSN disclosure and documentation requirements was due to circumstances that could not have been foreseen and were outside of the family's control, the PHA may defer the family's termination and provide the opportunity to comply with the requirement within a period not to exceed 90 calendar days from the date the PHA determined the family to be noncompliant.

PHA Policy

The PHA will defer the family's termination and provide the family with the opportunity to comply with the requirement for a period of 90 calendar days for circumstances beyond the participant's control such as delayed processing of the SSN application by the SSA, natural disaster, fire, death in the family, or other emergency, if there is a reasonable likelihood that the participant will be able to disclose an SSN by the deadline.

Methamphetamine Manufacture or Production
[24 CFR 982.553(b) (1) (ii)]

The PHA must terminate assistance if any household member has ever been convicted of the manufacture or production of methamphetamine on the premises of federally-assisted housing.

> PHA Policy
>
> The PHA will terminate assistance if any household member has ever been convicted of the manufacture or production of methamphetamine *in any location,* not just on the premises of federally-assisted housing.

Failure of Students to Meet Ongoing Eligibility Requirements
[24 CFR 982.552(b) (5) and FR 4/10/06]

If a student enrolled at an institution of higher education is under the age of 24, is not a veteran, is not married, does not have dependent children, and is not residing with his/her parents in an HCV assisted household, the PHA must the terminate the student's assistance if, at the time of reexamination, either the student's income or the income of the student's parents (if applicable) exceeds the applicable income limit.

If a participant household consists of both eligible and ineligible students, the eligible students shall not be terminated, but must be issued a voucher to move with continued assistance in accordance with program regulations and PHA policies, or must be given the opportunity to lease in place if the terminated ineligible student members elect to move out of the assisted unit.

Death of the Sole Family Member
[24 CFR 982.311(d), Notice PIH 2010-9, and Notice 2012-04]

The PHA must terminate program assistance for deceased single member households according to the required timeframes.

For more details, see 12.3.6 Deceased Tenant in CHAPTER 12.

13.2.5 Mandatory Policies and Other Authorized Terminations

Mandatory Policies
[24 CFR 982.553(b) and 982.551(l)]

HUD requires the PHA to establish policies that permit the PHA to terminate assistance if the PHA determines that:

- Any household member is currently engaged in any illegal use of a drug, or has a pattern of illegal drug use that interferes with the health, safety, or right to peaceful enjoyment of the premises by other residents;

- Any household member's abuse or pattern of abuse of alcohol may threaten the health, safety, or right to peaceful enjoyment of the premises by other residents;
- Any household member has violated the family's obligation not to engage in any drug-related criminal activity;
- Any household member has violated the family's obligation not to engage in violent criminal activity, including criminal activity that requires sex offender registration and failure to register as a sex offender.

Use of Illegal Drugs and Alcohol Abuse

> PHA Policy
>
> The PHA will terminate a family's assistance if any household member is currently engaged in any illegal use of a drug, or has a pattern of illegal drug use that interferes with the health, safety, or right to peaceful enjoyment of the premises by other residents. Currently engaged in is defined as any use of illegal drugs during the previous twelve months unless the household member is enrolled in and fully compliant with treatment.
>
> The PHA will terminate assistance if any household member's abuse or pattern of abuse of alcohol threatens the health, safety, or right to peaceful enjoyment of the premises by other residents.
>
> The PHA will consider all credible evidence, including but not limited to, any record of arrests, convictions, or eviction of household members related to the use of illegal drugs or abuse of alcohol.
>
> In making its decision to terminate assistance, the PHA will consider alternatives as described in Section 13.3.3 Alternatives to Termination of Assistance and other factors described in the section 13.3.4 Criteria for Deciding to Terminate Assistance and the section 13.3.5 Terminating the Assistance of Domestic Violence, Dating Violence, Sexual Assault, or Stalking Victims and Perpetrators. Upon consideration of such alternatives and factors, the PHA may, on a case-by-case basis, choose not to terminate assistance.

Drug-Related and Violent Criminal Activity
[24 CFR 5.100]

Drug means a controlled substance as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802).

Drug-related criminal activity is defined by HUD as the illegal manufacture, sale, distribution, or use of a drug, or the possession of a drug with intent to manufacture, sell, distribute or use the drug.

Violent criminal activity means any criminal activity that has as one of its elements the use, attempted use, or threatened use of physical force substantial enough to cause, or be reasonably likely to cause, serious bodily injury or property damage.

PHA Policy

The PHA will terminate a family's assistance if any household member has violated the family's obligation not to engage in any drug-related or violent criminal activity during participation in the HCV program.

The PHA will consider all credible evidence, including but not limited to, any record of arrests and/or convictions of household members related to drug-related or violent criminal activity, and any eviction or notice to evict based on drug-related or violent criminal activity.

In making its decision to terminate assistance, the PHA will consider alternatives as described in the section 13.3.4 Criteria for Deciding to Terminate Assistance and the section 13.3.5 Terminating the Assistance of Domestic Violence, Dating Violence, Sexual Assault, or Stalking Victims and Perpetrators. Upon consideration of such alternatives and factors, the PHA may, on a case-by-case basis, choose not to terminate assistance.

Termination Due to State Registered Lifetime Sex Offender Status
[PIH 2012-28]

HUD regulations at 24 CFR § 5.856 and § 982.553(a)(2) prohibit admission after June 25, 2001, if any member of a household is subject to a State lifetime sex offender registration requirement. This regulation reflects a statutory prohibition. A household receiving assistance with such a member is receiving assistance in violation of federal law.

If the PHA discovers that a household member was erroneously admitted (the household member was subject to a lifetime registration requirement at admission and was admitted after June 25, 2001), the PHA will immediately pursue termination of assistance for the household member. Regulations for hearings for the HCV program at 24 CFR § 982.555 continue to apply. If the PHA erroneously admitted a lifetime sex offender, the PHA will give the family the opportunity to remove the ineligible family member from the household. If the family is unwilling to remove that individual from the household, the PHA will terminate assistance for the household.

For admissions before June 25, 2001, there is currently no HUD statutory or regulatory basis to evict or terminate the assistance of the household solely on the basis of a household member's sex offender registration status.

13.2.6 Other Reasons for Termination of Assistance
[24 CFR 982.552(c), Pub.L. 109-162]

HUD permits the PHA to terminate assistance under a number of other circumstances. It is left to the discretion of the PHA whether such circumstances in general warrant consideration for the termination of assistance. The Violence Against Women Reauthorization Act of 2005 and 2013 explicitly prohibits PHAs from considering incidents or actual threatened domestic violence, dating violence, sexual assault, or stalking as reasons for terminating the assistance of a victim of such violence.

PHA Policy

The PHA will not terminate a family's assistance because of the family's failure to meet its obligations under the Family Self-Sufficiency voucher program.

The PHA will terminate a family's assistance if:

- The family has failed to comply with any family obligations under the program. See Section 5.2.6 Family Obligations for a list of family obligations. See Exhibit 13-1: Family Responsibilities Under The Section 8 Housing Choice Voucher Program for a listing of family obligations and related PHA policies.

- Any family member has been evicted from federally-assisted housing in the last five years.

- Any PHA has ever terminated assistance under the program for any member of the family.

- Any family member has committed fraud, bribery, or any other corrupt or criminal act in connection with any federal housing program.

- The family currently owes rent or other amounts to any PHA in connection with the HCV, Certificate, Moderate Rehabilitation or public housing programs.

- The family has not reimbursed any PHA for amounts the PHA paid to an owner under a HAP contract for rent, damages to the unit, or other amounts owed by the family under the lease.

- The family has breached the terms of a repayment agreement entered into with the PHA.

- A family member has engaged in or threatened violent or abusive behavior toward PHA personnel. Abusive or violent behavior towards PHA personnel includes verbal as well as physical abuse or violence. Use of racial epithets, or other language, written or oral, that is customarily used to intimidate may be considered abusive or violent behavior. Threatening refers to oral or written threats or physical gestures that communicate intent to abuse or commit violence.

- Any family member is subject to a lifetime registration requirement under a state sex offender registration program. [Notice PIH 2009-35]

In making its decision to terminate assistance, the PHA will consider alternatives as described 13.3.4 Criteria for Deciding to Terminate Assistance and the section 13.3.5 Terminating the Assistance of Domestic Violence, Dating Violence, Sexual Assault, or Stalking Victims and Perpetrators. Upon consideration of such alternatives and factors, the PHA may, on a case-by-case basis, choose not to terminate assistance.

Family Absence from the Unit
[24 CFR 982.312]

The family may be absent from the unit for brief periods. The PHA must establish a policy on how long the family may be absent from the assisted unit. However, the family may not be absent from the unit for a period of more than 180 consecutive calendar days for any reason. Absence in this context means that no member of the family is residing in the unit.

PHA Policy

If the family is absent from the unit for more than 90 consecutive calendar days, the family's assistance will be terminated. Notice of termination will be sent in accordance with the policies in Section 13.3.6 Termination Notice.

Insufficient Funding
[24 CFR 982.454] [Notice PIH 2011-32]

The PHA may terminate HAP contracts if the PHA determines, in accordance with HUD requirements, that funding under the consolidated ACC is insufficient to support continued assistance for families in the program.

PHA Policy

The PHA will determine whether there is sufficient funding to pay for currently assisted families according to the policies in CHAPTER 17. If the PHA determines there is a shortage of funding, prior to terminating any HAP contracts, the PHA will determine if any other actions can be taken to reduce program costs.

If after implementing all reasonable cost cutting measures there is not enough funding available to provide continued assistance for current participants, the PHA will terminate HAP contracts as a last resort.

Prior to terminating any HAP contracts, the PHA will inform the local HUD field office. The PHA will terminate the minimum number needed in order to reduce HAP costs to a level within the PHA's annual budget authority.

If the PHA must terminate HAP contracts due to insufficient funding, the PHA will do so in accordance with the following criteria and instructions:

The PHA will terminate families due to insufficient funding in the following order. The PHA will adopt the policy first in, first out. Under this option the PHA would terminate families within the same category according to the date of the family's admission to the program, starting with those who have been receiving assistance the longest.

- Non-elderly, non-disabled single member families.
- Non-elderly, non-disabled families with no children under the age of 18.
- Non-elderly, non-disabled families with children under the age of 18.
- Elderly and disabled families.
- NED, HUD-VASH and FUP families.

13.3 APPROACH TO TERMINATION OF ASSISTANCE

13.3.1 Overview

The PHA is required by regulation to terminate a family's assistance if certain program rules are violated. For other types of offenses, the regulations give the PHA the discretion to either terminate the family's assistance or to take another action. This part discusses the various actions the PHA may choose to take when it has discretion, and outlines the criteria the PHA

will use to make its decision about whether or not to terminate assistance. It also specifies the requirements for the notice that must be provided before terminating assistance.

13.3.2 Method of Termination

[24 CFR 982.552(a) (3)]

The way in which the PHA terminates assistance depends upon individual circumstances. HUD permits the PHA to terminate assistance by:

- Terminating housing assistance payments under a current HAP contract,
- Refusing to approve a request for tenancy or to enter into a new HAP contract, or
- Refusing to process a request for or to provide assistance under portability procedures.

13.3.3 Alternatives to Termination of Assistance

Change in Household Composition

As a condition of continued assistance, the PHA may require that any household member who participated in or was responsible for an offense no longer resides in the unit [24 CFR 982.552(c) (2) (ii)].

> PHA Policy
>
> As a condition of continued assistance, the head of household must certify that the culpable family member has vacated the unit and will not be permitted to visit or to stay as a guest in the assisted unit. The family must present evidence of the former family member's current address upon PHA request.

Repayment of Family Debts

> PHA Policy
>
> If a family owes amounts to the PHA, as a condition of continued assistance, the PHA will require the family to repay the full amount or to enter into a repayment agreement, within 30 days of receiving notice from the PHA of the amount owed. See 17.5.3 General Repayment Agreement Guidelines for Families in CHAPTER 17.

13.3.4 Criteria for Deciding to Terminate Assistance

For criminal activity, HUD permits the PHA to terminate assistance if a *preponderance of the evidence* indicates that a household member has engaged in the activity, regardless of whether the household member has been arrested or convicted [24 CFR 982.553(c)].

> PHA Policy
>
> The PHA will use the concept of the preponderance of the evidence as the standard for making all termination decisions.
>
> Preponderance of the evidence is defined as evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not. Preponderance of the evidence may not be determined by the number of witnesses, but by the greater weight of all evidence

<u>Consideration of Circumstances</u>
[24 CFR 982.552(c) (2) (i)]

The PHA is permitted, but not required, to consider all relevant circumstances when determining whether a family's assistance should be terminated.

> PHA Policy
>
> The PHA will consider the following factors when making its decision to terminate assistance:
>
> - The seriousness of the case, especially with respect to how it would affect other residents.
> - The effects that termination of assistance may have on other members of the family who were not involved in the action or failure
> - The extent of participation or culpability of individual family members, including whether the culpable family member is a minor or a person with disabilities or (as discussed further in section below) a victim of domestic violence, dating violence, sexual assault, or stalking
> - The length of time since the violation occurred, the family's recent history and the likelihood of favorable conduct in the future
> - In the case of drug or alcohol abuse, whether the culpable household member is participating in or has successfully completed a supervised drug or alcohol rehabilitation program or has otherwise been rehabilitated successfully. The PHA will require the participant to submit evidence of the household member's current participation in or successful completion of a supervised drug or alcohol rehabilitation program, or evidence of otherwise having been rehabilitated successfully.
> - In the case of program abuse, the dollar amount of the overpaid assistance and whether or not a false certification was signed by the family.

Reasonable Accommodation
[24 CFR 982.552(c) (2) (iv)]

If the family includes a person with disabilities, the PHA's decision to terminate the family's assistance is subject to consideration of reasonable accommodation in accordance with 24 CFR Part 8.

> PHA Policy
>
> If a family indicates that the behavior of a family member with a disability is the reason for a proposed termination of assistance, the PHA will determine whether the behavior is related to the disability. If so, upon the family's request, the PHA will determine whether alternative measures are appropriate as a reasonable accommodation. The PHA will only consider accommodations that can reasonably be expected to address the behavior that is the basis of the proposed termination of assistance. See CHAPTER 2 for a discussion of reasonable accommodation.

13.3.5 Terminating the Assistance of Domestic Violence, Dating Violence, Sexual Assault, or Stalking Victims and Perpetrators

[24 CFR 5.2005]

The Violence Against Women Reauthorization Act of 2005 and 2013 (VAWA) provides protections against termination of assistance for victims of domestic violence, dating violence, sexual assault, and stalking. For general VAWA requirements and the PHA policies pertaining to notification, documentation, and confidentiality, see Section 17.10 Violence Against Women Reauthorization Act of 2005 and 2013 (VAWA): Notification, Documentation, and Confidentiality.

VAWA Protections Against Termination

VAWA provides specific protections against termination of HCV assistance for victims of domestic violence, dating violence, sexual assault, or stalking.

- VAWA provides that a PHA may not terminate assistance to a family that moves out of an assisted unit in violation of the lease, with or without prior notification to the PHA, if the move occurred to protect the health or safety of a family member who is or has been the victim of domestic violence, dating violence, sexual assault, or stalking and who reasonably believed he or she was imminently threatened by harm from further violence if he or she remained in the unit [24 CFR 982.314(b)(4).

- VAWA provides that an incident or incidents of actual or threatened domestic violence, dating violence, sexual assault, or stalking may not be construed either as serious or repeated lease violation by the victim or as good cause to terminate the assistance of the victim [24 CFR 5.2005 (c)(1)].

- VAWA provides that criminal activity directly related to domestic violence, dating violence, sexual assault, or stalking may not be construed as cause for terminating the assistance of a tenant if a member of tenant household, a guest, or another person under the tenant's

control is the one engaging in the criminal activity and the tenant or an affiliated individual of the tenant is the actual or threatened victim of the domestic violence, dating violence, sexual assault, or stalking [24 CFR 5.2005(c) (2)].

- VAWA gives the PHA the authority to terminate assistance to any tenant or lawful occupant who engages in criminal activity directly relating to domestic violence, dating violence, sexual assault, or stalking against an affiliated individual or other individual without terminating assistance to, or otherwise penalizing, the victim of the violence [24 CFR 5.2009 (a)].

Limitations on VAWA Protections
[24 CFR 5.2005 (d) and (e)]

VAWA does not limit the authority of a PHA to terminate the assistance of a victim of abuse for reasons unrelated to domestic violence, dating violence, sexual assault, or stalking so long as the PHA does not subject the victim to a more demanding standard than it applies to other program participants [24 CFR 5.2005 (d) (1)].

VAWA does not limit the authority of the PHA to terminate the assistance of any participant if the PHA can demonstrate an actual and imminent threat to other tenants or those employed at or providing service to the property if that tenant is not evicted or terminated from assistance.

HUD regulations define actual and imminent threat to mean words, gestures, actions, or other indicators of a physical threat that (a) is real, (b) would occur within an immediate time frame, and (c) could result in death or serious bodily harm [24 CFR 5.2005 (d)(2) and (e)]. In determining whether an individual would pose an actual and imminent threat, the factors to be considered include:

- Duration of the risk
- Nature and severity of the potential harm
- Likelihood that the potential harm will occur
- The length of time before the potential harm would occur [24 CFR 5.3005 (e)]

Even when a victim poses an actual and imminent threat, however, HUD regulations authorize a PHA to terminate the victim's assistance "only when there are no other actions that could be taken to reduce or eliminate the threat." [24 CFR 5.2005(d)(3)].

PHA Policy

In determining whether a participant who is a victim of domestic violence, dating violence, sexual assault, or stalking is an actual and imminent threat to other tenants or those employed at or providing service to a property, the PHA will consider the following, and any other relevant, factors:

- Whether the threat is toward an employee or tenant other than the victim of domestic violence, dating violence, sexual assault, or stalking
- Whether the threat is a physical danger beyond a speculative threat
- Whether the threat is likely to happen within a short period of time
- Whether the threat to other tenants or employees can be eliminated in some other way, such as by helping the victim relocate to a confidential location

If the tenant wishes to contest the PHA's determination that he or she is an actual and imminent threat to other tenants or employees, the tenant may do so as part of the informal hearing.

Terminating the Assistance of a Domestic Violence Perpetrator
[24 CFR 5.2005(c)]

Although VAWA provides assistance termination protection for victims of domestic violence, it does not provide protection for perpetrators. VAWA gives the PHA the explicit authority to "terminate assistance to any individual who is a tenant or lawful occupant and who engages in criminal activity directly relating to domestic violence, dating violence, sexual assault, or stalking against an affiliated individual or other individual" without terminating assistance to, "or otherwise penalizing the victim of such violence who is also a tenant or lawful occupant." [24 CFR 5.2009 (a)] This authority is not dependent on a bifurcated lease or other eviction action by an owner against an individual family member. Further, this authority supersedes any local, state, or other federal law to the contrary. However, if the PHA chooses to exercise this authority, it must follow any procedures prescribed by HUD or by applicable local, state, or federal law regarding termination of assistance [Pub.L. 109-271]. This means that the PHA must follow the same rules when terminating assistance to an individual as it would when terminating the assistance of an entire family [3/16/07 *Federal Register* notice on the applicability of VAWA to HUD programs].

PHA Policy

The PHA will terminate assistance to a family member if the PHA determines that the family member has committed criminal acts of physical violence against other family members or others. This action will not affect the assistance of the remaining, non-culpable family members.

In making its decision, the PHA will consider all credible evidence, including, but not limited to, a signed certification (form HUD-50066) or other documentation of abuse submitted to the PHA by the victim. The PHA will also consider the factors in CHAPTER 13. Upon such consideration, the PHA may, on a case-by-case basis, choose not to terminate the assistance of the culpable family member.

If the PHA does terminate the assistance of the culpable family member, it will do so in accordance with applicable law, HUD regulations, and the policies in this plan.

13.3.6 Termination Notice

[HCV GB, p. 15-7]

If a family's assistance is to be terminated, whether voluntarily or involuntarily, the PHA must give the family and the owner written notice that specifies:

- The reasons for which assistance has been terminated
- The effective date of the termination
- The family's right to an informal hearing as described in CHAPTER 17 in Section 17.4.3 Informal Hearings for Participants.

If a criminal record is the basis of the termination, the PHA must provide the subject of the record and the tenant with a copy of the criminal record. [24 CFR 982.553(d)].

If immigration status is the basis of a family' termination, the special notice requirements for termination based on Citizenship Status must be followed. See Section Notice of Termination Based on Citizenship Status below.

PHA Policy

When termination is initiated by the PHA, the PHA will send a written notice of termination to the family and the owner of the family's unit.

The notice will state the date on which the termination will become effective. The PHA will provide the termination notice at least 30 calendar days prior to the effective date of the termination.

PHA Policy Continued

However, if a family vacates the unit without informing the PHA, 30 days' notice will not be given. In these cases, the notice to terminate will be sent at the time the PHA learns the family has vacated the unit.

When a family requests to be terminated from the program they must do so in writing to the PHA. The PHA will promptly, but no later than the termination effective date, send a confirmation notice to the family and the owner concerning the family's request to terminate assistance.

Notice to the family must be sent by certified mail return receipt requested and by regular mail. In instances where the certified mail is not accepted by the family and returned to the PHA, but the regular mail is not returned to the PHA by the Post Office, allegations by the tenant that they did not receive the notice of termination will not be considered by the PHA as a reason for failure to submit a request for an informal hearing or otherwise respond to the notice.

Unless both are returned to the PHA, there is the presumption that the notice has been received. Notice to the owner may be sent by certified mail only.

HUD does not require PHA to include information about the protections against termination of assistance provided by the Violence Against Women Act of 2005 and 2013 (VAWA) to victims of domestic violence, dating violence sexual assault, or stalking in the termination notice. PHA's have the discretion to include such information.

PHA Policy

Upon termination of a family's assistance, the PHA will include in its termination notice the VAWA information described in CHAPTER 17 of this Plan.

Notice of Termination Based on Citizenship Status
[24 CFR 5.514 (c) and (d)]

The PHA must terminate assistance if (1) a family fails to submit required documentation within the required timeframe concerning any family member's citizenship or eligible immigration status; (2) evidence of citizenship and eligible immigration status is submitted timely, but USCIS primary and secondary verification does not verify eligible immigration status of a family; or (3) the PHA determines that a family member has knowingly permitted another individual who is not eligible for assistance to reside (on a permanent basis) in the unit. For (3) above, such termination must be for a period of at least 24 months.

The notice of termination must advise the family of the reasons their assistance is being terminated, that they may be eligible for proration of assistance, the criteria and procedures for obtaining relief under the provisions for preservation of families, that they have the right to request an appeal to the USCIS of the results of secondary verification of immigration status and to submit additional documentation or a written explanation in support of the appeal, and

that they have the right to request an informal hearing with the PHA either upon completion of the USCIS appeal or in lieu of the USCIS appeal. Informal hearing procedures are contained in CHAPTER 17.

> PHA Policy
>
> The notice to terminate will be sent to the family and the owner at least 30 calendar days prior to the effective date of the termination.

13.3.7 How Termination of Assistance Affects the HAP Contract and Lease

When the family's assistance is terminated, the lease and HAP contract terminate automatically [Form HUD-52641].

The owner may offer the family a separate unassisted lease [HCV GB, p. 15-8].

13.4 TERMINATION OF TENANCY BY THE OWNER

13.4.1 Overview

Termination of an assisted tenancy is a matter between the owner and the family; the PHA is not directly involved. However, the grounds for owner termination of assisted tenancy are limited. Depending on the reason for which tenancy is terminated, the assistance will continue or will also be terminated.

13.4.2 Grounds for Owner Termination of Tenancy

[24 CFR 982.310 and Form HUD-52641-A, Tenancy Addendum, Pub.L. 109-162]

During the term of the lease, the owner is not permitted to terminate the tenancy except for serious or repeated violations of the lease, certain violations of state or local law, or other good cause.

Serious or Repeated Lease Violations

The owner is permitted to terminate the family's tenancy for serious or repeated violations of the terms and conditions of the lease, including failure to pay rent or other amounts due under the lease, except when the violations are related to incidents of actual or threatened domestic violence, dating violence, sexual assault, or stalking and the victim is protected from eviction by VAWA. A serious lease violation includes failure to pay rent or other amounts due under the lease. However, the PHA's failure to make a HAP payment to the owner is not a violation of the lease between the family and the owner.

Violation of Federal, State, or Local Law

The owner is permitted to terminate the tenancy if a family member violates federal, state, or local law that imposes obligations in connection with the occupancy or use of the premises.

Criminal Activity or Alcohol Abuse

The owner may terminate tenancy during the term of the lease if any *covered person*, meaning any member of the household, a guest or another person under the tenant's control commits any of the following types of criminal activity (for applicable definitions see 24 CFR 5.100):

- Any criminal activity that threatens the health or safety of, or the right to peaceful enjoyment of the premises by, other residents (including property management staff residing on the premises);

- Any criminal activity that threatens the health or safety of, or the right to peaceful enjoyment of their residences by, persons residing in the immediate vicinity of the premises;

- Any violent criminal activity on or near the premises; or

- Any drug-related criminal activity on or near the premises.

However, in the case of criminal activity directly related to domestic violence, dating violence, sexual assault, or stalking, if the tenant or an immediate member of the tenant's family is the victim, the criminal activity may not be construed as cause for terminating the victim's tenancy. See 13.3.5 Terminating the Assistance of Domestic Violence, Dating Violence, Sexual Assault, or Stalking Victims and Perpetrators.

The owner may terminate tenancy during the term of the lease if any member of the household is:

- Fleeing to avoid prosecution, custody, or confinement after conviction for a crime or an attempt to commit a crime that is a felony under the laws of the place from which the individual flees, or that, in the case of the State of New Jersey, is a high misdemeanor; or

- Violating a condition of probation or parole imposed under federal or state law.

The owner may terminate tenancy during the term of the lease if any member of the household has engaged in abuse of alcohol that threatens the health, safety, or right to peaceful enjoyment of the premises by other residents.

The owner may terminate tenancy for criminal activity by a household member in accordance with this section if the owner determines that the household member has committed the criminal activity, regardless of whether the household member has been arrested or convicted for such activity.

Evidence of Criminal Activity

The owner may terminate tenancy and evict by judicial action a family for criminal activity by a covered person if the owner determines they have engaged in the criminal activity, regardless of arrest or conviction and without satisfying the standard of proof used for a criminal conviction.

Other Good Cause

During the initial lease term or during any extension term, other good cause includes the disturbance of neighbors, destruction of property, or living or housekeeping habits that cause damage to the unit or premises.

After the initial lease term, “other good cause” for termination of tenancy by the owner includes:

- Failure by the family to accept the offer of a new lease or revision;
- The owner's desire to use the unit for personal or family use, or for a purpose other than as a residential rental unit; or
- A business or economic reason for termination of the tenancy (such as sale of the property, renovation of the unit, or desire to lease the unit at a higher rent).

After the initial lease term, the owner may give the family notice at any time, in accordance with the terms of the lease.

13.4.3 Eviction

[24 CFR 982.310(e) and (f) and Form HUD-52641-A, Tenancy Addendum]

The owner must give the tenant a written notice that specifies the grounds for termination of tenancy during the term of the lease. The tenancy does not terminate before the owner has given this notice, and the notice must be given at or before commencement of the eviction action.

The notice of grounds may be included in, or may be combined with, any owner eviction notice to the tenant.

Owner eviction notice means a notice to vacate, or a complaint or other initial pleading used under state or local law to commence an eviction action. The owner may only evict the tenant from the unit by instituting a court action. The owner must give the PHA a copy of any eviction notice at the same time the owner notifies the family. The family is also required to give the PHA a copy of any eviction notice (see CHAPTER 5).

PHA Policy

If the eviction action is finalized in court, the owner must provide the PHA with documentation related to the eviction, including notice of the eviction date, as soon as possible, but no later than 5 business days following the court-ordered eviction.

13.4.4 Deciding whether to Terminate Tenancy

[24 CFR 982.310(h), 24 CFR 982.310(h) (4)]

An owner who has grounds to terminate a tenancy is not required to do so, and may consider all of the circumstances relevant to a particular case before making a decision. These might include:

- The nature of the offending action
- The seriousness of the offending action;
- The effect on the community of the termination, or of the owner's failure to terminate the tenancy;
- The extent of participation by the leaseholder in the offending action;
- The effect of termination of tenancy on household members not involved in the offending activity;
- The demand for assisted housing by families who will adhere to lease responsibilities;
- The extent to which the leaseholder has shown personal responsibility and taken all reasonable steps to prevent or mitigate the offending action;
- The effect of the owner's action on the integrity of the program.

The owner may require a family to exclude a household member in order to continue to reside in the assisted unit, where that household member has participated in or been culpable for action or failure to act that warrants termination.

In determining whether to terminate tenancy for illegal use of drugs or alcohol abuse by a household member who is no longer engaged in such behavior, the owner may consider whether such household member is participating in or has successfully completed a supervised drug or alcohol rehabilitation program, or has otherwise been rehabilitated successfully (42 U.S.C. 13661). For this purpose, the owner may require the tenant to submit evidence of the household member's current participation in, or successful completion of, a supervised drug or alcohol rehabilitation program or evidence of otherwise having been rehabilitated successfully.

The owner's termination of tenancy actions must be consistent with the fair housing and equal opportunity provisions in 24 CFR 5.105.

An owner's decision to terminate tenancy for incidents related to domestic violence, dating violence, sexual assault, or stalking is limited by the Violence Against Women Reauthorization Act of 2005 and 2013 (VAWA) [24 CFR (5)(L)].

13.4.5 Effect of Tenancy Termination on the Family's Assistance

If an owner termination of tenancy is not due to a serious or repeated violation of the lease, and if the PHA has no other grounds for termination of assistance, the PHA may issue a new voucher so that the family can move with continued assistance (see CHAPTER 11).

CHAPTER 14 : OWNERS

14.1 INTRODUCTION

Owners play a central role in the HCV program by supplying decent, safe, and sanitary housing for participating families.

The term "owner" refers to any person or entity with the legal right to lease or sublease a unit to a participant in the HCV program [24 CFR 982.4(b)]. The term "owner" includes a principal or other interested party [24 CFR 982.453; 24 CFR 982.306(f)], such as a designated agent of the owner.

Owners have numerous responsibilities under the program, including screening and leasing to families, maintaining the dwelling unit, enforcing the lease, and complying with various contractual obligations. However, this chapter is not meant to be an overview of all aspects of owner participation in the HCV program.

The chapter is organized in three parts:

- Owners in the HCV Program: This part discusses the role of an owner in the PHA's HCV program and highlights key owner rights and responsibilities.

- HAP Contracts: This part explains provisions of the HAP contract and the relationship between the PHA and the owner as expressed in the HAP contract.

- Owner Incentive Fund Pilot Program: This part explains the components of the Owner Incentive Fund pilot program, which was established using MTW authority to promote upgrades to the housing stock in areas of the state with a large percentage of older, deteriorated housing stock.

For detailed information about HCV program responsibilities and processes, including PHA policies in key areas, owners will need to refer to several other chapters in this plan. Where appropriate, this Chapter will reference the other chapters.

14.2 OWNERS IN THE HCV PROGRAM

14.2.1 Owner recruitment and Retention

[HCV GB, pp. 2-4 to 2-6]

<u>Recruitment</u>

PHAs are responsible for ensuring that very low income families have access to all types and ranges of affordable housing in the PHA's jurisdiction, particularly housing outside areas of poverty or minority concentration. A critical element in fulfilling this responsibility is for the PHA to ensure that a sufficient number of owners, representing all types and ranges of affordable housing in the PHA's jurisdiction, are willing to participate in the HCV program.

To accomplish this objective, PHAs must identify and recruit new owners to participate in the program.

PHA Policy

The PHA will conduct owner outreach to ensure that owners are familiar with the program and its advantages. The PHA will actively recruit property owners with property located outside areas of poverty and minority concentration. These outreach strategies may include:

- Distributing printed material about the program to property owners and managers
- Contacting property owners and managers by phone or in-person
- Holding owner recruitment/information meetings at least once a year
- Participating in community based organizations comprised of private property and apartment owners and managers
- Developing working relationships with owners and real estate brokers associations

Each PHA will develop a specific, localized outreach strategy. Outreach strategies will be monitored for effectiveness, and adapted accordingly.

Retention

In addition to recruiting owners to participate in the HCV program, the PHA must also provide the kind of customer service that will encourage participating owners to remain active in the program.

PHA Policy

All PHA activities that may affect an owner's ability to lease a unit will be processed as rapidly as possible, in order to minimize vacancy losses for owners.

The PHA will provide owners with information that explains the program, including HUD and PHA policies and procedures, in easy-to-understand language.

The PHA will give special attention to helping new owners succeed through activities such as:

- Providing the owner with a designated PHA contact person
- Coordinating inspection and leasing activities between the PHA, the owner, and the family
- Providing other written information about how the program operates, including answers to frequently asked questions

Additional services may be undertaken on an as-needed basis, and as resources permit.

14.2.2 Basic HCV Program Requirements

HUD requires the PHA to aid families in their housing search by providing the family with a list of landlords or other parties known to the PHA who may be willing to lease a unit to the family, or to help the family find a unit. Although the PHA cannot maintain a list of owners that are pre-qualified to participate in the program, owners may indicate to the PHA their willingness to lease a unit to an eligible HCV family, or to help the HCV family find a unit [24 CFR 982.301(b)(11)].

> PHA Policy
>
> Owners that wish to indicate their willingness to lease a unit to an eligible HCV family or to help the HCV family find a unit must notify the PHA. The PHA will maintain a listing of such owners and provide this listing to the HCV family as part of the informational briefing packet

When a family approaches an owner to apply for tenancy, the owner is responsible for screening the family and deciding whether to lease to the family, just as the owner would with any potential tenant. The PHA has no liability or responsibility to the owner or other persons for the family's behavior or suitability for tenancy. See CHAPTER 3 and CHAPTER 10 for more detail on tenant family screening policies and process.

If the owner is willing, the family and the owner must jointly complete a Request for Tenancy Approval (RFTA, Form HUD 52517), which constitutes the family's request for assistance in the specified unit, and which documents the owner's willingness to lease to the family and to follow the program's requirements. When submitted to the PHA, this document is the first step in the process of obtaining approval for the family to receive the financial assistance it will need in order to occupy the unit. See 10.2.1 Request for Tenancy Approval in CHAPTER 10 for more detail on request for tenancy approval policies and process. Also submitted with the RFTA is a copy of the owner's proposed dwelling lease, including the HUD-required Tenancy Addendum (Form HUD-52641-A).

The dwelling lease must comply with all program requirements [24 CFR 982.308]. Owners are encouraged to use their standard leases when renting to an assisted family. However, the HCV program requires that the Tenancy Addendum, which helps standardize the tenancy requirements for all assisted families, be added word-for-word to that lease. See Section 10.2.2 Lease and Tenancy Addendum in CHAPTER 10 for a discussion of the dwelling lease and tenancy addendum, including lease terms and provisions.

The PHA and the owner enter into a formal contractual relationship by executing the Housing Assistance Payment (HAP) Contract (Form HUD-52641). The HAP contract format is prescribed by HUD. See Section 10.2.4 HAP Contract Execution for a discussion of the HAP contract execution process. Specific HAP contract provisions and responsibilities are discussed later in this Chapter, See Section 14.3 HAP Contracts.

HUD regulations stipulate that an assisted tenancy can be approved only under certain conditions.

The owner must be qualified to participate in the program [24 CFR 982.306]. Some owners are precluded from participating in the program, or from renting to a particular family, either because of their past history with this or another federal housing program, or because of certain conflicts of interest. Owner qualifications are discussed later in this Chapter, See Section 14.2.4 Owner Qualifications.

The selected unit must be of a type that is eligible for the program [24 CFR 982.305(a)]. Certain types of dwelling units cannot be assisted under the HCV program. Other types may be assisted under certain conditions. In addition, the owner must document legal ownership of the specified unit. See Section 10.1.3 Eligible Units for more detail on unit eligibility policies and process.

The selected unit must meet HUD's Housing Quality Standards (HQS) and/or equivalent state or local standards approved by HUD [24 CFR 982.305(a)]. The PHA will inspect the owner's dwelling unit at various stages of HCV program participation, to ensure that the unit continues to meet HQS requirements. See CHAPTER 8 for a discussion of the HQS standards, as well as the process for HQS inspections at initial lease-up and throughout the family's tenancy.

The PHA must determine that the cost of the unit is reasonable [24 CFR 982.305(a)]. The rent must be reasonable in relation to comparable unassisted units in the area and must not be in excess of rents charged by the owner for comparable, unassisted units on the premises. See CHAPTER 9 for a discussion of requirements and policies on rent reasonableness, rent comparability and the rent reasonableness determination process.

At initial lease-up of a unit, the PHA must determine that the share of rent to be paid by the family does not exceed 40 percent of the family's monthly adjusted income [24 CFR 982.305(a)]. See CHAPTER 10 for the policies on initial rent burden (See Rent Burden Section) and Section 6.4 Calculating Family Share and PHA Subsidy in CHAPTER 6 for a discussion of the calculation of family income, family share of rent and HAP.

14.2.3 Owner Responsibilities

[24 CFR 982.452]

The basic owner responsibilities in the HCV program are outlined in the regulations as follows:

- Performing all of the owner's obligations under the Housing Assistance Payments (HAP) contract and the lease
- Performing all management and rental functions for the assisted unit, including selecting a voucher-holder to lease the unit, and deciding if the family is suitable for tenancy of the unit
- Maintaining the unit in accordance with the Housing Quality Standards (HQS), including performance of ordinary and extraordinary maintenance
- Complying with equal opportunity requirements
- Preparing and furnishing to the PHA information required under the HAP contract

- Collecting from the family any security deposit, the tenant's contribution to rent (that part of rent to owner not covered by the housing assistance payment from the PHA), and any charges for unit damage by the family.

- Enforcing tenant obligations under the dwelling lease

- Paying for utilities and services (unless paid by the family under the lease)

- Making modifications to a dwelling unit occupied or to be occupied by a disabled person [24 CFR 100.203]

- Comply with the Violence Against Women Reauthorization Act of 2005 and 2013 (VAWA) when screening prospective HCV tenants or terminating the tenancy of an HCV family [24 CFR Part 5, Subpart L; 24 CFR 982.310 (h) (4) and 24 CFR 982.452 (b) (1)].

14.2.4 Owner Qualifications

The PHA does not formally approve an owner to participate in the HCV program. However, there are a number of criteria where the PHA may deny approval of an assisted tenancy based on past owner behavior, conflict of interest, or other owner-related issues. No owner has a right to participate in the HCV program [24 CFR 982.306(e)].

<u>Owners Barred from Participation</u>
[24 CFR 982.306(a) and (b)]

The PHA must not approve the assisted tenancy if the PHA has been informed that the owner has been debarred, suspended, or subject to a limited denial of participation under 24 CFR part 24. HUD may direct the PHA not to approve a tenancy request if a court or administrative agency has determined that the owner violated the Fair Housing Act or other federal equal opportunity requirements, or if such an action is pending.

<u>Leasing to Relatives</u>
[24 CFR 982.306(d), HCV GB p. 11-2]

The PHA must not approve an RFTA if the owner is the parent, child, grandparent, grandchild, sister, or brother of any member of the family. The PHA may make an exception as a reasonable accommodation for a family member with a disability. The owner is required to certify that no such relationship exists. This restriction applies at the time that the family receives assistance under the HCV program for occupancy of a particular unit. Current contracts on behalf of owners and families that are related may continue, but any new leases or contracts for these families may not be approved.

Conflict of Interest
[24 CFR 982.161; HCV GB p. 8-19]

The PHA must not approve a tenancy in which any of the following classes of persons has any interest, direct or indirect, during tenure or for one year thereafter:

- Any present or former member or officer of the PHA (except a participant commissioner)
- Any employee of the PHA, or any contractor, subcontractor or agent of the PHA, who formulates policy or who influences decisions with respect to the programs
- Any public official, member of a governing body, or State or local legislator, who exercises functions or responsibilities with respect to the programs
- Any member of the Congress of the United States

HUD may waive the conflict of interest requirements, except for members of Congress, for good cause. The PHA must submit a waiver request to the appropriate HUD Field Office for determination.

Any waiver request submitted by the PHA must include [HCV Guidebook pp.11-2 and 11-3]:

- Complete statement of the facts of the case;
- Analysis of the specific conflict of interest provision of the HAP contract and justification as to why the provision should be waived;
- Analysis of and statement of consistency with state and local laws. The local HUD office, the PHA, or both parties may conduct this analysis. Where appropriate, an opinion by the state's attorney general should be obtained;
- Opinion by the local HUD office as to whether there would be an appearance of impropriety if the waiver were granted;
- Statement regarding alternative existing housing available for lease under the HCV program or other assisted housing if the waiver is denied;
- If the case involves a hardship for a particular family, statement of the circumstances and discussion of possible alternatives;
- If the case involves a public official or member of the governing body, explanation of his/her duties under state or local law, including reference to any responsibilities involving the HCV program;
- If the case involves employment of a family member by the PHA or assistance under the HCV program for an eligible PHA employee, explanation of the responsibilities and duties of the position, including any related to the HCV program;

- If the case involves an investment on the part of a member, officer, or employee of the PHA, description of the nature of the investment, including disclosure/divestiture plans.

Where the PHA has requested a conflict of interest waiver, the PHA may not execute the HAP contract until HUD has made a decision on the waiver request.

> PHA Policy
>
> In considering whether to request a conflict of interest waiver from HUD, the PHA will consider factors the reasons for waiving the requirement; consistency with state and local laws; the existence of alternative housing available to families; the individual circumstances of a particular family; the specific duties of individuals whose positions present a possible conflict of interest; the nature of any financial investment in the property and plans for disclosure/divestiture; and the possible appearance of impropriety.

Owner Actions That May Result in Disapproval of a Tenancy Request
[24 CFR 982.306(c)]

HUD regulations permit the PHA, at the PHA's discretion, to refuse to approve a request for tenancy if the owner has committed any of a number of different actions.

If the PHA disapproves a request for tenancy because an owner is not qualified, it may not terminate the HAP contract for any assisted families that are already living in the owner's properties unless the owner has violated the HAP contract for those units [HCV GB p. 11-4].

PHA Policy

The PHA will refuse to approve a request for tenancy if the PHA becomes aware that any of the following are true:

- The owner has violated obligations under a HAP contract under Section 8 of the 1937 Act (42 U.S.C. 1437f);
- The owner has committed fraud, bribery or any other corrupt or criminal act in connection with any federal housing program;
- The owner has not paid state or local real estate taxes, fines, or assessment;
- The owner has engaged in any drug-related criminal activity or any violent criminal activity;
- The owner has a history or practice of non-compliance with the HQS for units leased under the tenant-based programs, or with applicable housing standards for units leased with project-based Section 8 assistance or leased under any other federal housing program;
- The owner has a history or practice of renting units that fail to meet state or local housing codes; or
- The owner has a history or practice of failing to terminate tenancy of tenants of units assisted under Section 8 or any other federally assisted housing program for activity engaged in by the tenant, any member of the household, a guest or another person under the control of any member of the household that: (i) Threatens the right to peaceful enjoyment of the premises by other residents; (ii) Threatens the health or safety of other residents, of employees of the PHA, or of owner employees or other persons engaged in management of the housing; (iii) Threatens the health or safety of, or the right to peaceful enjoyment of their residences, by persons residing in the immediate vicinity of the premises; or (iv) Is drug-related criminal activity or violent criminal activity.

In considering whether to disapprove owners for any of the discretionary reasons listed above, the PHA will consider any mitigating factors. Such factors may include, but are not limited to, the seriousness of the violation in relation to program requirements, the impact on the ability of families to lease units under the program, health and safety of participating families, among others. Upon consideration of such circumstances, the PHA may, on a case-by-case basis, choose to approve an owner.

Legal Ownership of Unit

The following represents PHA policy on legal ownership of a dwelling unit to be assisted under the HCV program.

> PHA Policy
>
> The PHA will only enter into a contractual relationship with the legal owner of a qualified unit. The PHA may require acceptable documentation of legal ownership (e.g., deed of trust, proof of taxes for most recent year).

14.2.5 Non-Discrimination

[HAP Contract – Form HUD-52641]

The owner must not discriminate against any person because of race, color, religion, sex, sexual orientation, gender identity, national origin, age, familial status, or disability, in connection with any actions or responsibilities under the HCV program and the HAP contract with the PHA.

The owner must cooperate with the PHA and with HUD in conducting any equal opportunity compliance reviews and complaint investigations in connection with the HCV program and the HAP contract with the PHA.

See CHAPTER 2 for a more thorough discussion of Fair Housing and Equal Opportunity requirements.

14.3 HAP CONTRACTS

14.3.1 Overview

The HAP contract represents a written agreement between the PHA and the owner of the dwelling unit occupied by a HCV assisted family. The contract spells out the owner's responsibilities under the program, as well as the PHA's obligations. Under the HAP contract, the PHA agrees to make housing assistance payments to the owner on behalf of a specific family occupying a specific unit.

The HAP contract is used for all HCV program tenancies except for assistance under the Section 8 homeownership program, and assistance to families that own a manufactured home and lease the space. See CHAPTER 16 for a discussion of any special housing types included in the PHA's HCV program.

If the PHA has given approval for the family of the assisted tenancy, the owner and the PHA execute the HAP contract. See CHAPTER 10 for a discussion of the leasing process, including provisions for execution of the HAP contract.

14.3.2 HAP Contract Contents

The HAP contract format is required by HUD, specifically Housing Assistance Payment (HAP) Contract, Form HUD-52641.

The HAP contract contains three parts.

Part A

Part A of the contract includes basic contract information about the name of the tenant family, address of the contract unit, names of all household members, first and last dates of initial lease term, amount of initial monthly rent to owner, amount of initial housing assistance payment, utilities and appliances to be supplied by owner and tenant, signatures of PHA and owner [HCV Guidebook, pp 11-10 and 11-11].

In general, the HAP contract cannot be modified. However, PHAs do have the discretion to add language to Part A of the HAP contract which prohibits the owner from collecting a security deposit in excess of private market practices or in excess of amounts charged to unassisted tenants. PHA policy on the amount of security deposit an owner may collect is found in CHAPTER 10.

In addition, PHAs have the discretion to add language to Part A of the HAP contract that defines when the housing assistance payment by the PHA is deemed received by the owner (e.g., upon mailing by the PHA or actual receipt by the owner).

> PHA Policy
>
> The PHA has not adopted a policy that defines when the housing assistance payment by the PHA is deemed received by the owner. Therefore, no modifications to the HAP contract will be necessary.

Part B

Part B is the body of the HAP contract. It describes in detail program requirements affecting the owner and owner roles and responsibilities under the HCV program. Most of the requirements contained in Part B of the HAP contract are outlined elsewhere in this plan. Topics addressed in Part B include:

- Lease of Contract Unit
- Maintenance, Utilities, and Other Services
- Term of HAP Contract
- Provision and Payment of Utilities and Appliances
- Rent to Owner: Reasonable Rent

- PHA Payment to Owner
- Prohibition of Discrimination
- Owner's Breach of HAP Contract
- PHA and HUD Access to Premises and Owner's Records
- Exclusion of Third Party Rights
- Conflict of Interest
- Assignment of the HAP Contract
- Written Notices
- Entire Agreement Interpretation

Part C

Part C of the HAP contract includes the Tenancy Addendum (Form HUD-52641-A). The addendum sets forth the tenancy requirements for the program and the composition of the household, as approved by the PHA. The owner must sign the HUD Tenancy Addendum with the prospective tenant, and the tenant has the right to enforce the Tenancy Addendum against the owner. The terms of the Tenancy Addendum prevail over any other provisions of the lease.

14.3.3 HAP Contract Payments

General

During the term of the HAP contract, and subject to the provisions of the HAP contract, the PHA must make monthly HAP payments to the owner on behalf of the family, at the beginning of each month. If a lease term begins after the first of the month, the HAP payment for the first month is prorated for a partial month.

The amount of the HAP payment is determined according to the policies described in CHAPTER 6 (See Section 6.4.1 Overview of Rent and Subsidy Calculations), and is subject to change during the term of the HAP contract. The PHA must notify the owner and the family in writing of any changes in the HAP payment.

HAP payments can be made only during the lease term, and only while the family is residing in the unit.

The monthly HAP payment by the PHA is credited toward the monthly rent to owner under the family's lease. The total of the rent paid by the tenant, plus the PHA HAP payment, should be equal to the rent specified in the lease (the rent to owner).

The family is not responsible for payment of the HAP payment, and the PHA is not responsible for payment of the family share of rent.

The family's share of the rent cannot be more than the difference between the total rent to the owner and the HAP payment. The owner may not demand or accept any rent payment from the tenant in excess of this maximum [24 CFR 982.451(b)(4)]. The owner may not charge the tenant extra amounts for items customarily included in rent in the locality, or provided at no additional cost to unsubsidized tenants in the premises [24 CFR 982.510(c)]. See CHAPTER 10 for a discussion of separate, non-lease agreements for services, appliances and other items that are not included in the lease.

If the owner receives any excess HAP from the PHA, the excess amount must be returned immediately. If the PHA determines that the owner is not entitled to all or a portion of the HAP, the PHA may deduct the amount of overpayment from any amounts due to the owner, including amounts due under any other Section 8 HCV contract. See Section 17.5 Owner and Family Debts to the PHA in CHAPTER 17 for additional detail on owner reimbursement of HAP overpayments.

Owner Certification of Compliance

Unless the owner complies with all provisions of the HAP contract, the owner is not entitled to receive housing assistance payments under the HAP contract [HAP Contract – Form HUD-52641].

By endorsing the monthly check from the PHA, the owner certifies to compliance with the terms of the HAP contract. This includes certification that the owner is maintaining the unit and premises in accordance with HQS; that the contract unit is leased to the tenant family and, to the best of the owner's knowledge, the family resides in the unit as the family's only residence; the rent to owner does not exceed rents charged by the owner for comparable unassisted units on the premises; and that the owner does not receive (other than rent to owner) any additional payments or other consideration for rent of the contract unit during the HAP term.

Late HAP Payments
[24 CFR 982.451(a)(5)]

The PHA is responsible for making HAP payments promptly when due to the owner, in accordance with the terms of the HAP contract. After the first two calendar months of the HAP contract term, the HAP contract provides for penalties if the PHA fails to make the HAP payment on time.

Penalties for late HAP payments can only be imposed if 1) the penalties are in accordance with generally accepted local rental market practices and law governing penalties for late payment by tenants; 2) it is the owner's normal business practice to charge late payment penalties for both assisted and unassisted families; and 3) the owner charges the assisted family for late payment of the family's share of the rent.

The PHA is not required to pay a late payment penalty if HUD determines that the payment is late for reasons beyond the PHA's control. In addition, late payment penalties are not required

if the PHA intentionally delays or denies payment as a remedy to an owner breach of the HAP contract [HCV Guidebook p. 11-7].

Termination of HAP Payments
[24 CFR 982.311(b)]

The PHA must continue making housing assistance payments to the owner in accordance with the HAP contract as long as the tenant continues to occupy the unit and the HAP contract is not violated.

HAP payments terminate when the HAP contract terminates or when the tenancy is terminated in accordance with the terms of the lease.

If the owner has initiated eviction proceedings against the family and the family continues to reside in the unit, the PHA must continue to make housing assistance payments to the owner until the owner has obtained a court judgment or other process allowing the owner to evict the tenant.

> PHA Policy
>
> The owner must inform the PHA when the owner has initiated eviction proceedings against the family and the family continues to reside in the unit.
>
> The owner must inform the PHA when the owner has obtained a court judgment or other process allowing the owner to evict the tenant, and provide the PHA with a copy of such judgment or determination.
>
> After the owner has obtained a court judgment or other process allowing the owner to evict the tenant, the PHA will continue to make HAP payments to the owner until the family actually moves from the unit or until the family is physically evicted from the unit, whichever is earlier. The owner must inform the PHA of the date when the family actually moves from the unit or the family is physically evicted from the unit.

14.3.4 Breach of HAP Contract
[24 CFR 982.453]

Any of the following actions by the owner constitutes a breach of the HAP contract:

- If the owner violates any obligations under the HAP contract including failure to maintain the unit in accordance with HQS
- If the owner has violated any obligation under any other HAP contract under Section 8
- If the owner has committed fraud, bribery or any other corrupt or criminal act in connection with any federal housing program
- For projects with mortgages insured by HUD or loans made by HUD, if the owner has failed to comply with the regulations for the applicable program; or if the owner has committed fraud, bribery or any other corrupt or criminal act in connection with the mortgage or loan

- If the owner has engaged in drug-related criminal activity
- If the owner has committed any violent criminal activity

If the PHA determines that a breach of the HAP contract has occurred, it may exercise any of its rights and remedies under the HAP contract. The PHA rights and remedies against the owner under the HAP contract include recovery of any HAP overpayment, suspension of housing assistance payments, abatement or reduction of the housing assistance payment, termination of the payment or termination the HAP contract. The PHA may also obtain additional relief by judicial order or action.

The PHA must notify the owner of its determination and provide in writing the reasons for the determination. The notice may require the owner to take corrective action by an established deadline. The PHA must provide the owner with written notice of any reduction in housing assistance payments or the termination of the HAP contract.

PHA Policy

Before the PHA invokes a remedy against an owner, the PHA will evaluate all information and documents available to determine if the contract has been breached.

If relevant, the PHA will conduct an audit of the owner's records pertaining to the tenancy or unit.

If it is determined that the owner has breached the contract, the PHA will consider all of the relevant factors including the seriousness of the breach, the effect on the family, the owner's record of compliance and the number and seriousness of any prior HAP contract violations.

PHAs must keep accurate records of interactions with owners for the following circumstances:

- If an owner threatens the health or safety of, or otherwise abuses the PHA employees. In instances where there is a documented history of threats or abuse to PHA employees, the PHA can seek DHCD approval to terminate the HAP contract.
- If an owner threatens the life of a PHA employee, the PHA can immediately terminate the HAP contract.

When HAP contracts are terminated under these circumstances, HCVP participants must be issued vouchers and allowed to move.

14.3.5 HAP Contract Term and Terminations

The term of the HAP contract runs concurrently with the term of the dwelling lease [24 CFR 982.451(a)(2)], beginning on the first day of the initial term of the lease and terminating on the last day of the term of the lease, including any lease term extensions.

The HAP contract and the housing assistance payments made under the HAP contract terminate if [HCV Guidebook pp.11-4 and 11-5, pg. 15-3]:

- The owner or the family terminates the lease;
- The lease expires;
- The PHA terminates the HAP contract;
- The PHA terminates assistance for the family;
- The family moves from the assisted unit. In this situation, the owner is entitled to keep the housing assistance payment for the month when the family moves out of the unit.
- 180 calendar days have elapsed since the PHA made the last housing assistance payment to the owner;
- The family is absent from the unit for longer than the maximum period permitted by the PHA;
- The Annual Contributions Contract (ACC) between the PHA and HUD expires
- The PHA elects to terminate the HAP contract.

PHA Policy

The PHA may elect to terminate the HAP contract in each of the following situations:

- Available program funding is not sufficient to support continued assistance for families in the program [24 CFR 982.454]
- The unit does not meet HQS size requirements due to change in family composition [24 CFR 982.403] – see CHAPTER 8;
- The unit does not meet HQS [24 CFR 982.404] – see CHAPTER 8;
- The family breaks up [HUD Form 52641] – see CHAPTER 3;
- The owner breaches the HAP contract [24 CFR 982.453(b)].

If the PHA terminates the HAP contract, the PHA must give the owner and the family written notice. The notice must specify the reasons for the termination and the effective date of the termination. Once a HAP contract is terminated, no further HAP payments may be made under that contract [HCV Guidebook pg.15-4].

> PHA Policy
>
> In all cases, the HAP contract terminates at the end of the calendar month that follows the calendar month in which the PHA gives written notice to the owner.
>
> The owner is not entitled to any housing assistance payment after this period, and must return to the PHA any housing assistance payment received after this period.
>
> HAP contract terminations resulting from a 24 hour HQS violation do not require a 30 day notice of contract termination.

If the family moves from the assisted unit into a new unit, even if the new unit is in the same building or complex as the assisted unit, the HAP contract for the assisted unit terminates. A new HAP contract would be required [HCV GB, p. 11-17].

When the family moves from an assisted unit into a new unit, the term of the HAP contract for the new unit may begin in the same month in which the family moves out of its old unit. This is not considered a duplicative subsidy [HCV GB, p. 8-22].

14.3.6 Change in Ownership/Assignment of the HAP Contract
[HUD-52641]

The HAP contract cannot be assigned to a new owner without the prior written consent of the PHA.

An owner under a HAP contract must notify the PHA in writing prior to a change in the legal ownership of the unit. The owner must supply all information as requested by the PHA.

Prior to approval of assignment to a new owner, the new owner must agree to be bound by and comply with the HAP contract. The agreement between the new owner and the former owner must be in writing and in a form that the PHA finds acceptable. The new owner must provide the PHA with a copy of the executed agreement.

PHA Policy

Assignment of the HAP contract will be approved only if the new owner is qualified to become an owner under the HCV program according to the policies in Section 14.2.4 Owner Qualifications of this chapter.

The PHA must receive a signed, written request from the existing owner stating the name and address of the new HAP payee and the effective date of the assignment in order to change the HAP payee under an outstanding HAP contract.

Within 15 business days of receiving the owner's request, the PHA will inform the current owner in writing whether the assignment may take place.

The new owner must provide a written certification to the PHA that includes:

- A copy of the escrow statement or other document showing the transfer of title and recorded deed;
- A copy of the owner's IRS Form W-9, Request for Taxpayer Identification Number and Certification, or the social security number of the new owner;
- The effective date of the HAP contract assignment;
- A written agreement to comply with the terms of the HAP contract; and
- Confirmation that the new owner is not a prohibited relative.

If the new owner does not agree to an assignment of the HAP contract, or fails to provide the necessary documents, the PHA will terminate the HAP contract with the old owner. If the new owner wants to offer the family a new lease, and the family elects to stay with continued assistance, the PHA will process the leasing in accordance with the policies in CHAPTER 10.

14.4 MTW OWNER INCENTIVE FUND PILOT PROGRAM

PHA Policy-MTW

Using its authority under the MTW Agreement, DHCD will establish an Owner Incentive Fund pilot program to promote upgrades to the housing stock in areas of the state with a large percentage of older, deteriorated housing stock.

When this type of housing is the prevailing housing available to HCV participants in a community/region, it has several undesirable consequences including: 1) limiting the tenants' ability to secure better quality housing in neighborhoods of lower concentrations of poverty; 2) resulting in inefficient use of the HCV inspection staffs' time by continually having to re-inspect units that frequently fall out of compliance; 3) resulting in few, if any, handicapped accessible units; and 4) discouraging new owners with better quality housing from making their units available to HCV households.

The program goals for this activity are:

1) Leasing higher quality units including incentivizing owners to upgrade existing housing at least one grade level, i.e. from a "C" to a "B" grade, or from a "B" to an "A" grade[2]; (See Exhibit 9-1: Grading System for Determining Unit Quality for more information on the grading of units.)

2) Increasing the number of units that are accessible to persons with disabilities;

3) Expanding the number of units leased in currently underserved neighborhoods, and

4) Encouraging new owner participation.

Initially, the program will be piloted in Berkshire County. The PHA may elect to expand this program to other parts of the state depending on the results achieved.

For specific program details regarding the Owner Incentive Program, see Exhibit 14-1: Owner Incentive Pilot Program.

[2] DHCD grades each unit during initial, renewal and mid-lease inspections. Chapter Eight of DHCD's HCV Administrative Plan found on DHCD's website explains in detail the unit grading system employed.

CHAPTER 15 : PROGRAM INTEGRITY

15.1 INTRODUCTION

The PHA is committed to ensuring that subsidy funds made available to the PHA are spent in accordance with HUD requirements.

This chapter covers HUD and PHA policies designed to prevent, detect, investigate and resolve instances of program abuse or fraud. It also describes the actions that will be taken in the case of unintentional errors and omissions.

- Preventing, Detecting, and Investigating Errors and Program Abuse: This part presents PHA policies related to preventing, detecting, and investigating errors and program abuse.

- Corrective Measures and Penalties: This part describes the corrective measures the PHA must and may take when errors or program abuses are found.

15.2 PREVENTING, DETECTING, AND INVESTIGATING ERRORS AND PROGRAM ABUSE

15.2.1 Preventing Errors and Program Abuse

HUD created the Enterprise Income Verification (EIV) system to provide PHAs with a powerful tool for preventing errors and program abuse. PHAs are required to use the EIV system in its entirety in accordance with HUD administrative guidance [24 CFR 5.233]. PHAs are further required to:

- Provide applicants and participants with form HUD-52675, “Debts Owed to PHAs and Terminations”

- Require all adult members of an applicant or participant family to acknowledge receipt of form HUD-52675 by signing a copy of the form for retention in the family file

PHA Policy

The PHA anticipates that the vast majority of families, owners, and PHA employees intend to and will comply with program requirements and make reasonable efforts to avoid errors.

To ensure that the PHA's HCV program is administered effectively and according to the highest ethical and legal standards, the PHA will employ a variety of techniques to ensure that both errors and intentional program abuse are rare.

- The PHA will discuss program compliance and integrity issues during the voucher briefing sessions described in CHAPTER 5.

- The PHA will provide each applicant and participant with a copy of "Is Fraud Worth It?" (Form HUD-1141-OIG) which explains the types of actions a family must avoid and the penalties for program abuse.

- The PHA will provide each applicant and participant with a copy of "What You Should Know about EIV," a guide to the Enterprise Income Verification (EIV) system published by HUD as an attachment to Notice PIH 2010-19. In addition, the PHA will require the head of each household to acknowledge receipt of the guide by signing a copy for retention in the family file.

- The PHA will place a warning statement about the penalties for fraud (as described in 18 U.S.C. 1001 and 1010) on key PHA forms and form letters that request information from a family or owner.

- PHA staff will be required to review and explain the contents of all HUD- and PHA-required forms prior to requesting family member signatures.

- PHAs may offer first-time owners the opportunity to attend a briefing session on HAP contract requirements.

- The PHA will provide each PHA employee with the necessary training on program rules and the organization's standards of conduct and ethics.

For purposes of this chapter the term error refers to an unintentional error or omission. Program abuse or fraud refers to a single act or pattern of actions that constitute a false statement, omission, or concealment of a substantial fact, made with the intent to deceive or mislead.

15.2.2 Detecting Errors and Program Abuse

In addition to taking steps to prevent errors and program abuse, the PHA will use a variety of activities to detect errors and program abuse.

Quality Control and Analysis of Data

HUD requires the PHA to review a random sample of tenant records annually to determine if the records conform to program requirements and to conduct quality control inspections of a sample of units to ensure HQS compliance [24 CFR, Part 985].

> PHA Policy
>
> The PHA will employ a variety of methods to detect errors and program abuse.
>
> - The PHA routinely will use available sources of up-front income verification, including HUD's EIV system to compare with family-provided information.
> - At each regular reexamination, current information provided by the family will be compared to information provided at the last regular reexamination to identify inconsistencies and incomplete information.
> - The PHA will compare family-reported income and expenditures to detect possible unreported income.

Independent Audits and HUD Monitoring

OMB Circular A-133 requires all PHAs that expend $500,000 or more in federal awards annually to have an independent audit (IPA). In addition, HUD conducts periodic on-site and automated monitoring of PHA activities and notifies the PHA of errors and potential cases of program abuse.

> PHA Policy
>
> The PHA will use the results reported in any IPA or HUD monitoring reports to identify potential program abuses as well as to assess the effectiveness of the PHA's error detection and abuse prevention efforts.

Individual Reporting of Possible Errors and Program Abuse

> PHA Policy
>
> The PHA will encourage staff, program participants, and the public to report possible program abuse.

15.2.3 Investigating Errors and Program Abuse

When the PHA Will Investigate

> PHA Policy
>
> The PHA will review all referrals, specific allegations, complaints, and tips from any source including other agencies, companies, and individuals, to determine if they warrant investigation. In order for the PHA to investigate, the allegation must contain at least one independently-verifiable item of information, such as the name of an employer or the name of an unauthorized household member.
>
> The PHA will investigate inconsistent information related to the family that is identified through file reviews and the verification process.

Consent to Release of Information
[24 CFR 982.516]

The PHA may investigate possible instances of error or abuse using all available PHA and public records. If necessary, the PHA will require HCV families to give consent to the release of additional information.

Analysis and Findings

> PHA Policy
>
> The PHA will base its evaluation on a preponderance of the evidence collected during its investigation.
>
> Preponderance of the evidence is defined as evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence that as a whole shows that the fact sought to be proved is more probable than not.
>
> Preponderance of evidence may not be determined by the number of witnesses, but by the greater weight of all evidence.
>
> For each investigation the PHA will determine (1) whether an error or program abuse has occurred, (2) whether any amount of money is owed the PHA, and (3) what corrective measures or penalties will be assessed.

Consideration of Remedies

All errors and instances of program abuse must be corrected prospectively. Whether the PHA will enforce other corrective actions and penalties depends upon the nature of the error or program abuse.

> PHA Policy
>
> In the case of family-caused errors or program abuse, the PHA will take into consideration (1) the seriousness of the offense and the extent of participation or culpability of individual family members, (2) any special circumstances surrounding the case, (3) any mitigating circumstances related to the disability of a family member, (4) the effects of a particular remedy on family members who were not involved in the offense.
>
> In the case of owner-caused errors or program abuse, the PHA will take into consideration (1) the seriousness of the offense, (2) the length of time since the violation has occurred, and (3) the effects of a particular remedy on family members who were not involved in the offense.

Notice and Appeals

> PHA Policy
>
> Upon conclusion of the investigation, the PHA will inform the relevant party in writing of its findings and remedies within 15 business days. The notice will include (1) a description of the error or program abuse, (2) the basis on which the PHA determined the error or program abuses, (3) the remedies to be employed, and (4) the family's right to appeal the results through the informal review or hearing process, if applicable (see CHAPTER 17).

15.3 CORRECTIVE MEASURES AND PENALTIES

15.3.1 Subsidy Under- or Overpayments

A subsidy under- or overpayment includes (1) an incorrect housing assistance payment to the owner, (2) an incorrect family share established for the family, and (3) an incorrect utility reimbursement to a family.

Corrections

Whether the incorrect subsidy determination is an overpayment or underpayment of subsidy, the PHA must promptly correct the HAP, family share, and any utility reimbursement prospectively.

> PHA Policy
>
> Increases in the family share will be implemented only after the family has received 30 days' notice.
>
> Any decreases in family share will become effective the first of the month following the discovery of the error.

Reimbursement

Whether the family or owner is required to reimburse the PHA or the PHA is required to make retroactive subsidy payments to the owner or family depends upon which party is responsible for the incorrect subsidy payment and whether the action taken was an error or program abuse. Policies regarding reimbursement are discussed in the sections that follow.

15.3.2 Family-Caused Errors and Program Abuse

Family obligations and general administrative requirements for participating in the program are discussed throughout this plan. This section deals specifically with errors and program abuse by family members.

An incorrect subsidy determination caused by a family generally would be the result of incorrect reporting of family composition, income, assets, or expenses, but also would include instances in which the family knowingly allows the PHA to use incorrect information provided by a third party.

Family Reimbursement to PHA
[HCV GB pp. 22-12 to 22-13]

> PHA Policy
>
> In the case of family-caused errors or program abuse, the family will be required to repay any excess subsidy received. The PHA may, but is not required to, offer the family a repayment agreement in accordance with CHAPTER 17. If the family fails to repay the excess subsidy, the PHA will terminate the family's assistance in accordance with the policies in CHAPTER 13.

PHA Reimbursement to Family
[HCV GB p. 22-12]

> PHA Policy
>
> The PHA will not reimburse the family for any underpayment of assistance when the underpayment clearly is caused by the family's omission or misrepresentation of information. Where the underpayment of assistance is as a result of the family caused omission or misrepresentation of information, the PHA will process a reexamination effective no earlier than the month following when the issue was brought to the PHA's attention by the family or the month following the date the issue was discovered by the PHA. The tenant family is obligated to provide the required information needed by the PHA to correctly calculate income, assets, expenses and family size. For example, if a family had a decrease in income in June and they did not report the change until October 5th, the PHA would conduct an interim reexamination effective November 1st but would not retroactively reimburse the tenant starting in June for the overpayment of rent.

Prohibited Actions

An applicant or participant in the HCV program must not knowingly:

- Make a false statement to the PHA [Title 18 U.S.C. Section 1001].
- Commit fraud, bribery, or any other corrupt or criminal act in connection with any federal housing program [24 CFR 982.552(c)(iv)].

PHA Policy

Any of the following will be considered evidence of family program abuse:

- Payment to the owner in excess of amounts authorized by the PHA for rent, security deposit, and additional services
- Offering bribes or illegal gratuities to the PHA Board of Directors, employees, contractors, or other PHA representatives
- Offering payments or other incentives to the owner or a third party as an inducement for the third party to make false or misleading statements to the PHA on the family's behalf
- Use of a false name or the use of falsified, forged, or altered documents
- Intentional misreporting of family information or circumstances (e.g. income, family composition)
- Omitted facts that were obviously known by a family member (e.g., not reporting employment income)
- Admission of program abuse by an adult family member
- The PHA may determine other actions to be program abuse based upon a preponderance of the evidence, as defined earlier in this chapter.

Penalties for Program Abuse

In the case of program abuse caused by a family the PHA may, at its discretion, impose any of the following remedies.

- The PHA will require the family to repay excess subsidy amounts paid by the PHA, as described earlier in this section.
- The PHA may require, as a condition of receiving or continuing assistance, that a culpable family member not reside in the unit. See policies in CHAPTER 3 (for applicants) and CHAPTER 13 (for participants)
- The PHA may deny or terminate the family's assistance following the policies set forth in CHAPTER 3 and CHAPTER 13 respectively.
- The PHA may refer the family for state or federal criminal prosecution as described in this Chapter.

15.3.3 Owner-Caused Error or Program Abuse

Owner requirements that are part of the regular process of offering, leasing, and maintaining a unit (e.g., HQS compliance, fair housing) are addressed in the appropriate chapters of this plan. This section focuses on errors and program abuse by owners.

An incorrect subsidy determination caused by an owner generally would be the result of an incorrect owner statement about the characteristics of the assisted unit (e.g., the number of bedrooms, which utilities are paid by the family). It also includes accepting duplicate housing assistance payments for the same unit in the same month, or after a family no longer resides in the unit.

Owner Reimbursement to the PHA

In all cases of overpayment of subsidy caused by the owner, the owner must repay to the PHA any excess subsidy received. The PHA may recover overpaid amounts by withholding housing assistance payments due for subsequent months, or if the debt is large, the PHA may allow the owner to pay in installments over a period of time [HCV GB p. 22-13].

> PHA Policy
>
> In cases where the owner has received excess subsidy, the PHA will require the owner to repay the amount owed in accordance with the policies in CHAPTER 17.

Prohibited Owner Actions

An owner participating in the HCV program must not:

- Make any false statement to the PHA [Title 18 U.S.C. Section 1001].
- Commit fraud, bribery, or any other corrupt or criminal act in connection with any federal housing program [24 CFR 982.453(a)(3)]

PHA Policy

Any of the following will be considered evidence of owner program abuse:

- Charging the family rent above or below the amount specified by the PHA
- Charging a security deposit other than that specified in the family's lease
- Charging the family for services that are provided to unassisted tenants at no extra charge
- Knowingly accepting housing assistance payments for any month(s) after the family has vacated the unit
- Knowingly accepting incorrect or excess housing assistance payments
- Offering bribes or illegal gratuities to the PHA Board of Directors, employees, contractors, or other PHA representatives
- Offering payments or other incentives to an HCV family as an inducement for the family to make false or misleading statements to the PHA
- Residing in the unit with an assisted family

Remedies and Penalties

When the PHA determines that the owner has committed program abuse, the PHA may take any of the following actions:

- Require the owner to repay excess housing assistance payments, as discussed earlier in this section and in accordance with the policies in the Section 17.5 Owner and Family Debts to the PHA in CHAPTER 17.
- Terminate the HAP contract (See Section 14.3.5 HAP Contract Term and Terminations).
- Bar the owner from future participation in any PHA programs.
- Refer the case to state or federal officials for criminal prosecution as described in this Chapter.

15.3.4 PHA-Caused Errors or Program Abuse

The responsibilities and expectations of PHA staff with respect to normal program administration are discussed throughout this plan. This section specifically addresses actions of a PHA staff member that are considered errors or program abuse related to the HCV program. Additional standards of conduct may be provided in the PHA personnel policy.

PHA-caused incorrect subsidy determinations include (1) failing to correctly apply HCV rules regarding family composition, income, assets, and expenses, (2) assigning the incorrect voucher size to a family, and (3) errors in calculation.

Repayment to the PHA

Neither a family nor an owner is required to repay an overpayment of subsidy if the error or program abuse is caused by PHA staff [HCV GB. 22-12].

PHA Reimbursement to Family or Owner

The PHA must reimburse a family for any underpayment of subsidy, regardless of whether the underpayment was the result of staff-caused error or staff or owner program abuse. Funds for this reimbursement must come from the PHA's administrative fee reserves [HCV GB p. 22-12].

Prohibited Activities

PHA Policy

Any of the following will be considered evidence of program abuse by PHA staff:

- Failing to comply with any HCV program requirements for personal gain
- Failing to comply with any HCV program requirements as a result of a conflict of interest relationship with any applicant, participant, or owner
- Seeking or accepting anything of material value from applicants, participating families, vendors, owners, contractors, or other persons who provide services or materials to the PHA
- Disclosing confidential or proprietary information to outside parties
- Gaining profit as a result of insider knowledge of PHA activities, policies, or practices
- Misappropriating or misusing HCV funds
- Destroying, concealing, removing, or inappropriately using any records related to the HCV program
- Committing any other corrupt or criminal act in connection with any federal housing program

Criminal Prosecution

> PHA Policy
>
> When the PHA determines that program abuse by an owner, family, or PHA staff member has occurred and the amount of overpaid subsidy meets or exceeds the threshold for prosecution under local or state law, the PHA will refer the matter to the appropriate entity for prosecution. When the amount of overpaid assistance meets or exceeds the federal threshold, the case will also be referred to the HUD Office of Inspector General (OIG).
>
> Other criminal violations related to the HCV program will be referred to the appropriate local, state, or federal entity.

15.3.5 Fraud and Program Abuse Recoveries

The PHA may retain a portion of program fraud losses that the PHA recovers from a family or owner through litigation, court order, or a repayment agreement [24 CFR 982.163].

The PHA must be the principal party initiating or sustaining the action to recover amounts due from tenants that are due as a result of fraud and abuse. 24 CFR 792.202 permits the PHA to retain the greater of:

- 50 percent of the amount it actually collects from a judgment, litigation (including settlement of a lawsuit) or an administrative repayment agreement, or

- Reasonable and necessary costs that the PHA incurs related to the collection including costs of investigation, legal fees, and agency collection fees.

The family must be afforded the opportunity for an informal hearing in accordance with requirements in 24 CFR 982.555.

If HUD incurs costs on behalf of the PHA related to the collection, these costs must be deducted from the amount retained by the PHA.

CHAPTER 16 : SPECIAL HOUSING TYPES

16.1 INTRODUCTION

[24 CFR 982 Subpart M]

The PHA may permit a family to use any of the special housing types discussed in this chapter. However, the PHA is not required to permit families receiving assistance in its jurisdiction to use these housing types, except that PHAs must permit use of any special housing type if needed as a reasonable accommodation for a person with a disability. The PHA also may limit the number of families who receive HCV assistance in these housing types and cannot require families to use a particular housing type. No special funding is provided for special housing types.

> PHA Policy
>
> DHCD permits the following special housing types: single room occupancy, congregate housing, group homes, shared housing, cooperative housing, manufactured homes, and assisted living facilities.

Special housing types include single room occupancy (SRO), congregate housing, group homes, shared housing, cooperative housing, manufactured homes where the family owns the home and leases the space, and homeownership [24 CFR 982.601].

This chapter consists of the following parts. Each part contains a description of the housing type and any special requirements associated with it. Except as modified by this chapter, the general requirements of the HCV program apply to special housing types.

- Single Room Occupancy
- Congregate Housing
- Group Homes
- Shared Housing
- Cooperative Housing
- Manufactured Homes (including manufactured home space rental)
- Homeownership
- Assisted Living Facilities

16.2 SINGLE ROOM OCCUPANCY

[24 CFR 982.602 through 982.605]

16.2.1 Overview

A single room occupancy (SRO) unit provides living and sleeping space for the exclusive use of the occupant but requires the occupant to share sanitary and/or food preparation facilities with others. More than one person may not occupy an SRO unit. HCV regulations do not limit the number of units in an SRO facility, but the size of a facility may be limited by local ordinances.

When providing HCV assistance in an SRO unit, a separate lease and HAP contract are executed for each assisted person, and the standard form of the HAP contract is used.

> PHA Policy
>
> A Section 8 voucher may not be used in an SRO unit that is subsidized under the Section 8 Moderate Rehabilitation Program or the Shelter Plus Care Program.

16.2.2 Payment Standard, Utility Allowance, and HAP Calculation

The payment standard for SRO housing is 75 percent of the 0-bedroom payment standard amount on the PHA's payment standard schedule.

The utility allowance for an assisted person residing in SRO housing is 75 percent of the zero bedroom utility allowance.

The HAP for an assisted occupant in an SRO facility is the lower of the SRO payment standard amount minus the TTP or the gross rent for the unit minus the TTP.

16.2.3 Housing Quality Standards (HQS)

HQS requirements described in CHAPTER 8 apply to SRO housing except as modified below.

<u>Access</u>

Access doors to the SRO unit must have working locks for privacy. The occupant must be able to access the unit without going through any other unit. Each unit must have immediate access to two or more approved means of exit from the building, appropriately marked and leading to safe and open space at ground level. The SRO unit must also have any other means of exit required by State or local law.

<u>Fire Safety</u>

All SRO facilities must have a sprinkler system that protects major spaces. "Major spaces" are defined as hallways, common areas, and any other areas specified in local fire, building, or safety codes. SROs must also have hard-wired smoke detectors, and any other fire and safety equipment required by state or local law.

Sanitary Facilities

Sanitary facilities must meet local code requirements for SRO housing. In the absence of local code standards the requirements discussed below apply [24 CFR 982.605].

At least one flush toilet that can be used in privacy, a lavatory basin, and a bathtub or shower in proper operating condition must be provided for each six persons (or fewer) residing in the SRO facility. If the SRO units are leased only to men, flush urinals may be substituted for up to one half of the required number of toilets. However, there must be at least one flush toilet in the building. Every lavatory basin and bathtub or shower must be supplied at all times with an adequate quantity of hot and cold running water. All of these facilities must be in proper operating condition, and must be adequate for personal cleanliness and the disposal of human waste. The facilities must utilize an approved public or private disposal system. Sanitary facilities must be reasonably accessible from a common hall or passageway, and may not be located more than one floor above or below the SRO unit. They may not be located below grade unless the SRO units are located on that level.

Space and Security

Space and security characteristics must meet local code requirements for SRO housing. In the absence of local code standards, the requirements discussed below apply [24 CFR 982.605].

An SRO unit must contain at least 110 square feet of floor space, and at least four square feet of closet space with an unobstructed height of at least five feet, for use by the occupant. If the closet space is less than four square feet, the habitable floor space in the SRO unit must be increased by the amount of the deficiency. Exterior doors and windows accessible from outside the SRO unit must be lockable.

Access doors to an SRO unit must have locks for privacy in proper operating condition. An SRO unit must have immediate access to two or more approved means of exit.

Because no children live in SRO housing, the housing quality standards applicable to lead-based paint do not apply.

16.3 CONGREGATE HOUSING

[24 CFR 982.606 through 982.609]

16.3.1 Overview

Congregate housing is intended for use by elderly persons or persons with disabilities. A congregate housing facility contains a shared central kitchen and dining area and a private living area for the individual household that includes at least a living room, bedroom and bathroom. Food service for residents must be provided.

If approved by the PHA, a family member or live-in aide may reside with the elderly person or person with disabilities. The PHA must approve a live-in aide if needed as a reasonable accommodation so that the program is readily accessible to and usable by persons with disabilities.

When providing HCV assistance in congregate housing, a separate lease and HAP contract are executed for each assisted family, and the standard form of the HAP contract is used.

16.3.2 Payment Standard, Utility Allowance, and HAP Calculation

The payment standard for an individual unit in a congregate housing facility is based on the number of rooms in the private living area. If there is only one room in the unit (not including the bathroom or the kitchen, if a kitchen is provided), the PHA must use the payment standard for a 0-bedroom unit. If the unit has two or more rooms (other than the bathroom and the kitchen), the PHA must use the 1-bedroom payment standard.

The HAP for an assisted occupant in a congregate housing facility is the lower of the applicable payment standard minus the TTP or the gross rent for the unit minus the TTP.
The gross rent for the unit for the purpose of calculating HCV assistance is the shelter portion (including utilities) of the resident's monthly housing expense only. The residents' costs for food service should not be included in the rent for a congregate housing unit.

Housing Quality Standards

HQS requirements as described in CHAPTER 8 apply to congregate housing except for the requirements stated below.

Congregate housing must have (1) a refrigerator of appropriate size in the private living area of each resident; (2) a central kitchen and dining facilities located within the premises and accessible to the residents, and (3) food service for the residents, that is not provided by the residents themselves.

The housing quality standards applicable to lead-based paint do not apply.

16.4 GROUP HOME

[24 CFR 982.610 through 982.614 and HCV GB p. 7-4]

16.4.1 Overview

A group home is a state-licensed facility intended for occupancy by elderly persons and/or persons with disabilities. Except for live-in aides, all persons living in a group home, whether assisted or not, must be elderly persons or persons with disabilities. Persons living in a group home must not require continuous medical or nursing care.

A group home consists of bedrooms for residents, which can be shared by no more than two people, and a living room, kitchen, dining area, bathroom, and other appropriate social, recreational, or community space that may be shared with other residents.

No more than 12 persons may reside in a group home including assisted and unassisted residents and any live-in aides.

If approved by the PHA, a live-in aide may live in the group home with a person with disabilities. The PHA must approve a live-in aide if needed as a reasonable accommodation so that the program is readily accessible to and usable by persons with disabilities.

When providing HCV assistance in a group home, a separate lease and HAP contract is executed for each assisted family, and the standard form of the HAP contract is used.

16.4.2 Payment Standard, Utility Allowance, and HAP Calculation

Unless there is a live-in aide, the family unit size for an assisted occupant of a group home must be 0- or 1-bedroom, depending on the PHA's subsidy standard. If there is a live-in aide, the aide must be counted in determining the household's unit size.

> PHA Policy
>
> If the applicant will have private facilities, such as a private bedroom and sanitary facilities, the family unit size is one; otherwise the family unit size is zero.

The payment standard used to calculate the HAP is the lower of: (1) the payment standard for the family unit size; or (2) the prorata share of the payment standard for the group home size. The prorata share is calculated by dividing the number of persons in the assisted household by the number of persons (assisted and unassisted) living in the group home.

The HAP for an assisted occupant in a group home is the lower of the payment standard minus the TTP or the gross rent minus the TTP.

The utility allowance for an assisted occupant in a group home is the prorata share of the utility allowance for the group home.

The rents paid for participants residing in group homes are subject to generally applicable standards for rent reasonableness. The rent for an assisted person must not exceed the prorata portion of the reasonable rent for the group home. In determining reasonable rent, the PHA should consider whether sanitary facilities and facilities for food preparation and service are common facilities or private facilities.

16.4.3 Housing Quality Standards

HQS requirements described in CHAPTER 8 apply to group homes except for the requirements stated below.

<u>Sanitary Facilities</u>

A group home must have at least one bathroom in the facility, with a flush toilet that can be used in privacy, a fixed basin with hot and cold running water, and a shower or bathtub with hot and cold running water. A group home may contain private or common bathrooms. However, no more than four residents can be required to share a bathroom.

Food Preparation and Service

Group home units must contain a kitchen and dining area with adequate space to store, prepare, and serve food. The facilities for food preparation and service may be private or may be shared by the residents. The kitchen must contain a range, an oven, a refrigerator, and a sink with hot and cold running water. The sink must drain into an approvable public or private disposal system.

Space and Security

Group homes must contain at least one bedroom of appropriate size for every two people, and a living room, kitchen, dining area, bathroom, and other appropriate social, recreational, or community space that may be shared with other residents.

Structure and Material

To avoid any threat to the health and safety of the residents, group homes must be structurally sound. Elevators must be in good condition. Group homes must be accessible to and usable by residents with disabilities.

Site and Neighborhood

Group homes must be located in a residential setting. The site and neighborhood should be reasonably free from hazards to the health, safety, and general welfare of the residents, and should not be subject to serious adverse conditions, such as:

- Dangerous walks or steps
- Instability
- Flooding, poor drainage
- Septic tank back-ups
- Sewage hazards
- Mud slides
- Abnormal air pollution
- Smoke or dust
- Excessive noise
- Vibrations or vehicular traffic
- Excessive accumulations of trash

- Vermin or rodent infestation, and
- Fire hazards.

The housing quality standards applicable to lead-based paint do not apply.

16.5 SHARED HOUSING

[24 CFR 982.615 through 982.618]

16.5.1 Overview

Shared housing is a single housing unit occupied by an assisted family and another resident or residents. The shared unit consists of both common space for use by the occupants of the unit and separate private space for each assisted family.

An assisted family may share a unit with other persons assisted under the HCV program or with other unassisted persons. The owner of a shared housing unit may reside in the unit, but housing assistance may not be paid on behalf of the owner. The resident owner may not be related by blood or marriage or domestic partnership ties to the assisted family.

If approved by the PHA, a live-in aide may reside with the family to care for a person with disabilities. The PHA must approve a live-in aide if needed as a reasonable accommodation so that the program is readily accessible to and usable by persons with disabilities.

When providing HCV assistance in shared housing, a separate lease and HAP contract are executed for each assisted family, and the standard form of the HAP contract is used.

> PHA Policy
>
> Two or more assisted families may enter into a shared housing arrangement provided that each family has private use of its family unit size number of bedrooms. The vouchers do not have to have been issued by the same PHA provided that the owner is willing to meet the contract obligations of both agencies. In the event that the agencies agree to conduct a single annual inspection then the PHA must conduct the single inspection.

16.5.2 Payment Standard, Utility Allowance, and HAP Calculation

The payment standard for a family in shared housing is the lower of the payment standard for the family unit size or the prorata share of the payment standard for the shared housing unit size.

The prorata share is calculated by dividing the number of bedrooms available for occupancy by the assisted family in the private space by the total number of bedrooms in the unit.

The HAP for a family in shared housing is the lower of the payment standard minus the TTP or the gross rent minus the TTP. The utility allowance for an assisted family living in shared housing is the prorata share of the utility allowance for the shared housing unit.

The rents paid for families living in shared housing are subject to generally applicable standards for rent reasonableness. The rent paid to the owner for the assisted family must not exceed the pro-rata portion of the reasonable rent for the shared unit. In determining reasonable rent, the PHA should consider whether sanitary and food preparation areas are private or shared.

16.5.3 Housing Quality Standards

The PHA may not give approval to reside in shared housing unless the entire unit, including the portion of the unit available for use by the assisted family under its lease, meets the housing quality standards.

HQS requirements described in CHAPTER 8 apply to shared housing except for the requirements stated below.

Facilities Available for the Family

Facilities available to the assisted family, whether shared or private, must include a living room, a bathroom, and food preparation and refuse disposal facilities.

Space and Security

The entire unit must provide adequate space and security for all assisted and unassisted residents. The private space for each assisted family must contain at least one bedroom for each two persons in the family. The number of bedrooms in the private space of an assisted family must not be less than the family unit size. A 0-bedroom or 1-bedroom unit may not be used for shared housing.

16.6 COOPERATIVE HOUSING
[24 CFR 982.619]

16.6.1 Overview

This part applies to rental assistance for a cooperative member residing in cooperative housing. It does not apply to assistance for a cooperative member who has purchased membership under the HCV homeownership option, or to rental assistance for a family that leases a cooperative housing unit from a cooperative member.

A cooperative is a form of ownership (nonprofit corporation or association) in which the residents purchase memberships in the ownership entity. Rather than being charged “rent” a cooperative member is charged a “carrying charge.”

When providing HCV assistance in cooperative housing, the standard form of the HAP contract is used.

16.6.2 Payment Standard, Utility Allowance and HAP Calculation

The payment standard and utility allowance are determined according to regular HCV program requirements.

The HAP for a cooperative housing unit is the lower of the payment standard minus the TTP or the monthly carrying charge for the unit, plus any utility allowance, minus the TTP. The monthly carrying charge includes the member's share of the cooperative debt service, operating expenses, and necessary payments to cooperative reserve funds. The carrying charge does not include down payments or other payments to purchase the cooperative unit or to amortize a loan made to the family for this purpose.

16.6.3 Housing Quality Standards

All standard HQS requirements apply to cooperative housing units. There are no additional HQS requirements.

16.7 MANUFACTURED HOMES

[24 CFR 982.620 through 982.624]

16.7.1 Overview

A manufactured home is a manufactured structure, transportable in one or more parts, that is built on a permanent chassis, and designed for use as a principal place of residence. HCV-assisted families may occupy manufactured homes in two different ways.

(1) A family can choose to rent a manufactured home already installed on a space and the PHA must permit it. In this instance program rules are the same as when a family rents any other residential housing, except that there are special HQS requirements as provided below.

(2) HUD also permits an otherwise eligible family that owns a manufactured home to rent a space for the manufactured home and receive HCV assistance with the rent for the space. PHAs may, but are not required to, provide assistance for such families.

16.7.2 Special Policies for Manufactured Home Owners Who Lease a Space

<u>Family Income</u>

In determining the annual income of families leasing manufactured home spaces, the value of the family's equity in the manufactured home in which the family resides is not counted as a family asset.

<u>Lease and HAP Contract</u>

There is a separate Tenancy Addendum (Form 52642-a) and separate HAP Contract (Form 52642) for this special housing type.

16.7.3 Payment Standard, Utility Allowance and HAP Calculation

Payment Standards

The FMR for a manufactured home space is generally 40 percent of the published FMR for a 2-bedroom unit or, where approved by HUD, the 40th percentile of the rental distribution of manufactured home spaces for the FMR area. The PHA may establish a payment standard for manufactured home spaces that is between 90-110 percent of the FMR for manufactured home spaces.

Utility Allowance

> MTW Policy
>
> The PHA maintains a utility allowance schedule, regardless of fuel type, geographical area and building type, for tenant-paid heat only. This schedule will also be used for manufactured homes. For the first 12 months of the initial lease term only, the allowance must include an amount for a utility hook-up charge if the family actually incurred a hook-up charge because of a move. This allowance will not be given to a family that leases in place. Utility allowances for manufactured home space must not include the costs of digging a well or installing a septic system.

Space Rent

The space rent is the sum of the rent to the owner for the manufactured home space, any charges for maintenance and management provided by the owner, and the utility allowance for tenant-paid utilities.

Housing Assistance Payment

The HAP for a manufactured home space under the housing choice voucher program is the lower of the payment standard minus the TTP or the (gross) manufactured home space rent minus the TTP.

Rent Reasonableness

Initially, and annually thereafter the PHA must determine that the rent for the manufactured home space is reasonable based on rents for comparable manufactured home spaces. The PHA must consider the location and size of the space, and any services and maintenance to be provided by the owner. By accepting the monthly HAP check, the owner certifies that the rent does not exceed rents charged by the owner for comparable unassisted spaces in the manufactured home park or elsewhere.

16.7.4 Housing Quality Standards

Under either type of occupancy described above, the manufactured home must meet all HQS performance requirements and acceptability criteria discussed in CHAPTER 8 of this plan. In addition, the following requirement applies.

Manufactured Home Tie-Down

A manufactured home must be placed on the site in a stable manner, and must be free from hazards such as sliding or wind damage. The home must be securely anchored by a tie-down device that distributes and transfers the loads imposed by the unit to appropriate ground anchors to resist overturning and sliding.

16.8 HOMEOWNERSHIP

[24 CFR 982.625 through 982.643]

PHA Policy DHCD does not presently offer a homeownership program.

16.9 ASSISTED LIVING FACILITIES

[HUD Notice PIH 2000-41(HA)]

HUD defines an assisted living facility as a facility designed for residents who have the physical ability to live independently but need assistance with some activities of daily living, such as personal care, transportation, meals, nursing care, laundry, medication monitoring, security, and housekeeping. A public, proprietary or private nonprofit corporation or association may own an assisted living facility.

16.9.1 Program Requirements

All housing choice voucher program rules apply to assisted living facilities (e.g., housing quality standards, rent reasonableness).

16.9.2 HAP Calculation

The housing assistance payment is calculated the same way as the normal voucher subsidy calculation. The housing assistance payment is the lower of the gross rent (including the utility allowance for all tenant furnished utilities) minus the TTP or the payment standard applicable to the family minus the TTP).

The cost of meals or supportive services may not be included in the rent to owner.

CHAPTER 17 : PROGRAM ADMINISTRATION

17.1 INTRODUCTION

This Chapter discusses administrative policies and practices that are relevant to the activities covered in this plan. The policies are discussed in the parts as described below:

- Administrative Fee Reserve: This part describes the PHA's policies with regard to oversight of expenditures from its administrative fee reserve.

- Setting Program Standards and Schedules: This part describes what payment standards are, and how they are updated, as well as how utility allowances are established and revised.

- Informal Reviews and Hearings. This part outlines the requirements and procedures for informal reviews and hearings, and for informal hearings regarding citizenship status.

- Owner or Family Debts to the PHA: This part describes policies for recovery of monies that the PHA has overpaid on behalf of families, or to owners, and describes the circumstances under which the PHA will offer repayment agreements to owners and families. Also discussed are the consequences for failure to make payments in accordance with a repayment agreement.

- Section 8 Management Assessment Program (SEMAP). Using its MTW authority, DHCD has elected not to be scored under SEMAP.

- Record-Keeping: All aspects of the program involve certain types of record-keeping. This part outlines the privacy rights of applicants and participants and record retention policies the PHA will follow.

- Reporting and Record Keeping for Children with Environmental Intervention Blood Lead Level: This part describes the PHA's responsibilities for reporting, data collection, and record keeping relative to children with environmental intervention blood lead levels that are less than six years of age, and are receiving HCV assistance.

- Determination of Insufficient Funding: This part describes the PHA's policies for determining if there is sufficient funding to issue vouchers, to approve moves to higher cost units or areas, and to continue assistance for all participant families.

- Violence against Women Act (VAWA): Notification, Documentation, and Confidentiality: This part contains key terms used in VAWA and describes requirements related to notifying families and owners about their rights and responsibilities under VAWA; requesting documentation from victims of domestic violence, dating violence, sexual assault, and stalking; and maintaining the confidentiality of information obtained from victims.

17.2 ADMINISTRATIVE FEE RESERVE

[24 CFR 982.155]

The PHA must maintain an administrative fee reserve for the program to pay program administrative expenses in excess of administrative fees paid by HUD for a PHA fiscal year. If funds in the administrative fee reserve are not needed to cover PHA administrative expenses, the PHA may use these funds for other housing purposes permitted by Federal, State and local law.

If the PHA has not adequately administered any Section 8 program, HUD may prohibit use of funds in the administrative fee reserve, and may direct the PHA to use funds in the reserve to improve administration of the program or to reimburse ineligible expenses. HUD also may prohibit use of the funds for certain purposes.

17.3 SETTING PROGRAM STANDARDS AND SCHEDULES

17.3.1 Overview

Although many of the program's requirements are established centrally by HUD, the HCV program's regulations recognize that some flexibility is required to allow the PHA to adapt the program to local conditions. This part discusses how the PHA establishes and updates certain schedules and standards that are used to administer the program locally. Details about how these schedules are applied to individual families are provided in other chapters. The schedules and standards discussed here include:

- Payment Standards, which dictate the maximum subsidy a family can receive (application of the payment standards is discussed in CHAPTER 6); and
- Utility Allowances, which specify how a family's payment should be adjusted to account for tenant-paid utilities (application of utility allowances is discussed in CHAPTER 6).

> PHA Policy
>
> Copies of the payment standard and utility allowance schedules are available for review in the PHA's offices during normal business hours. The current Payment Standard Schedule is posted on the DHCD website.

17.3.2 Payment Standards

[24 CFR 982.503; HCV GB, Chapter 7]

The payment standard sets the maximum subsidy payment a family can receive from the PHA each month [24 CFR 982.505(a)]. Payment standards are based on fair market rents (FMRs) published annually by HUD. FMRs are set at a percentile within the rent distribution of standard quality rental housing units in each FMR area. For most jurisdictions FMRs are set at the 40th percentile of rents in the market area.

The PHA must establish a payment standard schedule that establishes payment standard amounts for each FMR area within the PHA's jurisdiction, and for each unit size within each of

the FMR areas. For each unit size, the PHA may establish a single payment standard amount for the whole FMR area, or may set different payment standards for different parts of the FMR area. Unless HUD grants an exception, the PHA is required to establish a payment standard within a "basic range" established by HUD – between 90 and 110 percent of the published FMR for each unit size.

Updating Payment Standards

When HUD updates its FMRs, the PHA must update its payment standards if the standards are no longer within the basic range [24 CFR 982.503(b)]. HUD may require the PHA to make further adjustments if it determines that rent burdens for assisted families in the PHA's jurisdiction are unacceptably high 24 CFR 982.503(g)].

PHA Policy

The PHA will review the appropriateness of the payment standards on an annual basis when the new FMR is published. In addition to ensuring the payment standards are always within the "basic range" the PHA will consider the following factors when determining whether an adjustment should be made to the payment standard schedule:

- Funding Availability: The PHA will review the budget to determine the impact projected subsidy adjustments will have on funding available for the program and the number of families served. The PHA will compare the number of families who could be served under revised payment standard amounts with the number assisted under current payment standard amounts.

- Rent Burden of Participating Families: Rent burden will be determined by identifying the percentage of families, for each unit size, that are paying more than 30 percent of their monthly adjusted income as the family share. When 40 percent or more of families, for any given unit size, are paying more than 30 percent of adjusted monthly income as the family share, the PHA will consider increasing the payment standard. In evaluating rent burdens, the PHA will not include families renting a larger unit than their family unit size.

- Quality of Units Selected: The PHA will review the quality of units selected by participant families when making the determination of the percent of income families are paying for housing, to ensure that payment standard increases are only made when needed to reach the mid-range of the market.

- Changes in Rent to Owner: The PHA may review a sample of the units to determine how often owners are increasing or decreasing rents and the average percent of increases/decreases by bedroom size.

- Unit Availability: The PHA will review the availability of units for each unit size, particularly in areas with low concentrations of poor and minority families.

PHA Policy Continued

- Lease-up Time and Success Rate: The PHA will consider the percentage of families that are unable to locate suitable housing before the voucher expires and whether families are leaving the jurisdiction to find affordable housing.

- Increases in utility allowances: Payment standards within the basic range may be adjusted if utility allowances increase significantly during the year so that families attempting to lease a new unit are not affected by the 40% of income rule simply because of increased utility costs. PHAs must seek DHCD approval prior to implementing any payment standard changes for this reason.

Changes to payment standard amounts will be effective on December 1st of every year unless, based on the proposed FMRs, it appears that one or more of the PHA's current payment standard amounts will be outside the basic range when the final FMRs are published. In that case, the PHAs payment standards will be effective October 1st instead of December 1st.

The PHA will make retroactive adjustments to any processed reexaminations effective on or after October 1st if changes to the payment standards will be effective October 1st instead of December 1st because the published FMRs cause the current payment standard amounts to be outside the basic range.

For example, if a payment standard for a 2-bedroom unit with a reexamination effective October 1st is $1,200 and the new published FMR is $1,000 then the current payment standard will be greater than the basic range of 90-110% of the FMR. Therefore, the payment standard must be changed to $1,100 to be within the basic range. The change to the payment standard would normally be effective December 1st. However, this change to the payment standard will be effective October 1st because the published FMR caused the current payment standard to be outside the basic range. Retroactive adjustments must be made to all reexaminations with effective dates on or after October 1st that have already been processed.

Exception Payment Standards
[982.503(c)]

The PHA must request HUD approval to establish payment standards that are higher than the basic range. At HUD's sole discretion, HUD may approve a payment standard amount that is higher than the basic range for a designated part of the FMR area. HUD may approve an exception payment standard amount (in accordance with program requirements) for all units, or for all units of a given size, leased by program families in the exception area. Any PHA with jurisdiction in the exception area may use the HUD-approved exception payment standard amount. The total population of all HUD-approved exception areas in an FMR area may not include more than 50 percent of the population of the FMR area.

Unit-by-Unit Exceptions
[24 CFR 982.503(c)(2)(ii)] [Notice PIH 2010-26]

Unit-by-unit exceptions to the PHA's payment standards generally are not permitted. However, an exception may be made as a reasonable accommodation for a family that includes a person with disabilities. (See CHAPTER 2 for a discussion of reasonable accommodations.) This type of exception does not affect the PHA's payment standard schedule.

When needed as a reasonable accommodation, the PHA may make an exception to the payment standard without HUD approval if the exception amount does not exceed 110 percent of the applicable FMR for the unit size [HCV GB 7-9]. The PHA may request approval from the local HUD Office for an exception to the payment standard for a particular family if the required amount falls between 110 and 120 percent of the FMR.

PHA Policy for Non-MTW programs

A family that requires a reasonable accommodation may request a higher payment standard at the time the Request for Tenancy Approval (RFTA) is submitted. The family must document the need for the exception. In order to approve an exception (up to 110% of FMR), or request an exception from the HUD field office (up to 120%), the PHA must determine that:

- There is a shortage of affordable units that would be appropriate for the family;
- The family's TTP would otherwise exceed 40 percent of adjusted monthly income; and
- The rent for the unit is reasonable.

Before the PHA may approve the exception payment standard the following actions must have occurred:

1) Documentation of need for reasonable accommodation has been provided, which must include evidence of the disability and the necessity of the accommodation.

2) Submission of the RFTA

3) The gross rent must be determined to be reasonable; therefore, the unit must have been inspected but not necessarily have passed inspection.

One person at the PHA must be responsible for approving all exception payment standards. Approvals must be in writing and kept in the participant file.

Non-MTW Reasonable accommodation requests for exception payment standard that exceeds 120% of the FMR must be submitted through DHCD to HUD's Washington D.C. office for regulatory waiver and approval.

PHA Policy - MTW

When needed as a reasonable accommodation, DHCD may make an exception to the payment standard without HUD approval, utilizing its authority under the MTW Agreement.

DHCD may approve other documented and reasonable exceptions to payment standards without seeking HUD approval if such requests will support participants' ability to find suitable rental housing in "low poverty, high-opportunity" neighborhoods, and clearly achieve the statutory objectives of the MTW program.

A family that requires a reasonable accommodation, or that meets other criteria specified by DHCD under its MTW program, may request a higher payment standard at the time the Request for Tenancy Approval (RFTA) is submitted. The family must document the need for the exception. In order to approve an exception the PHA must determine that:

- There is a shortage of affordable units that would be appropriate for the family;
- The family's TTP would otherwise exceed 40 percent of adjusted monthly income; and
- The rent for the unit is reasonable.

Before the PHA may approve the exception payment standard the following actions must have occurred:

1) Documentation of the reason for the exception has been provided:

Reasonable Accommodation: If the request is for a reasonable accommodation, documentation of the need for reasonable accommodation must be provided, which must include evidence of the disability and/or the necessity of the accommodation.

Expand Housing Choice: If the request is not for a reasonable accommodation, the PHA must validate that approval of the exception payment standard supports the MTW goal to expand housing choice.

2) Submission of the RFTA

3) The gross rent must be determined to be reasonable; therefore, the unit must have been inspected but not necessarily have passed inspection.

One person at the PHA must be responsible for approving all exception payment standards. Approvals must be in writing and kept in the participant file.

DHCD will make a final determination on the request for a payment standard exception within three business days from the submission of completed documentation. PHAs will track and report the turnaround time for processing these requests.

"Success Rate" Payment Standard Amounts
[24 CFR 982.503(e)]

If a substantial percentage of families have difficulty finding a suitable unit, the PHA may request a "success rate payment standard" that applies to the entire jurisdiction. If approved by HUD, a success rate payment standard allows the PHA to set its payment standards at 90-110 percent of a higher FMR (the 50th, rather than the 40th percentile FMR). To support the request, the PHA must demonstrate that during the most recent 6-month period for which information is available:

- Fewer than 75 percent of families who were issued vouchers became participants;
- The PHA had established payment standards for all unit sizes, and for the entire jurisdiction, at 110 percent of the published FMR; and
- The PHA had a policy of allowing voucher holders who made sustained efforts to locate units at least 90 days to search for a unit.

Although HUD approves the success rate payment standard for all unit sizes in the FMR area, the PHA may choose to adjust the payment standard for only some unit sizes in all, or a designated part, of the PHA's jurisdiction within the FMR area.

Decreases in the Payment Standard Below the Basic Range
[24 CFR 982.503(d)]

The PHA must request HUD approval to establish a payment standard amount that is lower than the basic range. At HUD's sole discretion, HUD may approve establishment of a payment standard lower than the basic range. HUD will not approve a lower payment standard if the family share for more than 40 percent of program participants exceeds 30 percent of adjusted monthly income.

17.3.3 Utility Allowances
[24 CFR 982.517]

A PHA-established utility allowance schedule is used in determining family share and PHA subsidy.

PHA Policy – Non-MTW

The PHA must maintain a utility allowance schedule for (1) all tenant-paid utilities, (2) the cost of tenant-supplied refrigerators and ranges, and (3) other tenant-paid housing services such as trash collection.

The utility allowance schedule must be determined based on the typical cost of utilities and services paid by energy-conservative households that occupy housing of similar size and type in the same locality. In developing the schedule, the PHA must use normal patterns of consumption for the community as a whole, and current utility rates.

PHA Policy – Non-MTW (cont'd)

The utility allowance must include the utilities and services that are necessary in the locality to provide housing that complies with housing quality standards. Costs for telephone, cable/satellite television, and internet services are not included in the utility allowance schedule.

In the utility allowance schedule, the PHA must classify utilities and other housing services according to the following general categories: space heating; air conditioning; cooking; water heating; water; sewer; trash collection; other electric; cost of tenant-supplied refrigerator; cost of tenant-supplied range; and other specified housing services.

The cost of each utility and housing service must be stated separately by unit size and type. Chapter 18 of the HCV Guidebook provides detailed guidance to the PHA about establishing utility allowance schedules.

PHA Policy-MTW

The PHA utilizes a utility allowance schedule, regardless of fuel type, geographical area and building type, for tenant-paid heat only. The utility allowance schedule includes the utility allowance for heat. The PHA will apply the utility allowance for tenant paid heat using the smaller of the unit size or bedroom size. Utility allowances for any other tenant paid utilities, other than heat, will NOT be provided. (Exhibit 17-1: DHCD Section 8 Utility Allowance Schedule - MTW)

Where applicable, the PHA will use the Department of Energy's (DOE) residential energy consumption survey data to determine the utility allowance for households with approved reasonable accommodations for electricity. The PHA will determine reasonable accommodations for other utilities on a case by case basis. (See Chapter 6 Utility Allowance Policies- Reasonable Accommodation)

The MTW Utility Allowance Program Applicability Table includes the PHAs programs and their related applicability to the MTW UA allowance policy. Where Enhanced Vouchers and Tenant Protection Vouchers are concerned, the PHA will follow policy consistent with HUD published guidance.

MTW Utility Allowance Program Applicability Table	
Program	**Apply MTW UA Policy Yes or No**
Designated Housing	Yes
FSS Participants	Yes
FUP	Yes
Greater Plymouth Area Supportive Housing	Yes
Housing Options program	Yes
Little MTW (FES: Family Economic Stability)	Yes
Mainstream 1	Yes
Port Ins	Yes
Project Based	Yes
Raising the Next Generation	Yes
Tenant Based	Yes
Section 221 Project	Yes
Section 236 Project	Yes
Section 515 Project for rural housing	Yes
ModRehab	Yes
HOME (Tenant-Based Vouchers only)	No
LIHTC (Tenant-Based Vouchers only)	No
Mainstream 5	No
Port Outs	No
VASH	No
Non-Section 8 Programs	
AHVP	N/A
MRVP	N/A
Shelter Plus Care	N/A
Mod Rehab SRO	N/A
Consistent with Published HUD Guidance	
Enhanced Vouchers	Determinations to be made at the time of Award and one year after, as applicable
MTW Preservation Initiatives & RAD	Determinations to be made at the time of Award and one year after, as applicable

The following table includes implementation dates for the MTW utility allowance initiative for Project-Based developments.

Agency	Property Name	Address	Effective date of New Utility Allowance
BHDC	57 Main St.	Lee	**10/1/2014**
CTI	Wadleigh House 170 Main Street	Haverhill	**6/1/2014**
CTI	Pleasant St. Apts.	Beverly	**6/1/2014**
CTI	Home Together 26-28 Marsh St.	Gloucester	**7/1/2014**
CTI	Hope in Action	Lawrence & Methuen	**7/1/2014**
CTI	YWCA Market St Apts. 11 Market St.	Newburyport	**10/1/2014**
HAC	Kings Landing	Brewster	**6/1/2014**
HAC	Sally's Way	Truro	**11/1/2014**
HAP	580 South Summer St.	Holyoke	**6/1/2014**
RCAP	North Village	Webster	**5/1/2014**
RCAP	Austin Corridor II	Worcester	**9/1/2014**
SMOC	McCarthy Village Whittlesey Village	Acton	**8/1/2014**
SMOC	Edmands House	Framingham	**10/1/2014**
SSHDC	Dept. Crossing	Wareham	**6/1/2014**
SSHDC	Oscar Romero 24 Allen St.	New Bedford	**6/1/2014**

Air Conditioning

An allowance for air-conditioning must be provided when the majority of housing units in the market have central air-conditioning or are wired for tenant-installed air conditioners.

PHA Policy

The majority of housing units in the PHA's jurisdiction do not include central air-conditioning. Therefore, the PHA has not included an allowance for air-conditioning in its utility allowance schedule.

Reasonable Accommodation

HCV program regulations require a PHA to approve a utility allowance amount higher than shown on the PHA's schedule if a higher allowance is needed as a reasonable accommodation for a family member with a disability. See Chapter 6 on Applying Utility Allowances – Reasonable Accommodation for policy information on reasonable accommodations and utility allowances. For example, if a family member with a disability requires such an accommodation, the PHA will approve an allowance for air-conditioning, even if the PHA has determined that an allowance for air-conditioning generally is not needed (See CHAPTER 2 for policies regarding the request and approval of reasonable accommodations).

Utility Allowance Revisions

PHA Policy – Non-MTW

The PHA must review its schedule of utility allowances each year, and must revise the schedule if there has been a change of 10 percent or more in any utility rate since the last time the allowance for that utility was revised.

The PHA must maintain information supporting its annual review of utility allowance and any revisions made in its utility allowance schedule.

PHA Policy – MTW

The PHA will periodically, at its discretion, review utility allowance schedules to determine if adjustments are required. Annual updates will not be required.

PHA Policy – Non-MTW

Current utility allowance schedules are posted on the DHCD website.

Updated utility allowances and back-up documentation are due at DHCD each year by August 31st. Submission by August 31st ensures that the RAA will able to utilize these amounts for its December reexaminations, and will be concurrent with any changes in the APS. DHCD approval of utility allowance schedules is not required prior to implementation.

On an annual basis each RAA must obtain current rate information from the local utility companies and apply this information to the most current consumption data provided by DHCD to insure that families are receiving an adequate utility allowance. If there is a 10% or more change in the utility rate since the last revision, the RAA must revise the utility allowance schedules. The utility allowance schedule must be prepared and submitted on HUD form-52667.

The revised schedules and the utility survey information tables provided in Exhibit 17-2: Revised Schedules And The Utility Survey Information must be submitted to DHCD each year by August 31st so that the revised schedules are ready to use beginning with December reexaminations.

For the HUD-approved methodology used by DHCD for establishing the utility allowances see Exhibit 17-3: HUD-Approved Methodology Used By DHCD For Establishing The Utility Allowances. When developing your schedules please note the following:

1) Schedules must be based on unassisted rates.

2) Do not apply the minimum monthly service charge to more than one category per fuel type as this may result in an inflated allowance. For electricity, the monthly service charge should be included in the General Electric category since that category will apply to all families where utilities are not included in the rent. For gas, prepare your charts without including the monthly service charge in any category but rather as a single add-in. When it has been determined what combination of gas utilities a tenant is responsible for, the minimum monthly service charge should be added in only once.

DHCD recognizes that consumption patterns and rates in particular may vary by region. Therefore, each PHA has the option of either using the consumption data established by DHCD or compiling its own data by surveying actual annual consumption within its area of operation. Any PHA that chooses to develop regional consumption data shall follow the procedure as described in HUD Handbook 7420.10G Chapter 18. PHAs with uncommon fuel types, such as kerosene or wood, must develop its own consumption data for those fuel types in accordance with HUD procedures.

DHCD may approve utility allowances that have been developed for a PHA by an outside consultant.

PHAs may also use the HUD Utility Schedule Model, which enables the user to calculate utility schedules by housing type after inputting utility rate information. Step-by-step instructions for how to use the model are also provided.

Utility Allowances in Other Subsidized Housing

PHA Policy

If the owner or management company does not ask a PHA to use a different utility allowance the PHA should use its own.

In SHARP, Teller, RDAL, tax credit, Section 236 or Section 231(d)(3) or any development on the most current MassHousing "Housing List", the PHA may use the utility allowance schedule of the local PHA or the building provided:

1) The local PHA administers a Section 8 program

2) The local PHA utility allowance is updated annually; and,

3) The local PHA utility allowance schedule has been updated within the past year, or if it has not, the PHA has documented that it has completed a review of the schedule within the past year and it was not updated because the change was less than ten percent in any single category.

It is the Owner/Manager's responsibility to obtain the required information from the local PHA and provide this information to the administering PHA.

In any instance where a subsidized building uses its own utility schedule, the owner/manager must provide the PHA with the effective date of the schedule in use and the date of the last utility company survey.

Because these schedules are based solely on usage specific to the project and bedroom size, the cost to the tenant may be significantly lower than that indicated by the PHA's regionally set schedule.

In any instance where a subsidized building utility schedule is outdated, that schedule may still be used for setting the initial lease-up gross rent. For future regular reexaminations the PHA utility schedule will be used until such time as the PHA is provided with an updated schedule by the project owner/manager.

Determining Unit Size for Applying the Utility Allowance

PHA Policy

To apply the utility allowance properly each PHA must ensure that there is appropriate and adequate communication between Inspectors and Program Representatives. The family's subsidy size, per the PHA Occupancy Guidelines, will be indicated on the Request for Inspection form. Inspectors will identify the number of bedrooms on the applicable inspection form. The PHA will apply the utility allowance for the lower of the actual unit size or subsidy size.

Only bedrooms will be used to determine the size of the unit for utility allowance calculations. Rooms not intended for sleeping will NOT be used to determine the unit size for utility allowance calculations.

Direct Payment of Tenant Utilities

PHA Policy

If the housing assistance payment exceeds the rent to owner, the PHA may pay the balance of the payment either to the family or directly to the utility supplier to pay the utility bill (984.514(b)).

DHCD recommends that PHAs utilize the option to pay the utility companies directly when the family has a history of non-compliance with HQS, due to non-payment of utilities.

PHA Policy – MTW

The PHA will make utility reimbursements to the family when and if such reimbursements are more than $25/month. The PHA will not make any utility reimbursement to a family if such reimbursement is $25 or less per month.

For more information, see Section Utility Reimbursement in CHAPTER 6.

17.4 INFORMAL REVIEWS AND HEARINGS

17.4.1 Overview

When the PHA makes a decision that has a negative impact on a family, the family is often entitled to appeal the decision. For applicants, the appeal takes the form of an informal review; for participants, or for applicants denied admission because of citizenship issues, the appeal takes the form of an informal hearing.

PHAs are required to include in their administrative plans, informal review procedures for applicants, and informal hearing procedures for participants [24 CFR 982.54(d)(12) and (13)].

17.4.2 Informal Reviews

Informal reviews are provided for program applicants. An applicant is someone who has applied for admission to the program, but is not yet a participant in the program. Informal reviews are intended to provide a "minimum hearing requirement" [24 CFR 982.554], and need not be as elaborate as the informal hearing requirements. (Federal Register Volume 60, No. 127, p 36490).

Decisions Subject to Informal Review

The PHA must give an applicant the opportunity for an informal review of a decision denying assistance [24 CFR 982.554(a)]. Denial of assistance may include any or all of the following [24 CFR 982.552(a)(2)]:

- Denying listing on the PHA waiting list
- Denying or withdrawing a voucher
- Refusing to enter into a HAP contract or approve a lease
- Refusing to process or provide assistance under portability procedures

Informal reviews are not required for the following reasons [24 CFR 982.554(c)]:

- Discretionary administrative determinations by the PHA
- General policy issues or class grievances
- A determination of the family unit size under the PHA subsidy standards
- A PHA determination not to grant approval of the tenancy
- A PHA determination that the unit is not in compliance with the HQS
- A PHA determination that the unit is not in accordance with the HQS due to family size or composition

> PHA Policy
>
> The PHA will only offer an informal review to applicants for whom assistance is being denied. Denial of assistance includes: denying listing on the PHA waiting list; denying or withdrawing a voucher; refusing to enter into a HAP contract or approve a lease; refusing to process or provide assistance under portability procedures.

Notice to the Applicant
[24 CFR 982.554(a)]

The PHA must give an applicant prompt notice of a decision denying assistance. The notice must contain a brief statement of the reasons for the PHA decision, and must also state that the applicant may request an informal review of the decision. The notice must describe how to obtain the informal review.

Scheduling an Informal Review

> PHA Policy
>
> A request for an informal review must be made in writing and delivered to the PHA either in person or by first class mail, by the close of the business day, no later than 15 business days from the date of the PHA's denial of assistance.
>
> Except as provided in CHAPTER 3, the PHA must schedule and send written notice of the informal review within 15 business days of the family's request.

Informal Review Procedures
[24 CFR 982.554(b)]

> PHA Policy
>
> The informal review must be conducted by a person other than the one who made or approved the decision under review, or a subordinate of this person.
>
> Informal reviews may be conducted in writing; a meeting between the PHA representative and the applicant is recommended but not required.
>
> The applicant must be provided an opportunity to present written or oral objections to the decision of the PHA.
>
> The person conducting the review will make a recommendation to the PHA, but the PHA is responsible for making the final decision as to whether assistance should be granted or denied.

Informal Review Decision
[24 CFR 982.554(b)]

The PHA must notify the applicant of the PHA's final decision, including a brief statement of the reasons for the final decision.

PHA Policy

In rendering a decision, the PHA will evaluate the following matters:

- Whether or not the grounds for denial were stated factually in the Notice.
- The validity of grounds for denial of assistance. If the grounds for denial are not specified in the regulations, then the decision to deny assistance will be overturned.
- The validity of the evidence. The PHA will evaluate whether the facts presented prove the grounds for denial of assistance. If the facts prove that there are grounds for denial, and the denial is required by HUD, the PHA will uphold the decision to deny assistance. If the facts prove the grounds for denial, and the denial is discretionary, the PHA will consider the recommendation of the person conducting the informal review in making the final decision whether to deny assistance.

The PHA will notify the applicant of the final decision, including a statement explaining the reason(s) for the decision. The notice will be mailed within 15 business days of the informal review, to the applicant and his or her representative, if any, along with proof of mailing.

If the decision to deny is overturned as a result of the informal review, processing for admission will resume.

If the family fails to appear for their informal review, the denial of admission will stand and the family will be so notified.

Informal review decisions made by the PHA are final and cannot be appealed to DHCD.

17.4.3 Informal Hearings for Participants
[24 CFR 982.555, Pub.L. 109-162]

PHAs must offer an informal hearing for certain PHA determinations relating to the individual circumstances of a participant family. A participant is defined as a family that has been admitted to the PHA's HCV program and is currently assisted in the program. The purpose of the informal hearing is to consider whether the PHA's decisions related to the family's circumstances are in accordance with the law, HUD regulations and PHA policies.

The PHA is not permitted to terminate a family's assistance until the time allowed for the family to request an informal hearing has elapsed, and any requested hearing has been completed. Termination of assistance for a participant may include any or all of the following:

- Refusing to enter into a HAP contract or approve a lease
- Terminating housing assistance payments under an outstanding HAP contract
- Refusing to process or provide assistance under portability procedures

Decisions Subject to Informal Hearing

Circumstances for which the PHA must give a participant family an opportunity for an informal hearing are as follows:

- A determination of the family's annual or adjusted income, and the use of such income to compute the housing assistance payment
- A determination of the appropriate utility allowance (if any) for tenant-paid utilities from the PHA utility allowance schedule
- A determination of the family unit size under the PHA's subsidy standards
- A determination that a certificate program family is residing in a unit with a larger number of bedrooms than appropriate for the family unit size under the PHA's subsidy standards, or the PHA determination to deny the family's request for exception from the standards
- A determination to terminate assistance for a participant family because of the family's actions or failure to act
- A determination to terminate assistance because the participant has been absent from the assisted unit for longer than the maximum period permitted under PHA policy and HUD rules
- A determination to terminate a family's Family Self Sufficiency contract, withhold supportive services, or propose forfeiture of the family's escrow account [24 CFR 984.303(i)]

Circumstances for which an informal hearing is not required are as follows:

- Discretionary administrative determinations by the PHA
- General policy issues or class grievances
- Establishment of the PHA schedule of utility allowances for families in the program
- A PHA determination not to approve an extension or suspension of a voucher term
- A PHA determination not to approve a unit or tenancy
- A PHA determination that a unit selected by the applicant is not in compliance with the HQS
- A PHA determination that the unit is not in accordance with HQS because of family size

- A determination by the PHA to exercise or not to exercise any right or remedy against an owner under a HAP contract

> PHA Policy
>
> The PHA will only offer participants the opportunity for an informal hearing when required to by the regulations.

Notice to the Family
[24 CFR 982.555(c)]

When the PHA makes a decision that is subject to informal hearing procedures, the PHA must inform the family of its right to an informal hearing at the same time that it informs the family of the decision.

For decisions related to the family's annual or adjusted income, the determination of the appropriate utility allowance, and the determination of the family unit size, the PHA must notify the family that they may ask for an explanation of the basis of the determination, and that if they do not agree with the decision, they may request an informal hearing on the decision.

For decisions related to the termination of the family's assistance, or the denial of a family's request for an exception to the PHA's subsidy standards, the notice must contain a brief statement of the reasons for the decision, a statement that if the family does not agree with the decision, the family may request an informal hearing on the decision, and a statement of the deadline for the family to request an informal hearing.

> PHA Policy
>
> In cases where the PHA makes a decision for which an informal hearing must be offered, the notice to the family will include all of the following:
>
> - The proposed action or decision of the PHA;
> - A brief statement of the reasons for the decision including the regulatory reference;
> - The date the proposed action will take place; i.e. the decision is effective;
> - A statement of the family's right to an explanation of the basis for the PHA's decision;
> - A statement that if the family does not agree with the decision the family may request an informal hearing of the decision;
> - A deadline for the family to request the informal hearing. To whom the hearing request should be addressed; and
> - A copy of the PHA's hearing procedures.
>
> If the family does not avail itself of the opportunity for an informal hearing at the PHA, it may not appeal a termination decision to DHCD.

Scheduling an Informal Hearing
[24 CFR 982.555(d)]

When an informal hearing is required, the PHA must proceed with the hearing in a reasonably expeditious manner upon the request of the family.

> PHA Policy
>
> A request for an informal hearing must be made in writing and delivered to the PHA either in person or by first class mail, by the close of the business day, no later than 15 business days from the date of the PHA's decision or notice to terminate assistance.
>
> The PHA must schedule and send written notice of the informal hearing to the family within 15 business days of the family's request.
>
> The family may request to reschedule a hearing for good cause, or if it is needed as a reasonable accommodation for a person with disabilities. Good cause is defined as an unavoidable conflict which seriously affects the health, safety or welfare of the family. Requests to reschedule a hearing must be made orally or in writing prior to the hearing date. At its discretion, the PHA may request documentation of the "good cause" prior to rescheduling the hearing.
>
> If the family does not appear at the scheduled time, and was unable to reschedule the hearing in advance due to the nature of the conflict, the family must contact the PHA within 24 hours of the scheduled hearing date, excluding weekends and holidays.
>
> The PHA will reschedule the hearing only if the family can show good cause for the failure to appear, or if it is needed as a reasonable accommodation for a person with disabilities.

Pre-Hearing Right to Discovery
[24 CFR 982.555(e)]

Participants and the PHA are permitted pre-hearing discovery rights. The family must be given the opportunity to examine before the hearing any PHA documents that are directly relevant to the hearing. The family must be allowed to copy any such documents at their own expense. If the PHA does not make the document available for examination on request of the family, the PHA may not rely on the document at the hearing.

The PHA hearing procedures may provide that the PHA must be given the opportunity to examine at the PHA offices before the hearing, any family documents that are directly relevant to the hearing. The PHA must be allowed to copy any such document at the PHA's expense. If the family does not make the document available for examination on request of the PHA, the family may not rely on the document at the hearing.

For the purpose of informal hearings, documents include records and regulations.

PHA Policy

The family will be allowed to copy any documents related to the hearing. The family must request discovery of PHA documents no later than 12:00 p.m. on the business day prior to the scheduled hearing date.

The PHA must be given an opportunity to examine at the PHA offices before the hearing any family documents that are directly relevant to the hearing.

Whenever a participant requests an informal hearing, the PHA will automatically mail a letter to the participant requesting a copy of all documents that the participant intends to present or utilize at the hearing.

The participant must make the documents available no later than 12:00 pm on the business day prior to the scheduled hearing date.

Participant's Right to Bring Counsel
[24 CFR 982.555(e)(3)]

At its own expense, the family may be represented by a lawyer or other representative at the informal hearing.

Informal Hearing Officer
[24 CFR 982.555(e)(4)]

Informal hearings will be conducted by a person or persons approved by the PHA, other than the person who made or approved the decision or a subordinate of the person who made or approved the decision.

Attendance at the Informal Hearing

PHA Policy

Hearings may be attended by a hearing officer and the following applicable persons:

- A PHA representative(s) and any witnesses for the PHA.
- The participant and any witnesses for the participant.
- The participant's counsel or other representative.
- Any other person approved by the PHA as a reasonable accommodation for a person with a disability

Other Persons Affected: Any person who can demonstrate that they may be substantially and specifically affected by the proceeding may be allowed to participate in the hearing, in whole or in part, or they may be allowed to present evidence, either orally or in writing. It is not the PHA's responsibility to determine if there may be anyone who meets this criterion. However, if someone, such as an owner, learns of the hearing on their own, and claims to have a vested interest in the outcome of the hearing, the PHA must determine if they qualify under this section. This claim must be made three working days before the hearing so that the PHA has ample opportunity to consider the claim.

Conduct at Hearings

The person who conducts the hearing may regulate the conduct of the hearing in accordance with the PHA's hearing procedures [24 CFR 982.555(4)(ii)].

PHA Policy

The hearing officer is responsible to manage the order of business and to ensure that hearings are conducted in a professional and businesslike manner. Attendees are expected to comply with all hearing procedures established by the hearing officer and guidelines for conduct.

Any person demonstrating disruptive, abusive or otherwise inappropriate behavior will be excused from the hearing at the discretion of the hearing officer.

Evidence
[24 CFR 982.555(e)(5)]

The PHA and the family must be given the opportunity to present evidence and question any witnesses. In general, all evidence is admissible at an informal hearing. Evidence may be considered without regard to admissibility under the rules of evidence applicable to judicial proceedings.

PHA Policy

Any evidence to be considered by the hearing officer must be presented at the time of the hearing. There are four categories of evidence.

- Oral evidence: the testimony of witnesses.
- Documentary evidence: a writing which is relevant to the case, for example, a letter written to the PHA. Writings include all forms of recorded communication or representation, including letters, words, pictures, sounds, videotapes or symbols or combinations thereof.
- Demonstrative evidence: Evidence created specifically for the hearing and presented as an illustrative aid to assist the hearing officer, such as a model, a chart or other diagram.
- Real evidence: A tangible item relating directly to the case.

Hearsay Evidence: Evidence of a statement that was made other than by a witness while testifying at the hearing and that is offered to prove the truth of the matter. Even though evidence, including hearsay, is generally admissible, hearsay evidence alone cannot be used as the sole basis for the hearing officer's decision.

If either the PHA or the family fail to comply with the discovery requirements described above, the hearing officer will refuse to admit such evidence.

Other than the failure of a party to comply with discovery, the hearing officer has the authority to overrule any objections to evidence.

Recording of the Hearing

The family is entitled to have the hearing recorded by audiotape. The PHA may, but is not required to provide a transcript of the hearing.

PHA Policy

The PHA will record and maintain an audiotape of informal hearings. The PHA will provide a copy of the audiotaped hearing upon request. The PHA will not provide transcripts of informal hearings.

Hearing Officer's Decision
[24 CFR 982.555(e)(6)]

The person who conducts the hearing must issue a written decision, stating briefly the reasons for the decision. Factual determinations relating to the individual circumstances of the family must be based on a preponderance of evidence presented at the hearing. A copy of the hearing must be furnished promptly to the family.

PHA Policy

In rendering a decision, the hearing officer will consider the following matters:

- PHA Notice to the Family: The hearing officer will determine if the reasons for the PHA's decision are factually stated in the Notice.

- Discovery: The hearing officer will determine if the PHA and the family were given the opportunity to examine any relevant documents in accordance with PHA policy.

- PHA Evidence to Support the PHA Decision: The evidence consists of the facts presented. Evidence is not conclusion and it is not argument. The hearing officer will evaluate the facts to determine if they support the PHA's conclusion.

- Validity of Grounds for Termination of Assistance (when applicable): The hearing officer will determine if the termination of assistance is for one of the grounds specified in the HUD regulations and PHA policies. If the grounds for termination are not specified in the regulations or in compliance with PHA policies, then the decision of the PHA will be overturned.

The hearing officer will issue a written decision to the family and the PHA no later than 30 business days after the hearing. The report will contain the following information:

- Hearing information: Name of the participant; Date, time and place of the hearing; Name of the hearing officer; Name of the PHA representative; and Name of family representative (if any).

- Background: A brief, impartial statement of the reason for the hearing.

- Summary of the Evidence: The hearing officer will summarize the testimony of each witness and identify any documents that a witness produced in support of his/her testimony and that are admitted into evidence.

- Findings of Fact: The hearing officer will include all findings of fact, based on a preponderance of the evidence. Preponderance of the evidence is defined as evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not. Preponderance of the evidence may not be determined by the number of witnesses, but by the greater weight of all evidence.

- Conclusions: The hearing officer will render a conclusion derived from the facts that were found to be true by a preponderance of the evidence. The conclusion will result in a determination of whether these facts uphold the PHA's decision.

PHA Policy Continued

- Order: The hearing report will include a statement of whether the PHA's decision is upheld or overturned. If it is overturned, the hearing officer will instruct the PHA to change the decision in accordance with the hearing officer's determination. In the case of termination of assistance, the hearing officer will instruct the PHA to restore the participant's program status.

Procedures for Rehearing or Further Hearing

PHA Policy

The hearing officer may ask the family for additional information and/or might adjourn the hearing in order to reconvene at a later date, before reaching a decision. If the family misses an appointment or deadline ordered by the hearing officer, the action of the PHA will take effect and another hearing will not be granted.

In addition, within 15 business days after the date the hearing officer's report is mailed to the PHA and the participant, the PHA or the participant may request a rehearing or a further hearing. Such request must be made in writing and postmarked or hand-delivered to the hearing officer and to the other party within the 15 business days after the date the hearing officer's report is mailed. The request must demonstrate cause, supported by specific references to the hearing officer's report, why the request should be granted.

A rehearing or a further hearing may be requested for the purpose of rectifying any obvious mistake of law made during the hearing or any obvious injustice not known at the time of the hearing.

It shall be within the sole discretion of the PHA to grant or deny the request for further hearing or rehearing. A further hearing may be limited to written submissions by the parties, in the manner specified by the hearing officer.

PHA Notice of Final Decision
[24 CFR 982.555(f)]

The PHA is not bound by the decision of the hearing officer for matters in which the PHA is not required to provide an opportunity for a hearing, decisions that exceed the authority of the hearing officer, decisions that conflict with or contradict HUD regulations, requirements, or are otherwise contrary to Federal, State or local laws.

If the PHA determines it is not bound by the hearing officer's decision in accordance with HUD regulations, the PHA must promptly notify the family of the determination and the reason for the determination.

PHA Policy

The PHA will mail a "Notice of Final Decision" including the hearing officer's report, to the participant and their representative. This Notice will be sent by first-class mail, postage pre-paid with an affidavit of mailing enclosed. The participant will be mailed the original "Notice of Final Decision" and a copy of the proof of mailing. A copy of the "Notice of Final Decision" along with the original proof mailing will be maintained in the PHA's file.

Appeals to DHCD

PHA Policy

Of the PHA determinations where an informal hearing must be offered, only decisions regarding termination of assistance may be appealed to DHCD. The HUD requirement for an informal hearing is considered satisfied at the PHA level.

When a PHA has completed the informal hearing process and has upheld the initial decision to terminate assistance, the decision letter must inform the family of its right to an appeal at DHCD.

The notice must state that DHCD's Bureau of Federal Rental Assistance must receive the appeal within 15 days from the date of the decision letter. Appeals not received within 15 days will not be accepted and will be returned to the sender.

Appeals received within the 15-day period will be forwarded to DHCD's Office of the Chief Counsel. DHCD's hearing officer will send a notice requesting that the PHA and the aggrieved party submit any written documentation that they would like to be considered in support of their position. The hearing officer will review all submitted materials and will make a decision after consideration of the facts presented.

DHCD reserves the right to request that any written material be clarified. A written decision will be sent to both parties.

The outcome of any Section 8 appeal is dependent to a large extent on the individual circumstances of each case. However, this is particularly true with cases where the participant alleges that s/he was unable to fulfill his or her program obligations due to domestic violence. For this reason in cases where the domestic violence is documented and it appears the domestic violence was the cause of the participant's failure to fulfill his or her program obligations, DHCD reserves the right to review all the circumstances of each case, including everything that has happened while the family awaits an appeal, and make a determination based on all the information available. The implications of this policy are that there will be occasions where the PHA has acted correctly in making a decision, yet DHCD overturns the decision because the intervening circumstances are sufficient to change the balance of mitigating factors and negative information.

Portable Families

> PHA Policy
>
> Participants not holding a DHCD voucher may not appeal a PHA's decision to terminate assistance to DHCD.

Appeals Following Reinstatement with Conditions

> PHA Policy
>
> When a participant is reinstated with conditions (by PHA or by DHCD) and subsequently breaches those same conditions within one year, the participant must be informed that the appeal is made directly to DHCD.
>
> If more than one year has passed before the conditions are breached, the PHA must conduct another hearing to determine if the circumstances have changed.
>
> If the participant is subsequently terminated for a different reason, the PHA must conduct a new hearing.

17.4.4 Hearing and Appeal Provisions for Non-Citizens

[24 CFR 5.514]

Denial or termination of assistance based on immigration status is subject to special hearing and notice rules. Applicants who are denied assistance due to immigration status are entitled to an informal hearing, not an informal review.

Assistance to a family may not be delayed, denied, or terminated on the basis of immigration status at any time prior to a decision under the United States Citizenship and Immigration Services (USCIS) appeal process. Assistance to a family may not be terminated or denied while the PHA hearing is pending, but assistance to an applicant may be delayed pending the completion of the informal hearing.

A decision against a family member, issued in accordance with the USCIS appeal process or the PHA informal hearing process, does not preclude the family from exercising the right, that may otherwise be available, to seek redress directly through judicial procedures.

Notice of Denial or Termination of Assistance

[24 CFR 5.514(d)]

As discussed in CHAPTER 3 and CHAPTER 12, the notice of denial or termination of assistance for noncitizens must advise the family:

- That financial assistance will be denied or terminated, and provide a brief explanation of the reasons for the proposed denial or termination of assistance.
- The family may be eligible for proration of assistance.

- In the case of a participant, the criteria and procedures for obtaining relief under the provisions for preservation of families [24 CFR 5.514 and 5.518].

- That the family has a right to request an appeal to the USCIS of the results of secondary verification of immigration status and to submit additional documentation or explanation in support of the appeal.

- That the family has a right to request an informal hearing with the PHA either upon completion of the USCIS appeal or in lieu of the USCIS appeal.

- For applicants, assistance may not be delayed until the conclusion of the USCIS appeal process, but assistance may be delayed during the period of the informal hearing process.

USCIS Appeal Process
[24 CFR 5.514(e)]

When the PHA receives notification that the USCIS secondary verification failed to confirm eligible immigration status, the PHA must notify the family of the results of the USCIS verification. The family will have 30 days from the date of the notification to request an appeal of the USCIS results. The request for appeal must be made by the family in writing directly to the USCIS. The family must provide the PHA with a copy of the written request for appeal and the proof of mailing.

> PHA Policy
>
> The PHA will notify the family in writing of the results of the USCIS secondary verification within 15 business days of receiving the results.
>
> The family must provide the PHA with a copy of the written request for appeal and proof of mailing within 15 business days of sending the request to the USCIS.

The family must forward to the designated USCIS office any additional documentation or written explanation in support of the appeal. This material must include a copy of the USCIS document verification request (used to process the secondary request) or such other form specified by the USCIS, and a letter indicating that the family is requesting an appeal of the USCIS immigration status verification results.

The USCIS will notify the family, with a copy to the PHA, of its decision. When the USCIS notifies the PHA of the decision, the PHA must notify the family of its right to request an informal hearing.

> PHA Policy
>
> The PHA will send written notice to the family of its right to request an informal hearing within 15 business days of receiving notice of the USCIS decision regarding the family's immigration status.

Informal Hearing Procedures for Applicants
[24 CFR 5.514(f)]

After notification of the USCIS decision on appeal, or in lieu of an appeal to the USCIS, the family may request that the PHA provide a hearing. The request for a hearing must be made either within 30 days of receipt of the PHA notice of denial, or within 30 days of receipt of the USCIS appeal decision.

The informal hearing procedures for applicant families are described below.

Informal Hearing Officer

The PHA must provide an informal hearing before an impartial individual, other than a person who made or approved the decision under review, and other than a person who is a subordinate of the person who made or approved the decision.

Evidence

The family must be provided the opportunity to examine and copy at the family's expense, at a reasonable time in advance of the hearing, any documents in the possession of the PHA pertaining to the family's eligibility status, or in the possession of the USCIS (as permitted by USCIS requirements), including any records and regulations that may be relevant to the hearing.

> PHA Policy
>
> The family will be allowed to copy any documents related to the hearing. The family must request discovery of PHA documents no later than 12:00 p.m. on the business day prior to the hearing.

The family must be provided the opportunity to present evidence and arguments in support of eligible status. Evidence may be considered without regard to admissibility under the rules of evidence applicable to judicial proceedings.

The family must also be provided the opportunity to refute evidence relied upon by the PHA, and to confront and cross-examine all witnesses on whose testimony or information the PHA relies.

Representation and Interpretive Services

The family is entitled to be represented by an attorney or other designee, at the family's expense, and to have such person make statements on the family's behalf.

The family is entitled to arrange for an interpreter to attend the hearing, at the expense of the family, or the PHA, as may be agreed upon by the two parties.

Recording of the Hearing – Non-Citizens

The family is entitled to have the hearing recorded by audiotape. The PHA may, but is not required to provide a transcript of the hearing.

> PHA Policy
>
> PHA will record and maintain an audiotape of the hearing. The PHA will provide a copy of the audiotaped hearing upon request. The PHA will not provide a transcript of the hearing.

Hearing Decision

The PHA must provide the family with a written final decision, based solely on the facts presented at the hearing, within 14 calendar days of the date of the informal hearing. The decision must state the basis for the decision.

Informal Hearing Procedures for Residents
[24 CFR 5.514(f)]

After notification of the USCIS decision on appeal, or in lieu of an appeal to the USCIS, the family may request that the PHA provide a hearing. The request for a hearing must be made either within 30 days of receipt of the PHA notice of termination, or within 30 days of receipt of the USCIS appeal decision.

For the informal hearing procedures that apply to participant families whose assistance is being terminated based on immigration status, see Section 17.4.3 Informal Hearings for Participants.

Retention of Documents
[24 CFR 5.514(h)]

The PHA must retain for a minimum of 5 years the following documents that may have been submitted to the PHA by the family, or provided to the PHA as part of the USCIS appeal or the PHA informal hearing process:

- The application for assistance
- The form completed by the family for income reexamination
- Photocopies of any original documents, including original USCIS documents
- The signed verification consent form
- The USCIS verification results
- The request for a USCIS appeal
- The final USCIS determination
- The request for an informal hearing

- The final informal hearing decision

17.5 OWNER AND FAMILY DEBTS TO THE PHA

17.5.1 Overview

PHAs are required to include in the Administrative Plan, policies concerning repayment by a family of amounts owed to the PHA [24 CFR 982.54]. This part describes the PHA's policies for recovery of monies owed to the PHA by families or owners.

> PHA Policy
>
> When an action or inaction of an owner or participant results in the overpayment of housing assistance, the PHA holds the owner or participant liable to return any overpayments to the PHA.
>
> The PHA may enter into repayment agreements in accordance with the policies contained in this part as a means to recover overpayments.
>
> When an owner or participant refuses to repay monies owed to the PHA, the PHA will utilize other available collection alternatives including, but not limited to, the following:
>
> - Collection agencies
> - Small claims court
> - Civil law suit

17.5.2 Repayment Policy

<u>Owner Debts to the PHA</u>

> PHA Policy
>
> Any amount due to the PHA by an owner must be repaid by the owner within 30 days of the PHA determination of the debt.
>
> If the owner fails to repay the debt within the required time frame and is entitled to future HAP payments, the PHA will reduce the future HAP payments by the amount owed until the debt is paid in full.
>
> If the owner is not entitled to future HAP payments the PHA may, in its sole discretion, offer to enter into a repayment agreement in accordance with the policies below.
>
> If the owner refuses to repay the debt, does not enter into a repayment agreement, or breaches a repayment agreement, the PHA will ban the owner from future participation in the program and pursue other modes of collection.

Family Debts to the PHA

> PHA Policy
>
> Any amount owed to the PHA by an HCV family must be fully repaid by the family. The family may pay the amount owed in full.
>
> If the family is unable to repay the debt in full within 30 days, the PHA may, but is not required to, enter into a repayment agreement in accordance with the policies below.
>
> If the family refuses to repay the debt, does not enter into a repayment agreement, or breaches a repayment agreement, the PHA will terminate assistance in accordance with the policies in CHAPTER 13 and pursue other modes of collection.
>
> If the family's assistance is terminated and repayment has not been made, the money is still owed and the PHA may take action to collect the amount owed even though the family is no longer a Section 8 participant.

No Offer of Repayment Agreement

> PHA Policy
>
> The PHA will not enter into more than one repayment agreement with a family within a seven year period. If this is a second claim in a seven-year period then the participant family must continue to pay according to the existing repayment agreement (if the claim has not been repaid), and the subsequent claim must be paid in full. If the subsequent payment cannot be paid in full it will result in termination from the program. The PHA may not enter into a repayment agreement for the subsequent claim.

Repayment Agreement
[24 CFR 792.103] [Notice PIH 2010-19]

The term repayment agreement refers to a formal written document signed by a tenant or owner and provided to the PHA in which a tenant or owner acknowledges a debt in a specific amount and agrees to repay the amount due at specific time periods.

HUD requires certain provisions to be included in any repayment agreement involving amounts owed by a family because it underreported or failed to report income. At a minimum, these repayment agreements must contain the following provisions:

- A reference to the items in the family briefing packet that state the family's obligation to provide true and complete information at every reexamination and the grounds on which the PHA may terminate assistance because of a family's action or failure to act;

- A statement clarifying that each month the family not only must pay to the PHA the monthly payment amount specified in the agreement but must also pay to the owner the family's monthly share of the rent to owner;

- A statement that the terms of the repayment agreement may be renegotiated if the family's income decreases or increases; and

- A statement that late or missed payments constitute default of the repayment agreement and may result in termination of assistance

PHA Policy

The following guidelines will be used for repayment agreements:

- Term of Agreement

The maximum term of a repayment agreement is sixty (60) months. A waiver of up to two additional years may be granted only by the PHA's Leased Housing Director or their designee for verifiable mitigating circumstances.

- Minimum Monthly Payment

The monthly payment is structured at the discretion of the PHA so that it is achievable by the family within a period of up to 60 months. However, one additional two year waiver may be granted. A participant family may make an initial lump sum payment to reduce the monthly repayment amount.

For example, if a family owes $3,000 then the repayment agreement would be structured so that the family is paying at least $50 dollars/month. In certain cases, the PHA may make an exception to the 60 month payment structure. If a 2 year waiver is granted, as explained above, the monthly payment would not be structured so that is achievable by the family within 60 months and in this case, the family may be paying less than $50/month.

- Missed Payments

When a family falls behind a total of three payments at any time during the term of the repayment agreement, it is in default of the repayment agreement and will be immediately terminated from the program.

If a family fails to make a monthly payment, but later makes a double payment, the missed payment will not be counted as one of the three that leads to termination. If a family that is being terminated for missing three payments pays the entire debt in full on or before the date of the termination hearing it may be reinstated to the program.

- Impact of Bankruptcy on Tenant Debt

If a participant files for bankruptcy, any debts owed to the housing agency are dischargeable. If a participant receives a judgment of bankruptcy, any debts are discharged.

Debts Owed for FSS Participants

Prior to the preparation of the annual FSS Account report to the FSS family as required by 24 CFR 984.305 (a) (3), the FSS Coordinator shall insure that any interest deduction and segregation of funds allowed by 24 CFR 984.305 (a) (3) (iii) is made.

Prior to the disbursement of the FSS Account to the FSS family as required by 24 CFR 984.305 (c), the FSS Coordinator shall insure that the tenant family is in good standing and in compliance with the existing lease. If the family owes any money to the PHA or the property owner then the FSS Coordinator will advise the family that they are not able to receive the FSS money until and unless the money owed to the PHA or to the property owner is paid in full.

If the potential FSS graduate's escrow account balance is equal to or greater than the amount owed to the PHA, and the family is otherwise eligible to graduate from FSS and receive their escrow balance, the PHA may disburse the escrow balance in two checks. The first would be for the amount owed to the PHA. When the tenant/graduate signs the check back over to the PHA, the debt is cleared and the PHA may disburse the remaining funds to the graduate. This process presumes an in-person meeting, with appropriate sign-offs and documentation relating to the elimination of the tenant-owed debt.

17.5.3 General Repayment Agreement Guidelines for Families

PHA Policy

The PHA is not obligated to enter into a repayment agreement with a family. When deciding if the PHA should enter into a repayment agreement with the family, the PHA should consider the family's history of meeting its family obligations under the HCV program, including any history of fraud. The following guidelines should be followed:

- The agency may enter into a repayment agreement with any participant family that has not entered into a repayment agreement with the agency within the last seven years.
- The PHA will not enter into more than one repayment agreement with a participant family within a seven year period even if the previous amount owed has been repaid in full. For more details, see No Offer of Repayment Agreement.

The following should also be considered when deciding if the PHA should enter into a repayment agreement with the family:

- The amount owed by the family;
- The reason for the debt;
- The family's current and potential income and expenses; and
- Any other information that is relevant to the case.

Repayment Agreement Procedure

1. If the PHA is owed money by a participant family, the PHA must send out a letter notifying the participant family of the debt. Notice to the family must be sent by certified mail return receipt requested and by regular mail. In instances where the certified mail is not accepted by the family and returned to the PHA, but the regular mail is not returned to the PHA by the Post Office, allegations by the tenant that they did not receive the notice will not be considered by the PHA as a reason for failure to respond to the notice. Unless both are returned to the PHA, there will be the presumption that the notice has been received.

2. If entitled to, the participant family may enter into a repayment agreement. If the participant family agrees to enter into a repayment agreement, the PHA must complete the Repayment Agreement and have the participant family sign it. The repayment agreement should reflect a monthly repayment that will realize payment in full within 60 months unless a waiver has been authorized. The repayment agreement must reflect any initial lump sum payments made to reduce the debt.

3. A copy of the repayment agreement must be given to the participant family and staff, as appropriate, with the original placed in the participant's file.

4. The PHA shall ensure that appropriate staff and the FSS Coordinator(s) receive a monthly report listing all families who are current participants and who have outstanding claims. This report must be made available to all PHA staff, as required, so that the policies set forth herein may be fulfilled.

5. When a participant family requests a new Voucher in order to move, the PHA must first review the file and the updated, outstanding claim report to see if a repayment agreement is present and current. If the participant family is in default on the repayment agreement then the participant family shall be terminated from the program. See also Section 11.2.2 Restrictions on Moves.

6. In those cases where the Head of Household requests the transfer of the subsidy to a remaining household member, the subsidy will not be permitted to be transferred until the debt is paid in full.

- Billing:

  The PHA is responsible for sending a monthly bill to each family that owes money to the PHA. The monthly bill may be sent by regular mail. For each missed payment, the PHA will send a letter notifying the family that payment is overdue. In addition to the updated information as to the status of the outstanding account, the bill or letter shall advise the family of the consequences of the family's failure to abide by the repayment agreement. It is advisable that letters regarding missed payments be sent by both regular and certified mail.

- Monitoring and Reporting

  The PHA is responsible for the monitoring and reporting of all tenant owed debt as required by DHCD in its quarterly report or otherwise.

17.6 MANAGEMENT ASSESSMENT (SEMAP)

PHA Policy As an MTW agency, DHCD has elected not to participate in SEMAP effective June 19th, 2008.

17.7 RECORD KEEPING

17.7.1 Overview

The PHA must maintain complete and accurate accounts and other records for the program in accordance with HUD requirements, in a manner that permits a speedy and effective audit. All such records must be made available to HUD or the Comptroller General of the United States upon request.

In addition, the PHA must ensure that all applicant and participant files are maintained in a way that protects an individual's privacy rights.

17.7.2 Record Retention

[24 CFR 982.158]

During the term of each assisted lease, and for at least three years thereafter, the PHA must keep:

- A copy of the executed lease;
- The HAP contract; and
- The application from the family.

In addition, the PHA must keep the following records for at least three years from the effective date of action:

- Records that provide income, racial, ethnic, gender, and disability status data on program applicants and participants;
- An application from each ineligible family and notice that the applicant is not eligible;
- HUD-required reports;
- Unit inspection reports;
- Lead-based paint records as required by 24 CFR 35, Subpart B.
- Accounts and other records supporting PHA budget and financial statements for the program;

- Records to document the basis for PHA determination that rent to owner is a reasonable rent (initially and during the term of a HAP contract); and

- Other records specified by HUD.

If an informal hearing to establish a family's citizenship status is held, longer retention requirements apply for some types of documents. For specific requirements, see Section 17.4 Informal Reviews and Hearings.

> PHA Policy
>
> Applicant records must be kept for three years after the date the applicant was notified that they were not eligible, or three years after the conclusion of any lawsuit, whichever is later.
>
> With the exception of EIV Income Reports, participant records must be kept for seven years from the end of program participation, or after the conclusion of any lawsuit, whichever is later.

EIV Income Reports
[PIH Notice 2010-19, 2012-10]

The PHA is authorized to maintain EIV Income Reports in the tenant file for the duration of tenancy and no longer than three years from the end of participation.

> PHA Policy
>
> EIV Income Reports from terminated client files will be destroyed three years after end of participation.

17.7.3 Records Management

PHAs must maintain applicant and participant files and information in accordance with the regulatory requirements described below.

> PHA Policy
>
> All applicant and participant information will be kept in a secure location and access will be limited to authorized PHA staff.
>
> PHA staff will not discuss personal family information unless there is a business reason to do so. Inappropriate discussion of family information or improper disclosure of family information by staff will result in disciplinary action.

Privacy Act Requirements
[24 CFR 5.212 and Form-9886]

The collection, maintenance, use, and dissemination of social security numbers (SSN), employer identification numbers (EIN), any information derived from these numbers, and income information of applicants and participants must be conducted, to the extent applicable, in compliance with the Privacy Act of 1974, and all other provisions of Federal, State, and local law.

Applicants and participants, including all adults in the household, are required to sign a consent form, HUD-9886, Authorization for Release of Information. This form incorporates the Federal Privacy Act Statement and describes how the information collected using the form may be used, and under what conditions HUD or the PHA may release the information collected.

Upfront Income Verification (UIV) Records

PHAs that access UIV data through HUD's Enterprise Income Verification (EIV) System are required to adopt and follow specific security procedures to ensure that all EIV data is protected in accordance with Federal laws, regardless of the media on which the data is recorded (e.g. electronic, paper). These requirements are contained in the HUD issued document, Enterprise Income Verification (EIV) System, Security Procedures for Upfront Income Verification data.

PHA Policy

Prior to utilizing HUD's EIV system, the PHA will adopt and implement EIV security procedures required by HUD.

Criminal Records

The PHA may only disclose the criminal conviction records which the PHA receives from a law enforcement agency to officers or employees of the PHA, or to authorized representatives of the PHA who have a job-related need to have access to the information [24 CFR 5.903(e)]. The PHA must establish and implement a system of records management that ensures that any criminal record received by the PHA from a law enforcement agency is maintained confidentially, not misused or improperly disseminated, and destroyed, once the purpose for which the record was requested has been accomplished, including expiration of the period for filing a challenge to the PHA action without institution of a challenge or final disposition of any such litigation [24 CFR 5.903(g)]. The PHA will retain a record of the screening, including the type of screening and the date performed.

The PHA must establish and implement a system of records management that ensures that any sex offender registration information received by the PHA from a State or local agency is maintained confidentially, not misused or improperly disseminated, and destroyed, once the purpose for which the record was requested has been accomplished, including expiration of the period for filing a challenge to the PHA action without institution of a challenge or final disposition of any such litigation. This requirement does not apply to information that is public information, or is obtained by a PHA other than under 24 CFR 5.905.

Medical/Disability Records

PHAs are not permitted to inquire about the nature or extent of a person's disability. The PHA may not inquire about a person's diagnosis or details of treatment for a disability or medical condition. If the PHA receives a verification document that provides such information, the PHA should not place this information in the tenant file. The PHA should destroy the document.

Documentation of Domestic Violence, Dating Violence, Sexual Assault, or Stalking

For requirements and PHA policies related to management of documentation obtained from victims of domestic violence, dating violence, sexual assault, or stalking, see section 17.10 Violence Against Women Reauthorization Act of 2005 and 2013 (VAWA): Notification, Documentation, and Confidentiality in this Chapter.

17.8 REPORTING AND RECORD KEEPING FOR CHILDREN WITH ENVIRONMENTAL INTERVENTION BLOOD LEVEL

17.8.1 Overview

The PHA has certain responsibilities relative to children with environmental intervention blood lead levels that are receiving HCV assistance. The notification, verification, and hazard reduction requirements are discussed in CHAPTER 8. This part deals with the reporting requirements, and data collection and record keeping responsibilities that the PHA is subject to.

17.8.2 Reporting Requirement

[24 CFR 35.1225(e)]

The PHA must report the name and address of a child identified as having an environmental intervention blood lead level to the public health department within 5 business days of being so notified by any other medical health care professional.

> PHA Policy
>
> The PHA will provide the public health department written notice of the name and address of any child identified as having an environmental intervention blood lead level.

17.8.3 Data Collection and Record Keeping

[24 CFR 35.1225(f)]

At least quarterly, the PHA must attempt to obtain from the public health department(s) with a similar area of jurisdiction, the names and/or addresses of children less than 6 years old with an identified environmental intervention blood lead level.

If the PHA obtains names and addresses of environmental intervention blood lead level children from the public health department(s), the PHA must match this information with the names and addresses of families receiving HCV assistance, unless the public health department performs such a procedure. If a match occurs, the PHA must carry out the notification, verification, and

hazard reduction requirements discussed in CHAPTER 8, and the reporting requirement discussed above.

At least quarterly, the PHA must also report an updated list of the addresses of units receiving assistance under the HCV program to the same public health department(s), unless the public health department(s) states that it does not wish to receive such a report.

PHA Policy

The public health department(s) has stated they do not wish to receive a report of an updated list of the addresses of units receiving assistance under the HCV program, on a quarterly basis. Therefore, the PHA is not providing such a report.

17.9 DETERMINATION OF INSUFFICIENT FUNDING

17.9.1 Overview

The HCV regulations allow PHAs to deny families permission to move and to terminate Housing Assistance Payments (HAP) contracts if funding under the consolidated ACC is insufficient to support continued assistance [24 CFR 982.314(e)(1) and 982.454]. Insufficient funding may also impact the PHA's ability to issue vouchers to families on the waiting list. This part discusses the methodology the PHA will use to determine whether or not the PHA has sufficient funding to issue vouchers, approve moves, and to continue subsidizing all families currently under a HAP contract.

17.9.2 Methodology

PHA Policy

The PHA will determine whether there is adequate funding to issue vouchers, approve moves to higher cost units and areas, and continue subsidizing all current participants by comparing the PHA's annual budget authority to the annual total HAP needs on a monthly basis.

The total HAP needs for the calendar year will be projected by establishing the actual HAP costs year to date. To that figure, the PHA will add anticipated HAP expenditures for the remainder of the calendar year. Projected HAP expenditures will be calculated by multiplying the projected number of units leased per remaining months by the most current month's average HAP. The projected number of units leased per month will take into account the average monthly turnover of participant families. If the total annual HAP needs equal or exceed the annual budget authority, or if the PHA cannot support the cost of the proposed subsidy commitment (voucher issuance or move) based on the funding analysis, the PHA will be considered to have insufficient funding.

17.10 VIOLENCE AGAINST WOMEN REAUTHORIZATION ACTS OF 2005 AND 2013 (VAWA): NOTIFICATION, DOCUMENTATION, AND CONFIDENTIALITY

17.10.1 Overview

The Violence against Women Act of 2005 (VAWA) provides special protections for victims of domestic violence, dating violence and stalking who are applying for or receiving assistance under the housing choice voucher (HCV) program. If your state or local laws provide greater protection for such victims, those laws take precedence over VAWA.

On March 7, 2013, the Violence Against Women Reauthorization Act of 2013 (VAWA 2013) was signed into law. VAWA 2013 implements several key changes related to housing protections for victims of domestic violence, dating violence, sexual assault or stalking. The VAWA 2013 changes are documented in the HUD Notice in the Federal Register (78 FR 47717 (Aug. 6, 2013)), and are reflected in this Plan.

VAWA 2013 makes the following HUD programs subject to the VAWA protections:

- HOME Investment Partnerships (HOME) program;
- Section 202 Supportive Housing for the Elderly;
- Section 236 Rental Program;
- Section 811 Supportive Housing for Persons with Disabilities;
- Section 221(d)(3) Below Market Interest Rate (BMIR) Program;
- Housing Opportunities for Persons With AIDS (HOPWA) Program;
- HUD'S McKinney-Vento homeless programs;
- Low-Income Housing Tax Credit properties (Department of Treasury); and
- USDA Rural Housing properties (Department of Agriculture)

In addition to definitions of key terms used in VAWA, this part contains general VAWA requirements and PHA policies in three areas: notification, documentation, and confidentiality. Specific VAWA requirements and PHA policies are located primarily in the following sections: 3.2.3 Family Break-Up and Remaining Family Members; 3.4.6 Prohibition Against Denial of Assistance to Victims of Domestic Violence, Dating Violence, Sexual Assault, and Stalking; 11.2.1 Allowable Moves; 11.2.2 Restrictions on Moves; 13.3.5 Terminating the Assistance of Domestic Violence, Dating Violence, Sexual Assault, or Stalking Victims and Perpetrators.

17.10.2 Definitions

[24 CFR 5.2003]

As used in VAWA:

<u>Bifurcate</u>

The term bifurcate means, with respect to a public housing or Section 8 lease, to divide a lease as a matter of law such that certain tenants can be evicted or removed while the remaining family members' lease and occupancy rights are allowed to remain intact.

Dating Violence

The term dating violence means violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim; and where the existence of such a relationship shall be determined based on a consideration of the following factors:

- The length of the relationship
- The type of relationship
- The frequency of interaction between the persons involved in the relationship

Domestic Violence

The term domestic violence includes felony or misdemeanor crimes of violence committed by a current or former spouse of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction.

Affiliated Individual

The term affiliated individual means, with respect to a person:

- A spouse, parent, brother, sister, or child of that individual, or an individual to whom that individual stands in the position or place of a parent; or
- Any individual, tenant, or lawful occupant living in the household of that person.

Sexual Assault

Sexual assault is defined as any nonconsensual sexual act proscribed by Federal, tribal, or State law, including when the victim lacks capacity to consent (42 U.S.C. 13925(a)).

Stalking

The term stalking means:

- To follow, pursue, or repeatedly commit acts with the intent to kill, injure, harass, or intimidate; or
- To place under surveillance with the intent to kill, injure, harass, or intimidate another person; and
- In the course of, or as a result of, such following, pursuit, surveillance, or repeatedly committed acts, to place a person in reasonable fear of the death of, or serious bodily injury

to, or to cause substantial emotional harm to (1) that person, (2) a member of the immediate family of that person, or (3) the spouse or intimate partner of that person.

17.10.3 Notification

[24 CFR 5.2005(a)]

Notification to Public

The PHA adopts the following policy to help ensure that all actual and potential beneficiaries of its HCV program are aware of their rights under VAWA.

PHA Policy

The PHA will post the following information regarding VAWA in its offices and on its Web site. It will also make the information readily available to anyone who requests it.

- A summary of the rights and protections provided by VAWA to housing choice voucher program applicants and participants who are or have been victims of domestic violence, dating violence, sexual assault, or stalking (see sample notices in Exhibit 17-4: Sample Notice to HCV Applicants and Tenants Regarding Violence Against Women Act (VAWA) and Exhibit 17-5: Sample Notice to HCV Owners and Managers Regarding the Violence Against Women Act (VAWA))

- The definitions of domestic violence, dating violence, sexual assault, and stalking provided in VAWA (included in Exhibit 17-4: Sample Notice to HCV Applicants and Tenants Regarding Violence Against Women Act (VAWA) and Exhibit 17-5: Sample Notice to HCV Owners and Managers Regarding the Violence Against Women Act (VAWA))

- An explanation of the documentation that the PHA may require from an individual who claims the protections provided by VAWA (included in Exhibit 17-4: Sample Notice to HCV Applicants and Tenants Regarding Violence Against Women Act (VAWA) and Exhibit 17-5: Sample Notice to HCV Owners and Managers Regarding the Violence Against Women Act (VAWA))

- A copy of form HUD-50066, Certification of Domestic Violence, Dating Violence, or Stalking

- A statement of the PHA's obligation to keep confidential any information that it receives from a victim unless (a) the PHA has the victim's written permission to release the information, (b) it needs to use the information in an eviction proceeding, or (c) it is compelled by law to release the information (included in Exhibit 17-4: Sample Notice to HCV Applicants and Tenants Regarding Violence Against Women Act (VAWA) and Exhibit 17-5: Sample Notice to HCV Owners and Managers Regarding the Violence Against Women Act (VAWA))

- The National Domestic Violence Hot Line: 1-800-799-SAFE (7233) or 1-800-787-3224 (TTY) (included in Exhibit 17-4: Sample Notice to HCV Applicants and Tenants Regarding Violence Against Women Act (VAWA) and Exhibit 17-5: Sample Notice to HCV Owners and Managers Regarding the Violence Against Women Act (VAWA))
- Contact information for local victim advocacy groups or service providers

Notification to Program Applicants and Participants
[24 CFR 5.2005(a)(1)]

PHAs are required to inform program participants of their rights under VAWA, including their right to confidentiality and the limits thereof. Since VAWA provides protections for applicants as well as participants, PHAs may elect to provide the same information to applicants.

PHA Policy

The PHA will provide all applicants with information about VAWA at the time they request an application for housing assistance. The PHA will also include information about VAWA in all notices of denial of assistance.

The PHA will provide all participants with information about VAWA at the time of admission and when VAWA statutes and/or regulations change. The PHA will also include information about VAWA in notices of termination of assistance.

The VAWA information provided to applicants and participants will consist of the notice in Exhibit 17-4: Sample Notice to HCV Applicants and Tenants Regarding Violence Against Women Act (VAWA) and a copy of form HUD-50066.

Notification to Owners and Managers
[24 CFR 5.2005(a)(2)]

VAWA requires PHAs to notify owners and managers of their rights and responsibilities under this law.

PHA Policy

The PHA will provide owners and managers with information about their rights and obligations under VAWA when they begin their participation in the HCV program.

The VAWA information provided to owners will consist of the notice in Exhibit 17-5: Sample Notice to HCV Owners and Managers Regarding the Violence Against Women Act (VAWA) and a copy of form HUD-50066.

The PHA may also utilize any or all of the following means to notify owners of their VAWA responsibilities:

- As appropriate in day to day interactions with owners and managers.
- Inserts in HAP payments, 1099s, owner workshops, classes, orientations, and/or newsletters.
- Signs in the PHA lobby and/or mass mailings which include model VAWA certification forms.

17.10.4 Victim Documentation

[24 CFR 5.2007]

A PHA presented with a claim for initial or continued assistance based on status as a victim of domestic violence, dating violence, sexual assault, stalking, or criminal activity related to any of these forms of abuse may—but is not required to—request that the individual making the claim document the abuse. Any request for documentation must be in writing, and the individual must be allowed at least 14 business days after receipt of the request to submit the documentation. The PHA may extend this time period at its discretion. [24 CFR 5.2007(a)]

The individual may satisfy the PHA's request by providing any one of the following three forms of documentation [24 CFR 5.2007(b)]:

(1) A completed and signed HUD-approved certification form (HUD-50066, Certification of Domestic Violence, Dating Violence, or Stalking), which must include the name of the perpetrator;

(2) A federal, state, tribal, territorial, or local police report or court record; or

(3) Documentation signed by a person who has assisted the victim in addressing domestic violence, dating violence, sexual assault, or stalking, or the effects of such abuse. This person may be an employee, agent, or volunteer of a victim service provider; an attorney; a medical professional; an administrative agency; or a mental health professional. The person signing the documentation must attest under penalty of perjury to the person's belief that the incidents in question are bona fide incidents of abuse. The victim must also sign the documentation.

The PHA may not require third-party documentation (forms 2 and 3) in addition to certification (form 1), except as specified below under "Conflicting Documentation," nor may it require certification in addition to third-party documentation [VAWA final rule].

PHA Policy

An applicant or participant claiming protection under VAWA must provide documentation (1) demonstrating the connection between the abuse and the unfavorable history and (2) naming the perpetrator of the abuse.

Any request for documentation of domestic violence, dating violence, sexual assault, or stalking will describe the forms of acceptable documentation, will provide explicit instructions on where and to whom the documentation must be submitted, and will state the consequences for failure to submit the documentation or request an extension in writing by the deadline.

The PHA may, in its discretion, extend the deadline for 10 business days. Any extension granted by the PHA will be in writing.

Conflicting Documentation
[24 CFR 5.2007(e)]

In cases where the PHA receives conflicting certification documents from two or more members of a household, each claiming to be a victim and naming one or more of the other petitioning household members as the perpetrator, the PHA may determine which is the true victim by requiring each to provide acceptable third-party documentation, as described above (forms 2 and 3). The PHA must honor any court orders issued to protect the victim or to address the distribution of property.

> PHA Policy
>
> If presented with conflicting certification documents (two or more forms HUD-50066) from members of the same household, the PHA will attempt to determine which is the true victim by requiring each of them to provide third-party documentation in accordance with 24 CFR 5.2007(b)(2) or (3) and by following any HUD guidance on how such determinations should be made.

Discretion to Require No Formal Documentation
[24 CFR 5.2007(d)]

The PHA has the discretion to provide benefits to an individual based solely on the individual's statement or other corroborating evidence—i.e., without requiring formal documentation of abuse in accordance with 24 CFR 5.2007(b).

> PHA Policy
>
> The PHA reserves the right to waive the documentation requirement if it determines that a statement or other corroborating evidence from the individual will suffice. If the PHA accepts an individual's statement or other corroborating evidence of domestic violence, dating violence, sexual assault, or stalking, the PHA will document acceptance of the statement or evidence in the individual's file.

Failure to Provide Documentation
[24 CFR 5.2007(c)]

In order to deny relief for protection under VAWA, a PHA must provide the individual requesting relief with a written request for documentation of abuse. If the individual fails to provide the documentation within 14 business days from the date of receipt, or such longer time as the PHA may allow, the PHA may deny relief for protection under VAWA.

17.10.5 Confidentiality
[24 CFR 5.2007(b)(4)]

All information provided to the PHA regarding domestic violence, dating violence, sexual assault, or stalking, including the fact that an individual is a victim of such violence or stalking, must be retained in confidence. This means that the PHA (1) may not enter the information into any shared database, (2) may not allow employees or others to access the information unless

they are explicitly authorized to do so and have a need to know the information for purposes of their work, and (3) may not provide the information to any other entity or individual, except to the extent that the disclosure is (a) requested or consented to by the individual in writing, (b) required for use in an eviction proceeding, or (c) otherwise required by applicable law.

PHA Policy

If disclosure is required for use in an eviction proceeding or is otherwise required by applicable law, the PHA will inform the victim before disclosure occurs so that safety risks can be identified and addressed. See 13.3.5 Terminating the Assistance of Domestic Violence, Dating Violence, Sexual Assault, or Stalking Victims and Perpetrators in CHAPTER 13 for additional information on VAWA limitations.

CHAPTER 18 : PROJECT-BASED VOUCHER (PBV) ASSISTANCE

18.1 GENERAL

On October 13, 2005, HUD published the final rule for the Project-based voucher program. This rule can be found at 24 CFR Part 983.

All regulations governing the tenant-based Housing Choice Voucher Program (HCVP) program, found at 24 CFR 982, are applicable to the PBV program, with the exception of those sections listed at Parts 983.2(b) and (c) and described in Exhibit 18-1: 24 CFR 982 Regulations That DO NOT Apply to PBV.

The PBV has two components:

New Construction/Rehabilitation, referred to as "Development" PBV (for units that will be newly constructed or rehabilitated) and "Existing" PBV (for occupied or ready to be occupied units)

This administrative plan establishes DHCD's PBV policies and procedures for each area of program operation required by 24 CFR Part 983. It also includes discussion about many other important areas of PBV program administration that will assist our regional agency administrators (RAA) undertake careful and accurate administration of this valuable Section 8 program component. This plan has been designed to closely mirror the structure of 24 CFR Part 983. Key DHCD PBV policy considerations, as they may be amended from time to time, are also included in DHCD's Annual PHA Plan.

N.B. This plan does not apply to the former project-based certificate (PBC) program. Units under the PBC program are subject to the provisions of 24 CFR Part 983 codified as of May 1, 2001, with the exception of the term of renewal, discussed in the October 13, 2005 final rule at 983.10. This section limits extension of PBC HAP contracts to an aggregate term of 15 years.

<u>PHA Discretion to Operate a PBV Program and Maximum Amount of PBV Assistance</u>
[24 CFR 983.5(c) and 983.6 (a)]

DHCD began exercising its discretionary authority to operate a project-based component in 1991 and will continue to exercise this option under the October 13, 2005 final rule. The option to set-aside up to 20% of HCVP budget authority (983.6(a)) will continue to permit DHCD to develop and maintain long-term safe, decent and affordable housing that is accessible to its Section 8 applicants and program participants. DHCD has not set a specific goal for the amount of its budget authority that it will dedicate to its PBV program; however, in any given calendar year, DHCD reserves the right to utilize up to 20% of its budget authority for its PBV program.

18.2 SELECTION OF PBV OWNER PROPOSALS

18.2.1 Two Approved Methods for Proposal Selection
[24 CFR 983.51(b)(1) and (2)]

The final rule establishes two methods that a PHA can use to select owner proposals. These methods are found at 983.51(b)(1) and (2).

- 983.51(b)(1) permits the PHA to publicly issue a competitive request for PBV proposals.

- 983.51(b)(2) permits the PHA to select proposals that have successfully competed for housing assistance under a federal, state, or local government housing assistance, community development, or supportive services program, provided the proposal has been selected in accordance with such program's competitive selection requirements within three years of the PBV proposal selection date, and the earlier competitive selection proposal did not involve any consideration that the project would receive PBV assistance.

DHCD will use both methods of PBV proposal selection.

18.2.2 Public Notice of DHCD Request for PBV Proposals
[24 CFR 983.51(c)]

Public notice is required for PBV proposals that will be selected under 983.51(b)(1).

Just like HUD, DHCD utilizes its web page at www.mass.gov/dhcd/ to make public all major announcements and all key documents for its entire complement of housing and community development programs and activities. Key areas of public notification for which DHCD utilizes its web page include, but are not limited to: Notifications of Funding Availability (NOFA) and Requests for Proposals (RFP); all major policy documents such as the Consolidated Plan, the Qualified Allocation Plan and the Section 8 Annual and Five-year PHA Plan, regulations, guidelines and dates for public hearings.

DHCD will announce all PBV NOFAs and any subsequent modifications to these PBV NOFAs on its website.

Public Announcement of "Existing" PBV NOFAs

"Fixed date-due" NOFAs will be announced at least four weeks in advance of the prescribed due date. NOFAs for "rolling" applications will be announced at least three weeks in advance of the initial application acceptance date. Any modification(s) to an "existing" PBV NOFA will be announced on the website and will indicate an effective date of the modification(s) including, in the case of "rolling" applications, the date at which DHCD will no longer accept additional applications.

DHCD reserves the right to implement more than one "existing" PBV initiative at a time. In this instance, the specific NOFA requirements of each initiative will be publicly announced as described above.

Public Announcement of "Development" PBV NOFAs

DHCD's Division of Housing Development (DHD) administers the Commonwealth's Low Income Housing Tax Credit (LIHTC) program, the HOME program, and several other federal and state funded development programs. Twice a year DHD solicits proposals and awards funds for these development programs based on publicly announced competitive selection criteria established for each of them. These solicitations are referred to as DHCD's bi-annual One Stop Affordable Housing Funding rounds. (For a complete discussion of each development program administered by DHCD's DHD, including program descriptions, the selection criteria and selection team composition see Exhibit 18-2: Selection Criteria for DHCD Development Programs.) DHCD also partners with MassHousing, the state's affordable housing bank, to administer on DHCD's behalf, the Commonwealth's Affordable Housing Trust Fund (AHTF).

DHCD currently operates two "development" PBV initiatives:

- An initiative linked to DHCD's bi-annual One Stop Affordable Housing Funding round; and
- An initiative linked to DHCD/MassHousing's Affordable Housing Trust Fund (AHTF).

DHCD reserves the right to implement additional "development" initiatives.

Public Announcement Of Bi-Annual One Stop NOFAs

Bi-annual One Stop NOFAs will be announced on DHCD's website at www.mass.gov/dhcd/.

The Division of Housing Development (DHD) has established an "e-Source Center" a web-based list-serve that automatically sends notices of new funding initiatives, documents relating to all their various development programs, announcements of public hearings and other important notices to any agency or person who signs up for this list-serve. The e-source center is widely subscribed to by the development community in Massachusetts and accessible to anyone to receive e-source center notices on the Housing Development website. The "e-Source Center" is located on DHCD's website at www.mass.gov/dhcd/.

Public Announcement of AHTF and Any Future Development Initiative

AHTF announcements and any future development initiatives will be announced on DHCD's website on DHCD's website at www.mass.gov/dhcd/.

Selection of publicly solicited PBV proposals (983.51(b)(1))

"Existing" PBV Proposals

Each NOFA, its respective proposal application and review criteria will be posted on DHCD's website. DHCD will screen all "existing" PBV proposals and make all proposal selections. It will consult with the applicable RAA prior to making a final commitment of PBV funds for each project. For "rolling" NOFAs, DHCD will announce on its website the date it will stop accepting these PBV proposals. They proposals will be reviewed on a rolling basis as they are received unless otherwise stated in the NOFA's proposal selection requirements.

Awards will be contingent upon: 1) the availability of voucher and budget authority at the time the project is projected to be ready for occupancy; and, 2) the proposal's consistency with the published review criteria.

"Development" PBV Proposals Linked To One Stop Affordable Housing Funding Rounds

Each respective NOFA for these programs will indicate if DHCD "development" PBVs will be made available to any applicant that requests PBVs and successfully competes for the development funds. The NOFA will indicate the maximum number of PBVs that could be made available for successful One Stop applicants and will emphasize that the proposal must be otherwise compliant with all PBV requirements.

"Development" PBV Proposals Linked To MassHousing Affordable Housing Trust Fund

MassHousing, which has been designated by DHCD to administer the AHTF program on its behalf, will award AHTF funds to those projects that have requested PBVs, using the publicly announced selection criteria previously approved by DHCD and HUD. The AHTF NOFA indicates that the proposal must be otherwise compliant with all PBV requirements. These funds are awarded on a rolling basis.

"Development" PBV Proposals For Any Future Initiative

Awards of PBV assistance for any future development initiative that DHCD may elect to implement will be made by DHCD and/or a publicly announced partner agency designated by DHCD for this purpose.

Written Notification of PBV Selection to Owner

Once an application has been screened and selected for PBV assistance on either the "existing" or "development" component, the BFRA will issue a notice of "conditional reservation" of PBV assistance to the owner/project sponsor. This letter will advise the owner/project sponsor of all further requirements that must be satisfied prior to executing the Agreement to Enter Into a Housing Assistance Payments (AHAP) contract (in the case of "development" projects), or the Housing Assistance Payments Program (HAP) contract (in the case of "existing" projects.) Examples of these requirements could include, but are not limited to, satisfactory completion of the subsidy layering review (SLR), the environmental review (ER), approval of the owner's tenant selection plan, and final inspection of the units for HQS compliance. The letter will advise the owner/project sponsor that failure to complete all requirements for approval by HUD (where required) and DHCD will mean that DHCD will not be able to provide PBV assistance to the project. (See further discussion in section 18.4.1 Requirements that Must be Satisfied Prior to AHAP Execution in this Chapter).

18.2.3 Selection of PBV Proposals Previously Selected Through a Non-PBV Competition

[24 CFR 983.51(b)(2)]

At its option and on a case-by-case basis, DHCD may entertain requests to attach PBV assistance to units previously selected by a non-PBV competition, in accordance with the requirement of 983.51(b)(2)), under the following circumstances:

- Adequate PBV voucher and budget authority is projected to be available when the units are ready for occupancy;
- The request meets a compelling need and is otherwise consistent with DHCD's long-term affordable housing goals;
- The project is otherwise in compliance with all HUD and DHCD PBV requirements.
- Number of units requested and target population is consistent with current DHCD PBV NOFA requirements

The owner/project sponsor must initiate a written request for PBV assistance to DHCD accompanied by a letter from the "selection agency" that competitively selected the project for housing assistance under a federal, state or local government program. This letter, submitted on the "selection agency's" letterhead and signed by an authorized official, must include the following information:

- Date of the proposal selection;
- A certification that the proposal was competitively selected by the agency in full compliance with all publicly advertised selection requirements;
- A statement that proposal selection did not involve any consideration that the project would receive PBV assistance.
- A copy of the NOFA or other similar solicitation for affordable housing assistance that the owner/project sponsor responded to; and,
- A description of the housing program for which the applicant successfully completed, noting any special deed restrictions and/or special considerations such as tenant selection preferences.

When DHCD receives the "selection agency" letter, it will request that the owner/project sponsor fill out a DHCD PBV application, and subsequently determine if a reservation of PBV can and will be made.

18.2.4 Public Notice of DHCD PBV Owner/Project Sponsor Selection
[24 CFR 983.51(d)]

Once DHCD has received all required HUD approvals to proceed to AHAP or HAP and all other program requirements have been met, DHCD will publicly announce the selection of owner proposals on its website at: www.mass.gov/dhcd/;

18.2.5 PHA-Owned Units
[24 CFR 983.51(e)]

The final rule permits PBV assistance to be attached to PHA-owned units. It expands the definition of PHA-owned housing to include "agents" of the PHA who hold a direct or indirect interest in the building in which the PBVs will be located. Therefore, any proposal for PBV housing in which a DHCD Section 8 RAA has a direct or indirect interest must be considered PHA-owned housing.

All PHA-owned proposals must be approved by HUD, or an independent entity selected by HUD, after DHCD has granted its preliminary approval.

DHCD will employ the following selection process for any PHA-owned housing:

"Existing" PBV PHA-Owned Unit Proposals:

- "Rolling" NOFAs

Where DHCD's "existing" NOFA provides for proposals to be submitted on a rolling basis, DHCD will review the proposal(s) as they are received and make awards based upon its published criteria. Any rolling "existing" PHA-owned proposal selected by DHCD will be forwarded to HUD for its review and approval. When making the approval request, DHCD will forward to HUD: 1) the owner/project sponsor application and all attachments; 2) the NOFA under which the proposal was submitted; and 3) the selection criteria used by DHCD to makes its determination.

- "Fixed Due-Date" NOFAs

- Where DHCD's "existing" NOFA provides for a "fixed due-date", DHCD will forward to HUD a list of all applications received and a list of all applications selected in addition to items 1-3 above.

Where DHCD's publicly announced "existing" PBV initiative gives preference consideration to proposals that make vacant units available, DHCD will request that HUD make its review determination as soon as possible. DHCD will provide HUD with any additional information it requests to expeditiously process these approval requests expeditiously.

"Development" PBV PHA-Owned Unit Proposals

These proposals will have been selected according to the published criteria announced by DHCD's Division of Housing Development or MassHousing (or a future partner agency for a new "development" PBV initiative). A program description, a funding competition description for

each program, the proposal evaluation and selection criteria for each program, and the team performing the screening and selection for each development program is provided in Exhibit 18-2: Selection Criteria for DHCD Development Programs. If HUD requires additional information to demonstrate that these projects have been selected in accordance with the respective development program's competitive selection criteria, DHCD will request that its Division of Housing Development and/or MassHousing (or any future partner agency) provide the additional information requested. Once HUD approval to proceed has been received, DHCD will issue the owner a written notification of PBV selection contingent upon the project meeting all PBV requirements.

Rents and Inspections in PHA-Owned PBV Units
[24 CFR 983.59(b)(1) and (2) and 983.103(f)]

For both "existing" and "development" PHA-owned PBV units all inspections and determinations of reasonable rent must be completed by an independent entity approved by HUD. Further, the initial contract rent must be based upon an appraisal performed by a licensed, state-certified appraiser.

18.2.6 Housing type - High Rise Elevator Project for Families with Children
[24 CFR 983.53(b)]

A high-rise elevated building is defined by HUD as any building with 5 or more stories with an elevator. The final rule prohibits attaching PBV assistance to a high-rise elevator project that may be occupied by families with children unless the PHA initially determines there is no practical alternative (e.g., as a reasonable accommodation for a household member who is mobility impaired), and HUD approves such a finding. The PHA may make this determination on a project-by-project basis. Prior to approving any such proposals, DHCD will consult with the Boston HUD office to ascertain what type of documentation would be required to potentially support such PBV projects based upon each project's particular demographics.

18.2.7 Subsidy layering review (SLR) - Prohibition of Excess Public Assistance
[24 CFR 983.55]

SLRs must be completed and approved by HUD for all "existing" and "development" PBV projects that utilize other publicly supported housing funds.

The SLR is "intended to prevent excessive public assistance for the housing by combining (layering) housing assistance subsidy under the PBV program with other governmental housing assistance from federal, state, or local agencies, including assistance such as tax concessions or tax credits." HUD indicates in the preamble to the final rule that it will issue additional guidance on the requirements for processing SLR requests. If necessary, this section of the PBV administrative plan will be amended to conform to any new HUD SLR requirements.

SLR Submission Process

- The applicant must submit to DHCD all the information required by the HUD mandated SLR checklist found in Exhibit 18-3: Subsidy Layering Review Checklist for Projects Using Section 8 PBV.

- DHCD must review the SLR package prepared by the applicant for completeness and consistency with program requirements.

- If it appears complete and acceptable, DHCD must forward the SLR package to HUD's Boston office. This office will also review the material, and, if found acceptable, submit it to HUD Headquarters for final review and approval.

Because of the multiple reviews involved in completing a SLR review (DHCD, HUD Boston and HUD Headquarters), DHCD will immediately advise applicants that a final award of PBVs cannot be made until this review is completed and approved by HUD.

18.2.8 Exceeding the 25% cap on number of PBV units in a building

[24 CFR 983.56]

In general, no more than 25% of the units in a building may receive PBV assistance. Two categories of housing are automatically exempt from this requirement:

- Units in a single-family building, defined as any building with 1-4 units;

- Units that will house elderly and/or disabled households for the term of the HAP contract.

An additional category of units referred to as "excepted" units are also exempt from the 25% cap. They are defined as follows:

- Units that will house a qualifying family, defined by HUD as a household where at least one member will receive at least one supportive service for the term of the HAP contract.

<u>Elderly and Disabled Households</u>

DHCD may support PBV units targeted to elderly and/or disabled households. At DHCD's discretion, it may require that services targeted to the needs of the elderly and/or disabled are provided on a regular basis by qualified providers, and/or that the elderly units be part of an assisted living project, as defined by Section 983.3(b) of the final rule.

<u>Families Receiving Supportive Services</u>
[24 CFR 983.56]

DHCD may support PBV units targeted to families receiving supportive services, including those projects where the number of PBV units requested will exceed the 25% building cap. The types of services that DHCD will deem eligible to qualify a project to meet HUD's definition of "excepted" units include, but are not limited to:

- Household Training (e.g.: homemaking, parenting skills, money management);

- Job Training (preparation and counseling, job development and placement, follow-up assistance after job placement);

- Services and Resources (appropriate to assist families to achieve economic independence and self-sufficiency);

- Counseling for parents and other kinship relations caring for children with needs (programs for families adopting children from MA Department of Social Services (DSS), foster care programs, Grandfamily programs);

- Remedial Education (education for the completion of secondary or post-secondary education);

- Substance Abuse Treatment (counseling and treatment for substance abuse).

It is not necessary that the services be provided on site or by the project sponsor if the RAA has approved the services.

Extent to which services must be provided

A family must have at least one member receiving at least one "qualifying" supportive service. Every participating family occupying an "excepted" unit in a PBV supportive services project must sign a DHCD-developed "PBV Contract of Family Participation." This contract will establish a minimum period of time of no less than one year in which the family is expected to participate in one or more services and achieve certain goals during the term of the contract.

A household occupying an "excepted" unit cannot be required to participate in medical or disability-related services other than drug and alcohol treatment in the case of abusers as a condition of occupancy, although such services may be offered. (983.56(b)(2)(B))

The family may continue in occupancy in the "excepted" unit after they have successfully completed their supportive services contractual obligations. In this instance, the units will continue to count as "excepted" units for as long as the family eligibly resides in the unit.

DHCD monitoring family receipt of services
[24 CRF 983.56.(b)(2)(ii)(C)]

As required by the final rule, DHCD will monitor the tenants' continued receipt of supportive services on an annual basis.

As part of the PBV application process, each owner/project sponsor must articulate key program goals and core performance indicators in their PBV application. The owner/project sponsor will be required to describe how participant households will be monitored for compliance with their PBV Contract of Family Participation. During each 12-month cycle of the family's contract, the owner/project sponsor will be expected to maintain on-going evidence of the family's participation in their service program and maintain agreed upon data for inclusion in an annual performance report (PBV-APR) to be submitted to DHCD.

Termination of family for failure to fulfill service obligation

Failure by the family residing in an "excepted" unit to fulfill its service obligation, without good cause, will result in termination of the tenant from the PBV program and termination of the unit from the PBV program unless it is re-occupied by another "qualifying family."

At the RAA's request, the owner/project sponsor will be required to attend any tenant termination hearing and provide documentation supporting the owner's determination that the tenant failed to comply with their PBV Contract of Family Participation.

18.2.9 Site Selection Standards

[24 CFR 983.57]

Every PBV owner applicant must demonstrate that their project is consistent with HUD's statutory goal of "deconcentrating poverty and expanding housing and economic opportunities." DHCD will assess each application in this regard based on the following HUD-mandated criteria:

- HUD Designated Zone Whether the census tract in which the proposal will be located is in a HUD-designated Enterprise Zone, Economic Community, or Renewal Community.

- Public Housing Demolition Whether a PBV development will be located in a census tract where the concentration of assisted units will be or has decreased as a result of public housing demolition.

- Significant Revitalization Whether the census tract in which the proposed PBV development will be located is undergoing significant revitalization.

- Public Investment Whether state, local, or federal dollars have been invested in the area that has assisted in the achievement of the statutory requirement.

- New Market Rate Units Whether new market-rate units are being developed in the same census tract where the proposed PBV development will be located and the likelihood that such market-rate units will positively impact the poverty rate in the area.

- Decline in Poverty Rate If the poverty rate in the area where the proposed PBV development will be located is greater than 20 percent, the PHA should consider whether in the past five years there has been an overall decline in the poverty rate.

- Education and Economic Opportunities Whether there are meaningful opportunities for educational and economic advancements in the census tract where the proposed PBV development will be located.

Every DHCD PBV applicant must demonstrate to DHCD that their project satisfies the twin goals of deconcentrating poverty and expanding housing and economic opportunity regardless of the project's poverty rate as defined by the most recent census data. DHCD will make its assessment of an applicant's project's compliance with achieving these goals based on the totality of the applicant's response, taking into consideration the target population to be served (i.e. family, elderly, disabled, populations needing supportive services).

HUD's aforementioned criteria require the applicant to discuss each factor as it relates to the project's actual census tract. DHCD will only consider information about activity in neighboring census tracts if the information about the actual census tract demonstrates that HUD's goals of deconcentrating poverty and expanding housing and economic activity are being achieved in the actual tract.

DHCD will also further assess each proposal to determine if it achieves the following DHCD Consolidated Plan and Section 8 PHA Plan objectives:

- Development and maintenance of an adequate supply of safe, decent housing that is affordable and accessible to residents with a range of income levels and household needs;
- Assurance that MA residents with long-term support needs have access to appropriate services and accessible community housing options;
- Assurance of full and fair access to housing for all residents.

18.2.10 Environmental Review (ER)
[24 CFR 983.58]

Every PBV project is subject to HUD environmental review requirements. Prior to execution of an AHAP (for "development" PBV projects) and a HAP (for "existing" PBV projects), the owner must present evidence that the environmental review has been performed by a HUD-designated "responsible entity" and approved by HUD, or, where applicable, categorically excluded from review under the National Environmental Policy Act (NEPA).

When an owner cannot identify a "responsible entity" to perform the environmental review requirements, DHCD, in its capacity as a state housing and community development agency, and a HUD-authorized "responsible entity", will take the steps necessary to complete the ER. DHCD will publish the results of the review for public comment and at the appropriate time will send to HUD the Request for Release of Funds.

18.3 DWELLING UNITS

18.3.1 Additional DHCD Quality and Design Requirements
[24 CFR 983.101.(e)]

All DHCD PBV units must meet an inspection grade of B+ or higher in order to be eligible for initial PBV assistance. DHCD grading standards can be found in Exhibit 9-1: Grading System for Determining Unit Quality. These standards are also reproduced as part of DHCD's "existing" PBV application, which can be found on DHCD's website at www.mass.gov/dhcd/.

All PBV units must maintain a B grade or higher status throughout the term of the HAP contract.

18.3.2 Biennial HQS Inspections - PB

PHA Policy – MTW

All PB sites will be placed on a biennial inspection frequency. Based upon its inspection staff availability and the site management's capacity, the RAA reserves the right to schedule inspections for all units at a site on the same year or to schedule a portion of the units in one year and the remaining units in the next year.

If more than 50% of the units at one site fail the HQS recertification inspection on the first inspection attempt, all of the units at the site will be placed on an annual inspection frequency. The site will remain on annual inspection frequency until 75% or more of the units pass HQS on the first inspection attempt. The RAA may require the owner to participate in training on preparation and maintenance of a site for HQS inspection.

If the units at a site are on a split HQS recertification inspection schedule (a portion of the units are inspected in one year and the remaining units in the next year) and more than 50% of the inspected units, in any given year, fail the HQS inspection on the first inspection attempt, substandard site management is recognized and **all** remaining units at that site will be scheduled for inspection. Additionally, all of the units at the site will be placed on an annual inspection frequency and the site may no longer be split for scheduled HQS inspections. For example, a site has 93 units. 47 units are inspected in 2013 and the other 46 units are scheduled for inspection in 2014. In June 2013, more than half of the units inspected fail the HQS recertification inspection on the first attempt. The PHA will immediately schedule the remaining 46 units for HQS inspection and will convert the site to an annual inspection frequency. Thereafter, all 93 units will remain on an annual inspection frequency until 75% of all of the units pass inspection on the first inspection attempt.

The PHA reserves the right to change the inspection frequency of any project based site at the discretion of agency management. The severity of the repair may be taken into account when revising a site's inspection frequency.

Owners/agents and tenants **cannot** opt for their unit/site to remain on an annual inspection schedule; however, either the tenant or the landlord may request a complaint inspection at any time. Complaint inspections should not be requested until the owner/tenant has been contacted and given the opportunity to respond to the HQS issue.

When a PB unit turns over, the PHA will conduct an initial inspection regardless of the scheduled date of the next regular HQS inspection. The next regular HQS inspection for that unit will be consistent with the next regular HQS inspection for the other units at the site. For example, the units at a site have a scheduled regular HQS inspection date of March 2012 and the site is on a biennial inspection frequency. One of the units turns over in July 2012. The PHA conducts a turnover inspection on the unit in July 2012, prior to the new tenant moving in. The next scheduled regular HQS inspection for that unit will be March 2014 which is consistent with the regular HQS inspection date for the units at the site.

PHA Policy – MTW (cont'd)

If a unit has a routine failed HQS inspection as a result of a new HQS inspection requirement and corrects the deficiency within the required time period, the PHA reserves the right not to count this failure in the percentage of failed units at the site. For example, a unit fails the HQS inspection and the only failed item is the lack of an anti-tip device on the stove. Within 30 days the anti-tip device is installed and the unit passes at reinspection. If there are ten units at the site and five units fail for other violations plus the unit for the anti-tip device, the PHA may place the site on an annual inspection frequency or retain the site on a biennial inspection frequency as applicable. The failed inspection due to the anti-tip device would not count toward the 50% threshold for determining inspection frequency.

If a unit at the site is suppressed/abated and then later the unit is defaulted due to inspection violations, all units at the site may be placed on an annual inspection frequency; however, an exception may be made for tenant caused HQS violations. A unit can receive a failed inspection rating as a result of either owner or tenant caused HQS violations.

18.3.3 Biennial Audit Inspections - PB

PHA Policy – MTW

The RAA will conduct audit inspections on a twenty (20%) sample of the units at each site on a biennial inspection schedule. The audit inspections will be conducted approximately twelve (12) months from the regular biennial HQS inspection on the off year to confirm that units on the biennial inspection frequency continue to remain in compliance with HQS during the period between biennial inspections. The audit inspection will be completed using the same inspection process as the regular HQS inspection.

To select units for the audit inspection each RAA must select the applicable number of units at the site that were inspected 12 months prior to month being audited. For example, the RAA wishes to audit a site with 10 units that was inspected in April 2012 and was scheduled for the next regular inspection in April 2014. The RAA would randomly select 20% of the units to be inspected for an audit inspection in April 2013.

If more than 50% of units at a site do not pass the audit inspection, in an effort to maintain or restore biennial inspection efficiency, the RAA will require the owner to participate in training on preparation and maintenance of a site for HQS inspection.

Additionally, if more than 50% of units at a site do not pass the audit inspection, the RAA may use discretion in determining the appropriate follow-up action. Follow-up actions may include, but are not limited to:

- Changing the inspection frequency of the site at the time of the next regular HQS inspections;
- Requiring a management action plan to address the HQS issues;
- Increasing the audit sample; and/or,

PHA Policy – MTW (cont'd)

Regardless of the outcome of the biennial audit inspections, the next scheduled inspection date would remain unchanged. Inspection frequency will not change at the time of biennial audit inspection. Inspection frequency will be reviewed and modified as needed at the time of regular HQS inspection.

DHCD/RAA reserve the right to hold inspectors accountable for HQS violations identified during HQS audit inspections if the violations were obviously in place during the regular HQS inspection. DHCD reserves the right to make final determinations on inspector accountability for violations cited during HQS biennial audit inspections.

HQS enforcement policies apply to HQS findings identified during audit inspections. All other audit inspection and audit inspection reporting requirements apply to the biennial HQS audit inspections.

18.3.4 Remedies for HQS Violations

(983.207(b)(2))

If PBV units are not maintained in accordance with DHCD PBV HQS standards (or other HAP requirements), the RAA may exercise any of its remedies under the HAP contract, including termination of assistance, abatement or reduction of HAP payment, reduction of contract units and/or termination of the HAP contract.

18.4 REQUIREMENTS FOR REHABILITATED AND NEWLY CONSTRUCTED UNITS

Prior to ANY demolition and/or construction, all "development" PBV units require the owner/project sponsor to enter into an Agreement to Enter Into a Housing Assistance Payment (AHAP) contract with the appropriate DHCD RAA.

18.4.1 Requirements that Must be Satisfied Prior to AHAP Execution

It is imperative that each PBV developer understands that an AHAP cannot be executed, and NO construction, demolition or work on the land can begin until the following actions are completed and approved by HUD (where applicable) and DHCD:

1. A subsidy layering review (SLR) for any project that has any other housing assistance from federal, state or local agencies, including tax concessions and tax credits. HUD, or an agency designated by HUD, must perform and approve the SLR. NB: Any developer worried about the potential conflict between the sometimes lengthy the SLR approval process and DHCD's tax credit requirement for expending a percentage of tax credit funds by a certain date should contact DHCD's tax credit staff immediately.

2. An environmental review (ER) performed by the "responsible entity" (RE) designated by the city/town or state, or a certification by the RE that a review is not required.

3. If a PHA-owned property, HUD must approve the selection of the proposal and designate another agency to perform inspections and determine rent reasonableness.

4. If a high-rise elevated building that will house families with children, HUD must approve the site based on criteria that indicate "there is no practical alternative" for family housing in the community.

5. In-place tenants must be determined Section 8 eligible and appropriately housed in accordance with DHCD's subsidy standards for the HCVP. The unit cannot be assisted with PBV assistance if the tenant is not eligible and would have to be displaced, unless the tenant agrees to move and the owner is prepared to relocate the tenant household at the owner's expense, in a comparable unit located in the same or nearby building.

6. The owner must provide various certifications and provide the required attachments prior to AHAP execution.

7. If the unit is located in a high poverty census tract (20% or greater), DHCD requires that the applicant demonstrate before the AHAP can be signed that their project is consistent with HUD's statutory goal of "deconcentrating poverty and expanding housing and economic opportunities." The seven required HUD criteria that must be addressed can be found in Section 18.2.9 Site Selection Standards of this Chapter. DHCD will make its assessment of the project's compliance with these criteria based on the totality of the applicant's response. A project that cannot demonstrate compliance with these criteria will not be permitted to enter into AHAP.

Several of these requirements may conflict with other publicly funded housing programs. However, HUD has made clear that PBV requirements supersede other program requirements, even if these other programs are HUD-funded.

Failure to complete these steps in accordance with HUD's criteria and timeline and to obtain the required approvals means that the proposal cannot receive PBV assistance.

18.4.2 Required Mandatory Meeting with Owner/Project Sponsor for "Development" PBV Projects

In the written notification of "conditional reservation" of PBV assistance to applicants for "development" PBV (see Section "Written Notification of PBV Selection to Owner" in this Chapter), DHCD informs the owner/project sponsor that they must attend a mandatory meeting with DHCD BFRA staff to discuss all key AHAP and HAP requirements. It is the owner/sponsor's responsibility to contact the BFRA upon receipt of this letter to set a date and time for it. Each project has its own set of particular issues to be understood and worked out in advance of AHAP and HAP. These mandatory meetings are essential to assuring that the development process runs as smoothly as possible and that all stakeholders understand these key requirements from the day of notification of PBV selection.

The owner/sponsor is encouraged to bring the management agent for the property to this meeting. The BFRA invites DHD staff and the appropriate RAA staff. Owner/sponsors who have previously developed DHCD PBV units are still required to attend this meeting for all new projects. Because there are almost always different stakeholders involved in each respective

development project, this meeting allows key staff from each agency to meet one another before any work commences and to focus on issues specific to the project.

18.4.3 Prompt Execution of AHAP

[24 CFR 983.153(c)]

The final rule states that the AHAP must be executed promptly after PHA notice of proposal selection to the selected owner. DHCD will comply with this requirement immediately upon receipt of HUD's ER clearance letter and HUD approval of the SLR and any other criteria that require HUD approval.

18.4.4 Additional AHAP Requirements for RAA and Owners

HUD AHAP Boilerplate

Until HUD updates the AHAP, Part 1, Form HUD 52531-A, dated 4/90 and Part 11, Form HUD-52531-B, dated 12/88 remain in effect as of the effective date of this Plan.

RAA AHAP Contract Number

The RAA is required to assign a contract number to the AHAP which will be the same number used for the HAP contract.

AHAP Effective Date

The effective date of the AHAP may either be the date of execution or a subsequent date. Under no circumstances may the effective date precede the AHAP execution date.

Other significant dates:

- Date for commencement of work must be on or after the AHAP effective date and be a realistic date based on likely possible delays.

- Time for completion of work should be based on estimated completion date, with some cushion provided for unforeseeable delays. The RAA, with DHCD approval, may extend the completion date if all work is not completed by the date indicated for reasonable cause acceptable to the RAA.

Contents of the AHAP:

- Exhibit A - In place of the owner's application (which will be maintained by either DHCD's Housing Development Division (DHD), MassHousing, or a future partner agency), the RAA must include a copy of DHCD's PBV reservation letter and the Internal PBV Processing Memo from either DHCD's DHD or MassHousing to the BFRA, with a Memo to File stating that the complete application is available for viewing at the office of either DHCD or MassHousing, whichever was the selecting agency, during normal business hours.

In the case of a non-DHCD or MassHousing AHTF "development" selection, made by a "selection agency" as described in the section of this Chapter titled "18.2.3 Selection of PBV Proposals Previously Selected Through a Non-PBV Competition", items 1-5 described in that section must be included in Exhibit A.

- Exhibit B - The RAA must include the owner's narrative description of the work to be completed that contains: 1) a certification that currently the project does not substantially comply with HQS and additional DHCD inspection standards and requires the described work in order to be compliant; 2) A certification that the owners and other principals are not on the US General Services Administration list of parties excluded from federal procurement and non-procurement programs; 3) A Memo to File stating that the work write-up for rehabilitation, or if new construction, the specifications and plans, may be viewed at the office of either DHCD, MassHousing, or the "selection agency" as described in "Selection of PBV Proposals Previously Selected through a non-PBV Competition" of this Administrative Plan, whichever was the selecting agency.

- Exhibit C - This is prepared by the RAA and includes:

  1. AHAP contract number;
  2. Project address;
  3. Number of units by bedroom distribution;
  4. Size of the units, square footage, and the number of bathrooms in each unit;
  5. Utilities and services to be provided by the owner at no
  6. additional cost outside of the contract rent.
  7. Estimated gross rents that cannot exceed 110% of the published FMR or the HUD-approved Exception Rent (ER), minus any allowance for tenant-paid utilities. (See Section titled "18.7.4 Rent Reasonableness" in this Chapter for a discussion about rent limits for units in LIHTC and HOME buildings.)

- Exhibit D - A copy of the Housing Assistance Payments (HAP) contract, Form HUD-52530-A, that will be executed when the units are complete and accepted by the RAA; completed with owner and RAA name, contract number, (the same one used for the AHAP) and Exhibit B of the HAP contract which lists the services, maintenance and utilities to be provided by the owner at no additional cost outside of the contract rent.

- Exhibit E - If the work is to be completed in stages and brought under HAP in stages, this exhibit should indicate, by unit number, when each stage will be completed and ready for HAP.

- Exhibit F - The architect's certification as explained in the AHAP.

- Exhibit G - If PBV will be attached to nine or more units in the project, the Davis-Bacon (D-B) Wage Rate Schedule is available online.

Each page of all exhibits must include: 1) the project name; 2) address; 3)contract number, and 4)exhibit letter.

All construction must be completed within the time specified in the AHAP (including any extensions approved by the RAA). When all work has been completed and the units pass DHCD's HQS inspection and are accepted by the RAA, the owner and the RAA will execute the HAP contract.

With the exception of Davis-Bacon monitoring discussed below, monitoring of Section 3 compliance in part II of the AHAP involves informing the owner of the contractual obligations contained in Part 2 of the AHAP and, where applicable, keeping a copy of owner certifications of compliance in the project file.

Davis-Bacon (D-B)

Projects that will have nine or more units assisted with PBV are subject to D-B prevailing wage provisions for PBV. Even if there is HOME money in a project and it would ordinarily not be subject to D-B until 12 or more units are receiving assistance, the PBV award requires D-B compliance at nine units. The General Contractor (GC) is responsible for compliance with D-B for all employees on the site.

If D-B provisions apply to the project, the owner is responsible for ensuring that the appropriate language is contained in the construction contract(s). If another entity has not been identified to monitor D-B compliance by DHCD, DHD, MassHousing, a future partner agency or a "selection agency" per section in this Chapter titled "18.2.3 Selection of PBV Proposals Previously Selected Through a Non-PBV Competition", it is the responsibility of the administering RAA to monitor this compliance. The RAA may request DHCD assistance in meeting this obligation. Exhibit 18-4: Davis-Bacon Requirements provides a complete overview of the RAA's Davis-Bacon responsibilities.

18.5 HOUSING ASSISTANCE PAYMENTS CONTRACT

18.5.1 Identifying "Excepted" Units

[24 CFR 983.203((h)]

If PBV will be attached to more than 25% of the units in a multifamily building, the "excepted units" that will be set aside for the qualifying families must be identified. For example: In a building with a total of 8 units, it is permissible to provide PBV assistance to all 8 units (100%). In this instance, at least 6 of the units must be identified as "excepted units" and be occupied exclusively by elderly or disabled households or households that will receive services in accordance with section titled "18.2.8 Exceeding the 25% cap on number of PBV units in a building". The remaining two units fall within the 25% limit and do not need to be (but may be) occupied by one of these qualifying families.

18.5.2 Term of HAP Contract and Effective Date of First Payment

[24 CFR 983.205(a)]

The HAP contract may be executed for a term of up to ten years based on the owner's request and DHCD approval. Under no circumstances may an assisted lease be made effective, or subsidy payments begin, prior to the effective date of the HAP contract.

18.5.3 HAP Contract Extensions
[24 CFR 983.205(b)]

Within one year of expiration of the initial HAP contract, DHCD may agree to extend the contract for an additional term not to exceed five years. Any extension of the term must be on the form and subject to the conditions prescribed by HUD at the time of the extension. Subsequent extensions, up to a maximum of five years per extension, are subject to the same limitation.

In all instances, a rent reasonableness test will need to be performed at the time of contract extension.

Factors to Consider If Contract Extension is Requested

DHCD will consider several factors in its decision whether to extend an expiring HAP contract, including but not limited to:

- Owner compliance with HQS and consistent maintenance of the B or higher inspection grade.
- Rate of tenant turnover. A high rate (more than 25% annually), may indicate tenant dissatisfaction with the unit or owner.
- Timeliness of owner reporting of vacancies in order to minimize the time the unit remains vacant.
- Length of unit vacancies.
- Ease of re-leasing units at turnover.
- Owner's overall compliance with the HAP contract provisions.

DHCD will permit a HAP contract extension for a unit that may be vacant at the time the contract expires provided the vacancy is recent and the project has not experienced a high rate of turnover during the contract term.

18.5.4 Wrong Unit Size for In-Place Family at Time of Contract Extension Request
[24 CFR 983.253(b) and 983.259]

If an in-place family's bedroom needs have changed at the time of contract extension and the family is under-housed or over-housed and is no longer eligible for that particular unit size, the HAP contract may not be extended for that unit unless the family vacates the unit. In this case, the family must either be offered another PBV unit of an appropriate size, if available and nearby, or be issued a voucher at least 120 days prior to the HAP expiration date. If the family fails to use the voucher during its initial and any extended term, the voucher will expire, and the family will be responsible for the full gross rent of the unit.

In instances where the family size changes within 120 days of the HAP contract expiration, the same requirements previously stated apply. In these cases the HAP contract can be extended for the duration of the voucher (and any extensions), or for the time it takes for the tenant to re-locate to another PBV unit.

18.5.5 Termination of the HAP Contract by Owner Because of Rent Reduction
[24 CFR 983.205(d)]

If the RAA performs a rent reasonableness test that results in a reduced amount below the contract rent, the owner may elect to terminate the HAP contract and the tenant must be offered the next available tenant-based voucher.

18.5.6 HAP Contract Amendment to Add or Substitute Contract Units
[24 CFR 983.206(a) and (b)]

Substituting Contract Units
[24 CFR 983.206(a)]

DHCD will permit the owner to substitute a different unit with the same number of bedrooms in the same project for a previously covered contract unit provided the owner has otherwise acceptably performed all requirements under the HAP contract and the substitution does not violate the 25% cap.

Amendment to Add Contract Units
[24 CFR 983.206(b)]

DHCD may permit additional PBV units to be added to the PBV HAP contract provided it has adequate voucher and budget authority at the time the request is received, and:

- The total number of units in the building that will receive PBV assistance, or other project-based assistance, will not exceed 25% of the number of dwelling units (assisted or unassisted) in the building.
- The HAP can be amended during the three-year period immediately following the execution date of the HAP contract.
- The owner has otherwise acceptably performed all requirements under the HAP contract.
- Addition of unit is consistent with any DHCD publicly stated target population requirements (i.e. elderly, disabled, homeless, family, etc.) for PBV units at the time the request is made.

18.5.7 HQS and Rent Reasonableness Requirements prior to Contract Extension

Prior to the extension term, the following actions must occur:

- All units must be inspected for HQS compliance at a minimum inspection grade of B.
- A rent reasonableness test for each unit must be performed by the RAA.

- The units must be determined eligibly occupied and size appropriate for the in-place family.
- In the case of PHA-owned units, an independent entity approved by HUD must perform this work.

18.5.8 Termination of Assistance

Reduction of Unit(s) from HAP Contract for Tenant-Caused Program Violations

If a tenant family is terminated by the RAA for program violations during the term of the HAP contract, both the owner and participant family will be notified by letter that assistance will be terminated effective one calendar month from the date of the notice. DHCD tenant-based HCVP program termination appeal procedures apply to tenants of PBV units. In the event the termination is upheld but the tenant remains in place, the subsidy may be moved to another available unit of the same size and quality in the same project (with no increase in the total number of units to be assisted) if requested by the owner. If no eligible unit is available or if the owner does not request a unit replacement, the HAP must be reduced by that one unit. At such time as the unit becomes vacant, the owner can request that the unit be restored to the HAP contract and if adequate voucher and budget authority is available, DHCD may reinstate the unit.

HAP Contract Options When Tenants Become Ineligible Through No Fault of Tenant Household

Families that become ineligible through no fault of the family, such as when an increase in household income results in 30% of its adjusted monthly income being equal to or greater than the gross rent for the unit, may remain in the unit paying the full rental amount. A family may remain in place (as a tenant in good standing) and pay the full rental amount without assistance indefinitely. The PBV contract, however, must be reduced by one unit.

If the project is partially assisted the owner may request to substitute another same-size comparable unit for the ineligibly occupied one. If no such request is made by the owner, the HAP contract will be reduced by one unit.

Both the owner/project sponsor and the tenant will be notified by letter that the contract for the unit will be terminated effective one month from the date of notification.

If a family remains in place paying the full rent and subsequently becomes income eligible, the unit may be restored to the HAP contract if:

- Adequate voucher and budget authority is available; and
- The family has been redetermined program eligible; and
- The owner did not substitute a different unit when the HAP contract for the ineligibly occupied unit was terminated.

Unlike the HCVP, the PBV program does not provide for a six-month zero subsidy window for participants in PBV units. The only way an over-income tenant who subsequently experiences a reduction in income could be reinstated to the PBV program is if the tenant stays in the terminated unit paying full rent, as described above, and the owner did not substitute another unit.

18.6 OCCUPANCY

18.6.1 Determining In-Place Tenant Eligibility

[24 CFR 983.251]

When PBV applications are selected (both "existing" and "development") and include units that are currently occupied at the time of selection, both the owner and the RAA must take the following steps:

Owner/Project Sponsor Responsibility

The owner sponsor must send all in-place tenants a letter explaining that the owner's units have been selected for PBV assistance and that if the tenants are determined program eligible (including being appropriately housed according to DHCD's occupancy standards), they will be eligible to receive PBV assistance. The owner's letter must emphasize that any tenant found ineligible will not be displaced. The RAA will provide the owner with the details about program eligibility and relocation requirements. At the owner's request, the RAA will assist the owner in composing this letter.

RAA Responsibility

Once the owner's in-place tenant letter has been sent, the RAA will send to these tenants a modified HCVP pre-application that seeks information about each tenant's household composition. This information will assist the RAA in determining whether or not the household is occupying the appropriate number of bedrooms. Once the information is received, the RAA will advise DHCD and the owner about its unit size determinations.

Because of time delays in getting the various HUD approvals (when required) completed, the RAA will not perform the final tenant eligibility determination for any in-place tenant until the unit(s) has been otherwise approved for PBV assistance (e.g. passed HQS, met all other HUD requirements). Final eligibility includes the determination that the in-place household is appropriately housed with the correct number of bedrooms.

18.6.2 In-Place Non-Eligible Households

[24 CFR 983.251(b)(2)]

Over-Housed and Under-Housed In-Place Households

Where there exists an in-place non-eligible, over- or under-housed household, that occupied unit cannot be brought onto the program unless the owner, at his expense, finds a suitable replacement unit acceptable to that household.

Change in Household Composition Between Preliminary Determination of Eligibility and HAP Contract

If the household's composition changes after having been preliminarily determined program eligible (Section on 18.6.1 Determining In-Place Tenant Eligibility in this Chapter), and the unit is ready to come under HAP, DHCD will authorize the RAA to issue the family a tenant-based voucher if adequate voucher and budget authority is available.

Once the tenant has vacated the unit, it may be placed under HAP. If this authority is not available, the unit cannot be brought onto the program at that time.

Unit Substitution

If the unit is located in a partially assisted building and not more than 25% of the units receive PBV assistance, the owner may substitute another unit of the same size for the ineligibly occupied unit.

18.6.3 Selection from PHA Waiting List

[24 CFR 983.251(c)]

DHCD will maintain a site-specific waiting list for each respective PBV project.

Notification of all HCVP Applicants

All applicants on the DHCD tenant-based waiting list were notified in October 2005 of their opportunity to be listed on individual PBV lists and provided with a number to call if they choose to apply for this program at a later date. At that time, DHCD amended its tenant-based HCVP pre-application to notify any prospective HCVP applicants of their right to be listed on one or more of these PBV lists.

Referrals to PBV Site-Specific Waiting Lists

It is the responsibility of PBV owners and project sponsors to refer applicants to the site-specific waiting list for their respective project. DHCD funds PBV projects based upon the owner's/project sponsor's representation (supported with documentation) of the need for PBV housing in the project's community.

The RAA and their respective Housing Consumer Education Center (HCEC) will also make referrals to the site-specific lists. If units are not promptly filled because of lack of referrals, the RAA must arrange to meet with the owner/project sponsor to emphasize their responsibility to make a suitable number of referrals or risk contract termination.

Site-Specific Waiting List Information Available on DHCD's Website

DHCD's PBV site-specific waiting lists are available on DHCD's website at www.mass.gov/dhcd/.

Each site-specific waiting list identifies:

1. Name of the project;
2. Location of project;
3. Number of bedrooms in the project;
4. Accessible unit availability;
5. Any special preference and/or occupancy considerations such as elderly, disabled, supportive services.

18.6.4 Listing In-place Eligible Households on Both the Site-Specific and Master HCVP Waiting List

[24 CFR 983.251(b)(2)]

All in-place households must be simultaneously listed on the appropriate RAA's regional HCVP waiting list and the site specific waiting list for the building in which they reside. These households must receive an absolute selection preference for the project-based voucher on the site specific list. If the unit is not appropriately sized for the in-place household but another unit in the building is, the owner must offer this unit to the household before accepting any referrals from the RAA waiting list. It is the tenant's option to accept the owner's offer of the appropriately sized unit.

18.6.5 Timing of Referrals for "Development" and "Existing" PBV Projects

Tenants for vacant PBV units will be selected by the owner from RAA referrals from the site-specific waiting list.

<u>For "Development" PBV Projects</u>

Approximately 60 days before the anticipated HAP date, DHCD will add the name of the new project to its list of previously established site specific waiting lists on its website. At that time, all in-place tenants must be listed on this list. The owner/project sponsor, the RAA and the HCEC can also begin referring other prospective applicants to the list. The owner/project sponsor can begin requesting applicant referrals to fill vacant units as soon as the list is established.

<u>For "Existing" Projects</u>

Simultaneous with approving the HAP for an "existing" PBV project, DHCD will add the name of the new project to its list of site-specific waiting lists on its website and the owner/project sponsor can begin making applicant referrals to the list. At that time, the RAA will send referrals to the owners for all vacant units.

In all instances, the RAA will refer more applicants than there are units available in order to assure the units are filled as quickly as possible and to provide the owner with a reasonable pool of potentially acceptable applicants based on the owner's DHCD-approved tenant selection criteria. These referrals will not have been determined Section 8 eligible by the RAA. This process will occur after the owner/project sponsor has selected the tenant(s).

Referred applicants who lose contact with the RAA or owner/project sponsor or fail to respond to requests for additional information for a period greater than two weeks will be deemed to

have refused a potential offer of a unit. The RAA cannot require the owner to hold a unit vacant while it attempts to locate the applicant.

18.6.6 Projects that Include both DHCD and Local Housing Authority (LHA) PBVs

When a project includes PBVs provided by both DHCD and an LHA, at the request of the LHA, DHCD will consider contracting out the administration of its PBV units to the LHA in order to streamline the administration of all PBV units in the project. In these instances, the RAA will refer applicants from its DHCD site-specific waiting list to the LHA for all DHCD PBV units. The LHA and the RAA will be required to sign a Memorandum of Agreement (MOA) prepared by DHCD that will address shared administrative functions, reporting requirements, distribution of the administrative fee and other requirements, as appropriate.

18.6.7 Owner's Written Tenant Selection Plan

Prior to AHAP or HAP execution each owner must submit a tenant selection plan for approval by DHCD and the RAA. Failure to present an acceptable selection plan will result in DHCD's withdrawal of the offer to provide PBV assistance to the project.

Each tenant selection plan should address, at a minimum, the following criteria:

1. The admission preferences used to select applicants from the waiting list.
2. The screening criteria and methods used to screen.
3. The owner/project sponsor's certification that both assisted and unassisted tenants will be screened using the same screening criteria and methods.
4. If a credit check will be part of the screening, the minimum acceptable score.
5. A statement that the owner/project sponsor will return to the RAA a copy of the applicant referral list that shows the date and time that each referred applicant contacted the owner/project sponsor and the final status of the contact.
6. A statement that all applicants that pass the owner/project sponsor's screening will be referred back to the RAA as potentially acceptable tenants for a future vacancy.
7. A statement that owner/project sponsor's denials will be in writing to the applicant listing the reason(s) for the denial with a copy to the RAA.

For items 2-3 above, the owner/project sponsor may propose to provide the prospective assisted tenant with more latitude than unassisted tenants in recognition that the subsidy will improve the household's finances. Additionally, the owner can propose use of differing screening criteria where required by other federal program funds in use in the project. DHCD will determine if these criteria are approvable.

18.6.8 Timing of Owner's Tenant Selection and RAA Verification of Tenant's Section 8 Eligibility

When the owner selects from the list of referrals provided by the RAA in accordance with its approved written tenant selection plan, the owner does not have to screen the referrals in the order of placement on the RAA waiting list. Rather, the owner should screen prospective applicants based on the order in which the applicant contacts the owner, comes to see the unit and completes the owner's selection requirements.

The RAA will not verify an applicant's Section 8 eligibility until after the owner has selected the tenant(s). Owner screening typically takes much less time than RAA eligibility screening. Because Section 8 verification of eligibility can require considerable staff time to complete and the RAA will make more referrals than there are units available, DHCD has determined that it is not an appropriate use of staff time to complete the Section 8 eligibility screening until the applicant has been offered a unit by the owner.

18.6.9 RAA Notification to Applicants About the PBV Unit Selection Process

The RAA must clearly outline the admissions process in the selection/referral letter that is sent to the applicant. This information should include information about any special features in the project and any selection preferences, where applicable. The owner should be encouraged to offer additional information about the project, including pictures, which the RAA can include in its mailing to the applicants.

Examples of special preferences could include:

1. The project is one in which both initial and continued PBV eligibility will be contingent upon the family's willingness to participate in a program of supportive services;
2. A preference to disabled applicants who can demonstrate a need for specific services;
3. A preference to applicants living in institutions or at risk of institutionalization; or
4. The units are limited to those applicants who are eligible for assisted living.

Many projects will contain both preference and non-preference units.

<u>Pre-Qualifying for Certain Preference Units</u>

In some instances, it is appropriate to require that applicants pre-qualify for a preference in order to avoid issuing selection letters to applicants who would not otherwise be eligible and delaying the lease-up of the unit. DHCD will identify these units before the selection process begins. In these instances, upon receipt of an application for units in these projects - where the household size meets the preference units' bedroom size - the RAA must send to these applicants a letter acknowledging receipt of their application and advising them that if they meet the preference standard, they will receive priority consideration for selection before all other applicants. Applicants who wish to be considered for these units must submit documentation to pre-qualify their eligibility for this priority consideration. The RAA letter to the applicant must include:

1. A description of the preference criteria for priority consideration;
2. A description listing what documentation is required to verify eligibility for this consideration;
3. A list of entities appropriate to verify the applicant's eligibility for the priority consideration.

When making selections for these units, applicants who have been pre-qualified will be selected before all other applicants.

Because referrals are generally made to the owner without the RAA first determining Section 8 eligibility, both the owner and the applicants must be notified in writing by the RAA that among those applicants that meet the owner's selection criteria, the first applicant that contacts the owner and is approved by the owner, who is subsequently determined eligible by the RAA, will be offered the unit.

18.6.10 Preferences

The tenant selection plan for the PBV site includes the specific admission preferences used to select applicants from the waiting list. The following admission preferences may apply to PBV sites:

Regional Residency Preference

A regional residency preference will be applied as a ranking preference to all PBV applicants. Applicants may apply to units outside of their region, but they will not be selected until all applicants with a residency preference have been exhausted. A regional residency preference will not apply to PBV projects that have received DHCD approval for an owner-maintained, site-based waiting list.

Homeless Preference

An applicant will generally be considered homeless, unless otherwise provided by DHCD, if the applicant lacks a fixed, regular, and adequate nighttime residence and has a primary nighttime residence that is; (a) a supervised publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters, and transitional housing), or (b) an institution in which they have been residents for more than 30 consecutive days and no subsequent residences have been identified and they lack the resources and support networks needed to obtain access to housing, or (c) a public or private place not designed for, or ordinarily used as, a regular sleeping place for human beings.

Homeless Veterans Preference

A veteran is a person who served in the active military, navy, or air service and who was discharged or released from such service under conditions other than dishonorable. Veterans must also meet the definition of homeless to qualify for this preference.

Youth Aging Out Preference

DHCD may approve a preference for youth aging out and receiving supportive services consistent with section 19.4 Family Unification Program.

Homeless Programs or Initiatives

DHCD may also approve homeless criteria for occupancy of units in conjunction with the New Lease Pilot Program or other DHCD programs or initiatives that are created to address the issue of homelessness.

Preference for Certain Disability Projects

DHCD may agree to provide a preference for projects serving persons with disabilities who live in institutions or are at risk of institutionalization.

Tenant Selection for Community Based Housing (CBH) Units

CBH is a state bond-financed program that provides 0% deferred loans for housing for disabled people who are institutionalized or at risk of institutionalization. (See Exhibit 18-2: Selection Criteria for DHCD Development Programs). Clients of the MA Department of Mental Health (DMH) and the MA Department of Mental Retardation (DMR) are not eligible for CBH units (because they are eligible for the state-financed Facilities Consolidation Fund (FCF) program). When CBH development funds are included in any units selected for PBV, priority shall be provided as follows:

- First Priority: Persons with disabilities (as that term is defined in 760 CMR 60.02) who are living in institutions or are at risk of institutionalization, and are not eligible for the FCF program (see Exhibit 18-2: Selection Criteria for DHCD Development Programs) as set out in St. 2004, c.290, Line Item 4000-8200. Of all persons eligible for this priority, for units that incorporate special design features, preference shall be given to those persons with a documented need for the special design features.

- Second Priority: All persons with disabilities living in institutions or at risk of institutionalization.

- Third Priority: All persons with disabilities.

Eligibility for first priority will be documented by a Massachusetts Rehabilitation Commission (MRC)-approved entity.

Preference for Disabled Households Needing Services
[24 CFR 983.251(d)]

DHCD may support projects that require preference be given to disabled households that need services offered at a particular project in accordance with the following HUD conditions and criteria:

1. Preference cannot be granted to persons with a specific disability.
2. The project sponsor must document that the applicant has a disability that significantly interferes with their ability to obtain and maintain themselves in housing; and,
3. Who, without appropriate services, will not be able to obtain or maintain themselves in housing; and,
4. For whom such services cannot be provided in a non-segregated setting (i.e. a tenant-based voucher for an independently selected unit would not meet the needs of the applicant).
5. Disabled residents shall not be required to accept the particular services offered at the project.

6. In advertising the project, the owner may advertise the project as offering services for a particular type of disability; however, the project must be open to all otherwise eligible persons with disabilities who may benefit from the services provided.

Tenant Selection for Facilities Consolidation Funds (FCF) Units:

FCF is a state bond-financed program that funds community-based housing for clients of the MA Department of Mental Health (DMH) and MA Department of Mental Retardation (DMR) who require services. (See Exhibit 18-2: Selection Criteria for DHCD Development Programs). When FCF development funds are included in any unit selected for PBV, priority shall be provided as follows:

First Priority: FCF-eligible clients who require services in accordance with the criteria outlined in Section on "Preference for Disabled Households Needing Services" above.

Second Priority: All other disabled clients requiring services in accordance with the criteria outlined in Section "Preference for Disabled Households Needing Services" above.

Eligibility for first priority in units funded with FCF will be documented by a DMH or DMR approved entity.

Who Determines Tenant Eligibility for Preference for Disabled Households Needing Services?

The owner/project sponsor must identify in their application which professional organization and/or independent individual(s) will make the assessment that a disabled applicant meets the HUD criteria listed in the section titled "Preference for Disabled Households Needing Services" of this Chapter. Such professionals could include licensed medical, psychological or allied mental health and/or human services professionals. Whomever the owner/project sponsor selects to make the assessment must sign a certification form that either attests to or rejects each applicant's need for services in accordance with said section.

Applicant eligibility will be made by the owner/project sponsor. The RAA will periodically monitor the project sponsor's applicant selection determinations for compliance with their DHCD-approved selection plan.

Applicant Referrals:

All disabled applicant referrals to these units will be made from the project's site specific waiting list (983.251(c)(3)) maintained by the appropriate DHCD RAA. All applicants referred to the project must receive information prepared by the owner/project sponsor that describes the project's services and explains the preference criteria for tenant selection. The owner/project sponsor must send all applicant referrals written notification of their selection determination, with a copy to the RAA.

Applicant Right to Appeal Denial of PBV Unit Based on Failure to Demonstrate Need for Services Offered

Any applicant denied preference consideration for a project providing services must be offered the right to appeal the decision made by the owner/project sponsor. The owner/project sponsor must include in their PBV application to DHCD the specific criteria they will use to assess an applicant's need for services and a sample letter that they will use to notify both the applicant and the RAA that they have been determined ineligible.

Preference for Families Eligible to Receive Supportive Services where 25% or Less Than a Building's Units Will Have PBV

DHCD may allow a preference for families that can demonstrate they need the same types of supportive services allowed for "excepted units" (see Sections "Development" PBV Proposals For Any Future Initiative" and "18.5.1 Identifying "Excepted" Units" units in a project"). However, these families cannot be required to sign a PBV Contract of Family Participation as a condition of occupancy and cannot be terminated from the PBV program for failure to participate in and/or complete a service program.

Other Preferences

DHCD may establish other tenant selection preferences for its PBV projects, provided these preferences support DHCD's mission, as stated in its most current HUD-approved PHA Plan and Consolidated Plan. DHCD will amend this PBV administrative plan and announce any new preference(s) on DHCD's website at www.mass.gov/dhcd/.

Elimination of Singles Preference for SRO Units

Due to the difficulties inherent in maintaining occupancy in SRO units, DHCD will permit the admission of single-person households that are not elderly or disabled for these units provided all other eligibility criteria are met; however, the elimination of the single's preference does not apply to full-time students.

18.6.11 Applicant Right to Appeal an Owner Denial

If an owner denies a unit to a referred applicant, the owner must send a written notice to the applicant clearly stating the reason(s) for denial. The owner must provide a copy of this denial letter to the RAA and must advise the applicant of any appeal rights to the owner. The applicant may request that the RAA review the owner's denial to verify that compliance with the owner's approved written tenant selection plan.

18.6.12 RAA Briefing of Applicants Selected to Occupy a PBV unit

All applicants selected to occupy the PBV units must be briefed on program benefits and responsibilities. The oral briefing must include a description of how the PBV program works and family and owner responsibilities. Each briefed family must receive a packet that contains:1) Information on how the RAA determines the total tenant payment for the family; 2) family obligations under the program; 3) applicable fair housing information; and, 4) information about

continued program eligibility if household composition changes and unit size is no longer suitable.

If the family head or spouse is a person with a disability, the RAA must take appropriate steps to insure effective communication in accordance with 24 CFR 8.6 in conducting the oral briefing and in providing the written information packet, including appropriate, alternative formats.

18.6.13 Filling Accessible Units

The owner/project sponsor must make every effort to refer eligible households that would benefit from the unit's accessibility features to the RAA's site-specific waiting list before DHCD will permit the RAA to lease such a unit to a non-handicapped applicant. Owners must list accessible units with the Mass Accessible Housing Registry. Both the owner and the RAA should also notify all local and regional disability organizations of accessible PBV unit availability. The regional HCEC should be able to assist with these referrals.

18.6.14 Removal of Applicant from Site-Specific List

Rejection by an applicant of the largest bedroom size in the project for which they are eligible will result in removal of the applicant's name from that project's waiting list. For instance, an applicant that refuses a one-bedroom unit in a project will not be referred to a smaller unit (0BR, ESRO, SRO) in that same project. The RAA must notify the applicant of this removal in the initial selection letter, or a subsequent letter, before the removal occurs.

18.6.15 Student Status

An SRO PBV unit may be occupied by a student who is also receiving assistance under Title IV of the Social Security Act, enrolled in a job training program receiving assistance under the Job Training Partnership Act, or under other similar federal, state, or local laws.

An SRO PBV unit may not be occupied by a full-time student except as described above.

A full-time student is defined by the IRS as taking 12 credit hours a semester or attending school full-time 5 months per year at an educational institution with regular facilities other than a correspondence or night school.

Student status is required to be monitored on a tax year basis; thus, an applicant would not be eligible if the person had been a full-time student for five months of the calendar year even if they had graduated prior to being referred to a PBV unit. RAAs should adjust tenant certification procedures to consider student status according to this interpretation.

In addition, apart from the previous selection criteria discussed, higher education students who are part of participant households are also subject to income scrutiny per 24 CFR 982.552.

18.6.16 Applicant Responsibility for Updating Information

Applicants will be placed on each PBV waiting list by the date and time the application is received. Applicants for any site-specific PBV project that are not on the HCVP waiting list will

be automatically listed on the HCVP waiting list. If the applicant's household composition is not appropriate for the project, the RAA will not place the applicant on that project's waiting list. It is the applicant's responsibility to follow up with the RAA to verify that they were placed on each respective list for which they applied.

It is the applicant's responsibility to make any requests for changes on the waiting lists they have applied to, if such changes would be necessitated by a change in the applicant's family size and/or composition or mailing address. Failure by the applicant to maintain up-to-date information with the RAA may adversely affect their position on some or all site-specific lists.

18.6.17 RAA Denial of Eligibility for PBV Applicant

The RAA is responsible for defending its decisions pertaining to the applicant's eligibility for PBV assistance. HCVP appeal procedures will be utilized and shall be the same as currently in effect for the HCVP as set forth in CHAPTER 17 of this Plan.

18.6.18 Overcrowded, Under-Occupied, and Accessible Units
[24 CFR 983.259]

Under-Housed

Should a change in family size or composition cause a family to become under-housed to the point of causing the unit to be non-compliant with HQS space requirements and there is either an available appropriately sized PBV unit or a tenant-based voucher available for the family, it must relocate with assistance or be terminated from the program. If there is no voucher available to issue to the family or an available comparable PBV unit to which the family may relocate, the family will remain in place without penalty to the owner until the family can relocate with assistance.

Adding a Family Member

If a request from the family to add another member that is not by birth, adoption, or court order would cause the family to breach HQS space requirements, such request must be denied by the owner and the RAA. If such family has been in good standing for at least one year at the time of the request to add a member, then the request may be approved if the RAA has a tenant-based voucher to issue to the family or there is an available PBV unit of appropriate size for the new family composition in the building.

Over-Housed

If a family becomes over-housed due to a change of family size or composition after the first year of tenancy, the family must relocate at their expense to a smaller PBV unit or accept a voucher to relocate. If there is no appropriately sized comparable PBV unit or voucher available for the family, it may remain in place with no reduction in the contract rent until such time as there is either a voucher or unit available. If the family has failed to move with assistance within two months to a suitably sized PBV unit, or moved within the voucher term limit (and any approved extensions) the family must be terminated from the program. If the project is

partially assisted, the owner may request to substitute another comparable unit for the one that is ineligibly occupied.

Reasonable Time to Relocate if Over/Under-Housed

If a suitably sized comparable PBV unit is located in the same or nearby building the tenant will have two months to relocate at the tenant's expense.

If no suitably sized comparable PBV unit is available, the tenant will be issued a voucher and have the maximum time permitted on the voucher to relocate, including any extensions granted for reasonable accommodation or mitigating circumstances.

Inappropriately Housed in an Accessible Unit

The RAA must utilize a lease addendum that requires an inappropriately housed family to move from an accessible unit when a family that needs the accessibility features is identified for the unit.

In order to minimize loss of income to a project, an accessible unit may be leased to a family that does not require the unit's special features under the following circumstances: 1) it has been vacant for at least 45 days, and, 2) both the RAA and the owner/project sponsor have exhausted their respective outreach sources to identify a family that would benefit from the unit's accessible features. Because such a family is inappropriately housed, they must be required to sign a lease addendum prior to initial occupancy agreeing to move from the unit. If there is a suitable PBV unit available within the project, the inappropriately housed family must be offered the opportunity to move to that unit. If there is no PBV unit available, the RAA will issue an available tenant-based voucher to the family.

Reasonable Time to Relocate from an Accessible Unit if Accessible Features are not Required by Tenant

- If there is a suitable PBV unit within the same or nearby building, the family must relocate within 45 days. The RAA will be authorized to pay for this move from its administrative fee and DHCD will reimburse the RAA for this expenditure.

- Section above on reasonable time to relocate if over/under-housed or relocation requirement when a tenant-based voucher is issued. The RAA will be authorized to pay for this move from its administrative fee and DHCD will reimburse the RAA for this expenditure.

- If the family fails to relocate with assistance either to an appropriate PBV unit or within the voucher term limit (and any approved extensions), the family must be terminated from the program.

- If there is no unit or voucher available, the family will remain in the accessible unit without penalty until such time as one or the other becomes available to the family.

18.6.19 Requirement for "Remaining Member(s)" of an "Excepted Unit"
[24 CFR 983.261(d)]

As discussed in section on "18.2.8 Exceeding the 25% cap on number of PBV units in a building [24 CFR 983.56]", the three household types that can qualify a unit as an "excepted" unit include: 1) elderly, 2) disabled, and 3) households where one or more members participate in a program of supportive services under the terms of a PBV Contract of Family Participation.

In each instance, any remaining family member(s) of "excepted" units that no longer qualifies for "excepted unit" status must vacate the unit within a reasonable period of time in order that the PBV unit can be used for the intended "qualifying" household type. The RAA will issue a tenant-based voucher to the remaining family member(s) (exclusive of any live-in aide), provided they continue to be program eligible. They must vacate the unit at their expense within DHCD's established voucher term and any approved extensions. Exceptions may be permitted for reasonable accommodation or mitigating circumstances.

Failure to move with tenant-based voucher assistance will result in program termination. If the household remains in place after the voucher expires, it will be responsible for the full contract rent.

Termination of PBV contract if remaining family member(s) fail to vacate the "excepted" unit by the expiration of the mobile voucher term

If the remaining family fails to vacate the PBV unit within the established time, the unit must be removed from the HAP contract unless the project is partially assisted, and it is possible for the HAP contract to be amended to substitute a different unit of the same bedroom size in the project, or the owner terminates the lease and evicts the family.

18.6.20 Family Right to Move (Opt Out) with Tenant-Based Assistance
[24 CFR 983.260]

At the end of the second full year of assisted tenancy in a PBV unit, a participant in good standing may request a tenant-based HCV in order to move to a unit of their choice with continued assistance. This is referred to as a voluntary opt-out. Each calendar year, the number of vouchers that will be available to issue to voluntary opt-outs will be limited to a percentage of the RAA non-targeted MTW program turnover. Turnover of targeted MTW program vouchers shall not be included when calculating the number of vouchers available for opt outs.

The number of vouchers that will be available to voluntary opt-outs is calculated as follows.

1. Determine the size of the RAA non-targeted MTW voucher portfolio on December 31 of the prior calendar year.
2. Determine the number of the RAA PBV units on December 31 of the prior calendar year and calculate the number of PBV units as a percentage of the non-targeted MTW voucher portfolio.
3. Determine the number of the RAA non-targeted MTW program turnover on December 31 of the prior calendar year. Turnover is defined as either: 1) End of program participation, or 2)

a portability voucher that is absorbed by the receiving agency. Participant transfers between RAAs shall not be counted as turnover.

4. Multiply the number of non-targeted MTW program turnover units by the percentage calculated above (number of PBV units as a percentage of the non-targeted MTW voucher portfolio).

For example,

- An RAA administers 2,000 non-targeted MTW program vouchers and 200 PBVs.
- 200/2,000= .1= 10%
- The RAA had approximately 135 non-targeted MTW vouchers turn over in the prior calendar year.
- This RAA will have 14 tenant-based vouchers available to issue to PBV voluntary opt-outs. 135 x 10% = 13.5 rounded to 14

All PBV families that wish to move must submit a written request to opt out. An RAA may not accept a written request to opt out prior to the participant's two year anniversary date. If the participant family is in good standing when their request is submitted the RAA will date and time stamp the request and place the participant on the standard voucher wait list with a voluntary opt-out preference for the region that administers the Project Based assistance. Subject to the annual cap, opt out families will be given a voucher in accordance with the selection from the waiting list hierarchy outlined in CHAPTER 4.

Upon RAA approval for a tenant-based voucher, the participant must give the owner advance written notice of intent to vacate with a copy to the RAA in accordance with the lease.

These new guidelines will not apply to the following PBV households:

- Households that are over or under-housed;
- Households that are victims of domestic violence pursuant to the VAWA policy;
- Households that require a tenant-based voucher to address an approved reasonable accommodation request;
- Non-disabled households that occupy an accessible unit and that have been requested to move to allow a disabled household to move into the accessible unit;
- Households that can document the need to move in order to obtain or maintain employment; and
- Households that can document that a household member has been accepted into a higher education institution and can document the need to move in order to attend the institution.

PBV households who meet one or more of these criteria are considered non-voluntary opt-outs and will not have to wait until the end of the second year of assisted tenancy in a PBV unit to receive a tenant-based voucher. Non-voluntary opt-outs receive priority over voluntary opt-outs and are not counted towards the annual cap.

PBV households who wish to opt out will be selected from the standard waiting list according to their PB preference and then by date and time of application. Project Based Preferences are as follows:

Project Based Preference	Ranking
Forced Opt-Out	1
Underhoused	2
Overhoused	3
Voluntary Opt-Out	4

For example, if a PB household applies for a voluntarily opt out on April 1, 2012 and another PB household is over-housed with a date of July 1, 2012, then the overhoused PB family will receive the tenant based voucher first since the overhoused family has a higher preference ranking. PB Voluntary opt-out households may have to remain on the waiting list if the annual cap has already been met. Additionally, if there is insufficient funding and additional vouchers cannot be issued, the voluntary opt-out households may have to remain on the waiting list even if the annual cap has not been met.

Term of Opt-Out Voucher

PBV participants that request an opt-out tenant-based voucher to relocate will be issued an available voucher for a 60 day term. If the family has not located a program eligible unit to which it can relocate with assistance at expiration of the voucher term, it must wait until its next annual lease anniversary before again becoming eligible to request a tenant-based voucher, unless the tenant and owner/project sponsor agree to mutually terminate the lease prior to the next anniversary date and the RAA has available voucher and budget authority. Because of the time involved in filling PBV units and the need for an owner to have some control over vacancy loss, the opt-out voucher will not be extended beyond 60 days except for reasonable accommodation or mitigating circumstances acceptable to the RAA.

18.6.21 Synchronizing the Annual PBV Tenant Eligibility Recertification with LIHTC and/or HOME Eligibility Recertification Requirements

If possible and where applicable, DHCD recommends that its RAAs synchronize the PBV tenant rent recertification with the LIHTC and/or HOME program to avoid both the confusion associated with and the difficulties inherent in requiring a tenant to undergo more than one eligibility recertification per year.

18.7 RENT TO OWNER

With the exception of rents for units with other subsidy discussed in Section on "18.7.2 Rents for Units with Other Subsidy" in this Chapter, at the initial HAP contract the maximum gross rent will be set at the lesser of: 1) 110% of the applicable FMR or the HUD-approved exception rent; 2) the reasonable rent, or, 3) the owner requested rent.

18.7.1 Rent in Low Income Housing Tax Credit (LIHTC) Units

[24 CFR 983.301(c)]

LIHTC Units Located Inside of a Qualified Census Tract (QCT)

The rents for these units cannot exceed the lowest of:

- An amount determined by the RAA, not to exceed 110% of the applicable fair market rent (or any exception payment standard) for the unit bedroom size, minus any utility allowance;
- The reasonable rent; or

The requested rent by the owner.

LIHTC Units Located Outside of a Qualified Census Tract (QCT)
[24 CFR 983.301(d)]

The rents for these units cannot exceed the lowest of:

- The tax credit rent minus any utility allowance;
- The reasonable rent; or
- The requested rent by the owner.

These criteria apply if, in the same building, there are comparable tax credit units of the same unit bedroom size as the contract unit and the comparable tax credit units do not have any form of rental assistance other than the tax credit; and the tax credit rent exceeds the applicable FMR (or exception payment standard) and that rent has been requested by the owner and determined reasonable by the RAA.

LIHTC and Rent Reasonableness Consideration

Inside a QCT, LIHTC units are "assisted" units for purposes of rent comparability and may not be used for rent reasonableness. Outside a QCT, LIHTC units with rents that exceed the payment standard and have no other rental assistance are not considered assisted and may be used for rent reasonableness.

18.7.2 Rents for Units with Other Subsidy
[24 CFR 983.304]

The rent for the following units cannot exceed the subsidized rent (basic rent) as determined in accordance with requirements for the applicable federal programs:

- An insured or non-insured Section 236 project;
- A formerly insured or non-insured Section 236 project that continued to receive Interest Reduction Payment following a decoupling action;
- A Section 221(d)(3) below market interest rate (BMIR) project;

- A Section 515 project of the Rural Housing Service;
- Any other type of federally subsidized project specified by HUD.

18.7.3 Rents in HOME Units

High HOME household rents are limited by the high HOME rent formula established by HUD. Rents for Low HOME-eligible households can be established up to the maximum PBV. The rent must still be determined rent reasonable for similar unassisted units in the same or nearby building.

At initial occupancy, all PBV/HOME units must be occupied by Low HOME households having incomes at or below 50% of AMI; the project is permitted to collect whatever rent the PBV program will permit. If the initial PBV/HOME household income increases to between 51% and 80% of AMI, the unit can no longer be considered a Low HOME unit and the project is ineligible to collect rent above the HOME program limits. Projects often can correct HOME/PBV confusion by using another eligible unit as the required HOME unit. DHCD HOME staff is available for guidance and clarification.

18.7.4 Rent Reasonableness

The RAA must perform a rent reasonableness test on all contracted units both at initial HAP and under the following circumstances:

- When the owner requests a rent adjustment;
- When the owner requests to substitute an assisted unit;
- If there is a change in the allocation of responsibility for utilities; and/or
- At time of any contract extension.

Using its MTW authority, the RAAs will not perform a rent reasonableness test for MTW PB units if there is a 5% or greater reduction in the HUD published FMR.

The contract rent may be adjusted up or down as indicated by the results of the rent reasonableness test. This requirement means that there may be occasions when a PBV rent must be reduced because of verified decreases in rent levels for comparable unassisted units in the PBV community.

18.7.5 Rent Adjustments
[24 CFR 983.302]

Each year, at the HAP contract anniversary date, the owner may be granted a rent adjustment Any owner request for a rent increase automatically requires the RAA to perform a rent reasonableness review. Additionally, except for certain tax credit units as defined in 24 CFR 983.501(c) redetermined rents shall not exceed the lowest of the reasonable rent or the rent

requested by owner. Using its MTW authority, the PHA has eliminated consideration of the FMR limits in redetermining rents.

The owner must request the increase in writing at least 60 days prior to the HAP contract anniversary date. If the request is made less than 60 days prior to the HAP anniversary date, it may delay the effective date of the RAA-approved rent adjustment. Adjustments may not be applied retroactively. Requests from owners received after the HAP anniversary date, if approved by the RAA, will be effective on the first of the month following the date the request is received by the RAA. A late rent adjustment request will not adversely affect the dates of future adjustments.

Rent Decreases

Rent decreases go into effect either at the anniversary date of the HAP (if the owner requested a rent redetermination and rent needs to be lowered) or on the first of the month following a re-determination for reasons stated in section 18.7.4 Rent Reasonableness in this Chapter.

18.7.6 Request to Use a Building-Specific or Local Housing Authority Utility Allowance

At the request of the owner, DHCD may agree to allow a building specific or the local housing authority utility allowance to be used in the project.

18.8 PAYMENT TO OWNER

18.8.1 Vacancy Payments During the Term of the PBV HAP Contract

[24 CFR 983.352(2)]

DHCD will permit a maximum vacancy payment up to 60 days excluding a payment for units that are vacant at the time of the initial HAP. The following requirements must be satisfied in order for a vacancy payment to be made:

- *Prompt notification of vacancy to RAA*

  The owner must promptly notify the RAA of any pending vacancy immediately upon receiving notice from a tenant of intent to vacate the unit. In the event of a vacancy that occurs without notice to the owner, the owner must notify the RAA immediately upon learning of the vacancy not later than the first missed rent payment by the tenant family. The owner may keep the HAP payable for the month when the family moves out ("move out month") provided the vacancy is not the owner's fault.

- *Continued compliance with HQS and all other program requirements*

  The owner has taken all steps necessary to prevent vacancy loss from occurring including keeping the unit compliant with HQS.

- *Requirements for owner's written request for vacancy payment*

  Requests for vacancy payments must be in writing to the RAA and must be made during the first month of a new lease-up or in the 30 days subsequent to the 60-day vacancy period, whichever comes first. Payment may only be made when the vacancy period has elapsed. The owner's written request must include the following information:

  1. A statement that the family has vacated and the date the family moved out, to the best of the owner's knowledge;
  2. The owner certification that the vacancy was not the fault of the owner and that the unit was vacant during the period for which payment is claimed;
  3. A certification that the owner took all reasonable action to minimize the likelihood and length of the vacancy;
  4. Any other additional information that the RAA determines appropriate to verify that the owner is entitled to the payment.

- *Vacancy payment amount*

  The payment for each month of the maximum two-month period will be determined by the RAA. This amount cannot exceed the monthly rent to the owner under the assisted lease minus any portion of the rental payment received by the owner, including amounts available from the tenant's security deposit.

- *Prompt request for applicant referrals to fill vacant unit*
  If referrals are not promptly requested by the owner or applicants screened promptly upon responding to a referral, the owner will not be eligible to receive a vacancy payment.

- *Frequency of vacancies and relationship to HAP extensions*

  The RAA will consider the frequency and nature of vacancy requests when deciding whether or not to renew an expiring PBV HAP contract.

CHAPTER 19 : TARGETED PROGRAMS

19.1 NON-ELDERLY DISABLED HOUSING PROGRAMS (NED)

Since 1997, HCVs for NED families have been awarded under various special purpose HCV programs: Rental Assistance for Non-Elderly Persons with Disabilities in Support of Designated Housing Plans (Designated Housing); Rental Assistance for Non-Elderly Persons with Disabilities Related to Certain Types of Section 8 Project-Based Developments (Certain Developments); One-Year Mainstream Housing Opportunities for Persons with Disabilities and the Project Access Pilot Program (formerly Access Housing 2000).

19.2 NED - DESIGNATED HOUSING AND ONE-YEAR MAINSTREAM PROGRAM

19.2.1 Overview

Funding for DHCD's Designated Housing program (DSG) was provided under the HUD Rental Assistance for Non-Elderly Persons with Disabilities Related to Certain Types of Section 8 Project-Based Developments and Section 202, 221(d) and 236 Developments, also referred to as the 'Certain Developments Program'.

The One-Year Mainstream Housing Program (MS1) provides Section 8 housing assistance to very low-income non-elderly families with disabilities.

These programs provide housing assistance to very low-income non-elderly disabled families and individuals. They are an integral part of the Commonwealth's housing continuum that provides permanent housing for persons with disabilities.

PHA Policy NED, MS1 and DSG vouchers are subject to MTW policies.

19.2.2 Eligibility

Disability Status

At least one person in the household must be disabled. The disabled household member must be the head of household, co-head or spouse. See Exhibit 3-1: Detailed Definitions Related to Disabilities. A household where a child is the only family member with a disability is not eligible for this program.

RAAs will verify an applicant's disability status for purposes of determining program eligibility in accordance with CHAPTER 7.

19.2.3 Waiting List Management And Selection

Upon exhausting the current regional DSG and MS waiting lists RAAs will issue NED turnover vouchers to eligible, non-elderly disabled households selected from their regional standard HCV waiting list. [MTW Plan FY 2012]

If a NED applicant moves out of the initial RAAs region, the applicant must be absorbed by the receiving RAA with a NED voucher when one becomes available. If a NED voucher is not available, the receiving agency must bill the issuing agency until such time as a NED voucher is available. This procedure will prevent over-issuance of NED vouchers.

19.2.4 Support Services

At the briefing, each applicant will be offered a list of contacts at the human service agencies in their region. This list should include staff that can:

- Assist in identifying supports for individuals with psychiatric disabilities including those who have mental health illnesses but may not be eligible for DMH programs.

- Assist in identifying supports for individuals with mental retardation including community-based supports.

- Assist in identifying detoxification, treatment and support programs for people with substance abuse problems.

- Make referrals to resources that support people with HIV/AIDS including housing search services, specialized health services, support groups, meals programs and others.

- Assist in providing referrals for vocational rehabilitation programs for individuals with any type of disability who would like to go to work.

- Direct individuals to home care assistance, personal care assistance, home modifications and independent living supports.

Participants will be encouraged to review the list and to contact any agency if they feel they need or want any support services. RAAs will use the list as needed to make referrals if requested by participants and also to obtain advice from a human service professional if needed.

Housing Search

Each RAA must provide applicants with housing search assistance that includes, at a minimum: a list of available units in the area. Applicants may utilize the RAA's Housing Consumer Education Center resources that include listings of available units, a computer to access listings on the Internet, local newspapers, and a telephone.

19.3 FIVE YEAR MAINSTREAM HOUSING PROGRAM (MS5)

19.3.1 Overview

The Mainstream Five Housing Program (MS5) provides Section 8 housing assistance to very low-income non-elderly or elderly families with disabilities. Mainstream Housing is an integral part of the Commonwealth's housing continuum that provides permanent housing for persons with disabilities.

MS5 vouchers are not subject to MTW policies.
MS5 vouchers are not classified as NED vouchers.

19.3.2 Eligibility

Disability Status

The head of household, co-head or spouse must be elderly or non-elderly and disabled.
A household where a child is the only family member with a disability is not eligible for this program.

RAAs will verify an applicant's disability status for purposes of determining program eligibility. See CHAPTER 7.

19.3.3 Waiting List Management And Selection

Upon exhausting the current regional MS waiting list RAAs will issue MS5 turnover vouchers to eligible, disabled households selected from their regional standard HCV waiting list.

If an MS5 applicant or participant moves out of the initial RAAs region, the applicant must be absorbed by the receiving RAA with a MS5 voucher when one becomes available. If a MS5 voucher is not available, the receiving agency must bill the issuing agency until such time as a MS5 voucher is available. This procedure will prevent over-issuance of MS5 vouchers.

19.3.4 Services

Housing Search

Each RAA must provide applicants with housing search assistance that includes, at a minimum, a list of available units in the area. Applicants may utilize the RAA's Housing Consumer Education Center resources that include listings of available units, a computer to access listings on the Internet, local newspapers, and a telephone.

19.4 FAMILY UNIFICATION PROGRAM

19.4.1 Overview

The Family Unification Program (FUP) is a collaborative effort between the DHCD and the Department of Children and Families (DCF). The FUP targets:

(1) families with children in placement who have substantially complied with all the DCF service plan tasks, but do not have permanent or adequate housing to which their children can be returned, and

(2) families for whom lack of adequate housing is the primary factor in the threat of or imminent placement of the family's child, or children in out of home care, and

(3) battered women with their children who have not secured permanent, standard, replacement housing, and

(4) youth that are at least 18 years old and not more than 21 years old who left foster care at the age of 16 or older and who lack adequate housing.

All applicants must be referred by the DCF and have an open DCF case at the time of referral, selection, and when the voucher is issued.

The policies and procedures set forth in this plan will achieve two important DCF and DHCD program objectives: to maintain a regional distribution of FUP vouchers to ensure ongoing availability in all areas of the Commonwealth; and, to ensure rapid utilization of vouchers.

PHA Policy FUP vouchers are non-MTW vouchers to which MTW efficiencies are applied.

19.4.2 Eligibility

A FUP eligible family is one that:

- The DCF has certified is a family for whom the *lack of adequate housing* is a primary factor in the imminent placement of the family's child, or children, in out-of-home care, or in the delay of discharge of a child or children, to the family from out-of-home care; AND

- Has substantially complied with all DCF service plan tasks and the lack of adequate housing is either the only remaining barrier to unification or will be the primary cause for imminent placement of the children in out of home care; AND

- The RAA has determined is eligible for Section 8 rental assistance.

A FUP eligible youth is defined as:

- A youth that DCF has certified to be at least 18 years old and not more than 21 years old (has not reached his/her 22nd birthday) who left foster care at age 16 or older and who does not have adequate housing; AND

- That the RAA has determined is eligible for Section 8 rental assistance.

Lack of Adequate Housing

Lack of adequate housing means:

1. A family or youth is living in substandard or dilapidated housing; or
2. A family or youth is homeless; or
3. A family or youth is in imminent danger of losing their housing. A family or youth is considered to be in imminent danger of losing their housing if the family or youth will be evicted within a week from a private dwelling unit, no subsequent residence has been identified, and the family or youth lacks the resources and support networks needed to obtain housing.
4. A family or youth is displaced by domestic violence; or
5. A family or youth is living in an overcrowded unit; or
6. A family or youth is living in housing not accessible to the family's disabled child or children, or to the youth, due to the nature of the disability.

Substandard Housing

A family or youth is living in substandard housing if the unit:
1. Is dilapidated; *"Dilapidated"* means the unit does not provide safe and adequate shelter, and in its present condition endangers the health, safety or well-being of a family or youth, or the unit has one or more critical defects, or a combination of intermediate defects in sufficient number or extent to require considerable repair or rebuilding. The defects may involve original construction, or they may result from continued neglect or lack of repair, or from serious damage to the structure.
2. Does not have operable indoor plumbing;
3. Does not have a usable flush toilet inside the unit for the exclusive use of a family or youth;
4. Does not have a usable shower or bathtub inside the unit for the exclusive use of a family or youth;
5. Does not have electricity or has inadequate or unsafe electrical service;
6. Does not have a safe or adequate source of heat;
7. Should, but does not have a kitchen; or
8. Has been declared unfit for habitation by an agency or unit of government.

Verification Requirements: Substandard Housing

Applicants living in substandard housing must provide certification from a unit or agency of government that the applicant's unit has one or more of the deficiencies listed above or the unit's condition is as described above.

Homeless

A “homeless family” includes any person (including a youth) or family that:
Lacks a fixed, regular, and adequate nighttime residence and has a primary nighttime residence that is:

1. A supervised publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters, and transitional housing);
2. An institution that provides a temporary residence for persons intended to be institutionalized; or
3. A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.

Homeless applicants who meet the requirement for “Imminent danger of losing their housing”, must provide the following:

- Documentation from an appropriate source (e.g. present or prior landlord, unit or agency of government, social service agency) that the applicant is in imminent danger of losing housing, or has lost housing and is temporarily doubled up; and
- If homelessness is due to fire, and a member of the household caused or contributed to the fire due to negligence or an intentional act, the family is not eligible for a preference.

Verification Requirements: Homeless

Homeless applicants who meet the criteria described in section entitled “Homeless” must provide certification of homeless status from a public or private facility that provides shelter for such households, or from the local police department or social service agency.

Applicants who are homeless due to residing in a transitional housing program must provide a letter from the transitional program’s sponsoring agency documenting the applicant’s participation and readiness to maintain an independent tenancy. If an applicant reaches the top of the waiting list prior to completing the transitional program they will be frozen upon selection from the waiting list until such time as they successfully complete the program or choose to leave the program. The applicant will then be issued the next available voucher if they are eligible.

Displaced by Domestic Violence

A family or youth is displaced by domestic violence if:

- The family or youth has vacated a housing unit because of domestic violence; or

- The family or youth lives in a housing unit with a person who engages in domestic violence, or lives in a housing unit whose location is known to a person who has engaged in domestic violence, and moving from such housing unit is needed to protect the health or safety of the applicant family or youth.

"Domestic violence" means felony or misdemeanor crimes of violence committed by a current or former spouse of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of Massachusetts, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of Massachusetts.

For an applicant to qualify under this category the actual or threatened violence must have occurred recently or be of a continuing nature and the applicant must certify that the person who engaged in such violence will not reside with the applicant family.

Living in an Overcrowded Unit

A family or youth is considered to be living in an overcrowded unit if:

1. The family is separated from its child (or children) and the parent(s) are living in an otherwise standard housing unit, but, after the family is re-united, the parents' housing unit would be overcrowded for the entire family and would be considered substandard; or
2. The family is living with its child (or children) in a unit that is overcrowded for the entire family and this overcrowded condition may result in the imminent placement of its child (or children) in out-of-home care.
3. The youth is living in a unit that is overcrowded.

DCF occupancy standards will be used to determine whether the unit is overcrowded.

Other Eligibility Criteria

Applicants must have an open DCF case at the time of referral; at the time of application; at the time of selection; and, at the time a subsidy is issued.

19.4.3 Outreach & Referrals

DCF and DHCD will periodically conduct training sessions for all DCF staff to inform them of the purpose of the program, the availability of subsidy, and how to make referrals.

DHCD regional administering agencies will notify the DCF Central Office when it has FUP vouchers available to issue.

DCF Area Office Referrals to the FUP

DCF Area Offices will consult with DCF Central Office before referring applicants to the FUP program. DCF Central Office will ensure that the applicants being referred are FUP-eligible and then forward the Referral Form/Certification of Eligibility to the appropriate regional RAA. The Central Office may also make referrals directly.

Housing Agency Referrals to DCF

If a Section 8 applicant appears to be FUP-eligible, the RAA will refer the applicant to the DCF Central Office. DCF Central Office staff will make the referral if they are able to confirm FUP-eligibility.

19.4.4 Waiting List – Management & Selection

Regional waiting lists are maintained by each RAA. The RAAs are responsible for a majority of admissions functions, including but not limited to: receiving referrals from DCF, entering data, maintaining and updating the waiting list, and mailings to applicants.

The waiting list will remain open for the purpose of accepting referrals only for families that DCF has certified are eligible to participate in the FUP.

Due to limited availability and low turnover of FUP vouchers referrals are received and placed on the waiting list only when FUP vouchers are available to issue. Applicants will be placed on the FUP waiting list by the date and time the referral is received. If the waiting list is open for DHCD's HCV program, the applicant will also be placed on that list if they are not already on it. If a referral is received by FAX, the date/time that the FAX was received will be used when entering the applicant onto the waiting list. If the referral is not faxed it must be date/time stamped by the RAA. Incomplete referrals will be returned to the DCF by the RAA. An applicant will not be placed on the FUP waiting list until the referral is complete. If an RAA receives a referral for an applicant that lives out of its region, the referral should be returned to the referring DCF office with instructions on where it should be sent.

Residency Preference

A regional residency preference for selection will be applied to all FUP applicants. The residency preference areas are the administrative areas of DHCD's RAAs.

Applicants are assigned a regional designation based on the address provided in the referral form.

If an applicant family is living in a shelter or other temporary residence, the location of their last permanent residence may be used for the purpose of establishing a residency preference. All applicant requests for a change of regional designation must be made in writing.

Selecting Applicants

Applicants will be selected in order by date of application with a regional ranking preference applied. When a FUP subsidy is available in any RAA jurisdiction, the first eligible applicant in that region will receive the subsidy. If there is no eligible applicant in that region, the RAA will inform the DCF Central Office of the availability of a subsidy and request a referral. DCF and the RAA will work closely regarding the disposition of all applications.

Any applicant that has been on the waiting list for more than 60 days will require re-verification of FUP-eligible status from DCF Central Office prior to selection. If an applicant becomes

ineligible while they are on the waiting list, the RAA will remove the applicant from the FUP waiting list and inform the applicant, in writing, of the denial by DCF and of their right to contact DCF for further information. The applicant will not be removed from any other waiting list that they may be on.

If the applicant is FUP-eligible, the RAA will select the applicant and require that they complete a detailed Section 8 application. The RAA will perform a standard Section 8 eligibility check including but not limited to income verification, household composition, eligible immigration status and CORI status. Verification of preference/eligibility will be required in accordance with this plan.

In accordance with 24 CFR 982.201(e) information verifying family eligibility must be obtained by the RAA no more than 60 days before the applicant is issued a subsidy.

When verification of eligibility is complete the RAA will conduct an applicant briefing and issue a FUP voucher. DCF staff is encouraged to attend all Section 8 related functions with their clients and help them locate suitable and safe housing.

The RAA will remain in close contact with the DCF Central Office regarding the status of each FUP applicant throughout this process.

19.4.5 Portability

If a FUP applicant moves out of the initial RAAs region, the applicant must be absorbed by the receiving RAA with a FUP voucher when one becomes available. If a FUP voucher is not available, the receiving RAA must bill the issuing RAA until such time as a FUP voucher is available. This procedure will prevent over-issuance of FUP subsidies and will maintain the regional allocation.

Moves out of State

In order for DCF to remain involved with the families accepted to the FUP, portability out-of-state will not be permitted in the first year. On a case-by-case basis and in consultation with the DCF domestic violence unit, exceptions may be made for applicants admitted due to domestic violence.

19.4.6 Appeals

DHCD's RAAs are responsible for defending their eligibility decisions, pertaining to the family's eligibility for FUP Section 8 rental assistance. Informal review procedures will be utilized and shall be as set forth in CHAPTER 17.

The DCF is responsible for defending its family eligibility determinations and a similar informal review procedure will be utilized.

19.4.7 On-Going Considerations

The agency and individuals carrying primary responsibility for the provision of ongoing services to the family will be responsible to identify and access needed appropriate support services. The Department of Children and Families will remain involved with families accepted to the program for a period of between six months and one year from the date of occupancy in order to provide supportive services and ensure that family stability is maintained in the new dwelling.

All FUP subsidies will be issued to other FUP eligible applicants upon turnover.

RAAs will participate in all required evaluations, and will be prepared to maintain additional data on these clients, as may be required by HUD and/or DCF.

After a subsidy is issued, DCF will inform the RAA of any changes in the family's situation or composition, such as the permanent removal of children from the household.

19.4.8 Affirmatively Furthering Fair Housing

DHCD will administer its HUD Family Unification Program in accordance with all applicable Fair Housing and Equal Opportunity laws, HUD's Limited English Proficiency (LEP) guidelines, and in such a manner as to affirmatively further fair housing. DHCD will do this by taking the following steps as they relate to personnel, participants, and the overall operation of its FUP Program and associated activities:

1. DHCD administers its HCVP and related programs through a network of regional administering agencies (RAAs). In selecting, contracting, and monitoring these agencies, DHCD will ensure that the subcontractors can meet their obligations to affirmatively further fair housing in their respective FUP Programs. Specifically, these subcontractors will be expected to:

    a. Identify and ensure certification of FUP eligible families and youth that may be on the RAA's waiting list and ensure that the family or youth maintain their original position on the waiting list after certification.
    b. Appropriately place all FUP eligible families and youth referred from DCF on the HCV waiting list in order of first come, first served.
    c. Support FUP applicants and participants in guaranteeing their rights to fair housing by providing them with information, materials, and referrals relevant to fair housing laws and protections, agencies, and discrimination complaint procedures (state and federal) annually and as requested. Provide the Housing Discrimination Hotline telephone number 1-800-669-9777 to all FUP applicants and participants.
    d. Offer and/or respond to requests for reasonable accommodations in order to allow persons with disabilities to participate in the FUP program.
    e. Examine programs or proposed programs and identify any impediments to fair housing choice within those programs addressing those impediments in a reasonable fashion in view of the resources available.
    f. Work with local jurisdictions to implement any of the jurisdiction's initiatives to affirmatively further fair housing that requires DHCD's involvement.
    g. Maintain records reflecting these analyses and actions.

2. DHCD's subcontractors will take the following proactive steps in addressing accessibility problems for persons with disabilities by doing the following:

    a. Assist program applicants and participants, where requested, to gain access to supportive services available within the community, but not require eligible applicants or participants to accept supportive services as a condition of continued participation in the program.
    b. Identify public and private funding sources to assist participants with disabilities in covering the costs of structural alterations and other accessibility features that are needed as accommodations for their disabilities.
    c. Not deny persons who qualify for a HCV under this program other housing opportunities, or otherwise restrict access to PHA programs to eligible applicants who choose not to participate.
    d. Provide housing search assistance through its Housing Consumer Education Centers.
    e. In accordance with rent reasonableness requirements, approve higher rents to owners that provide accessible units with structural modifications for persons with disabilities
    f. Provide technical assistance, through referrals to local fair housing and equal opportunity offices, to owners interested in making reasonable accommodations or units accessible to persons with disabilities.

19.4.9 Family Unification – Adolescent Outreach Program

<u>Eligibility</u>

Young adults at least 18 years old and not more than 21 years old (have not reached 22nd birthday) who left foster care at age 16 or older and do not have adequate housing.

Applicants must meet Chafee Program eligibility guidelines and be young adults ages 18 to 21 that:

a) Are leaving DCF custody and not returning home;

b) Have left DCF custody for independent living and are returning for Outreach Program support;

c) Have signed a Voluntary Placement Agreement with DCF and will remain in agency care while pursuing their educational/vocational goals.

In addition to meeting one of the above eligibility criteria, young adults must:

1. Be employed or actively seeking employment, or have an income which is sufficient to pay the balance of the subsidized rent;

2. Agree to participate in the Outreach Program, and

3. Meet at least weekly with an Outreach worker to enhance money and home management skills, job maintenance skills, problem solving and decision-making skills, etc.

Applicants must also meet Section 8 eligibility requirements including but not limited to income, eligible immigration status, and CORI status.

Referrals

The DCF AOP Coordinator will make all referrals. Referrals will be placed on the FUP waiting list.

Portability

Portability and moves out of state will not be permitted.

Program Time Limit

By law, a FUP voucher issued under this program may only be used to provide housing assistance for the youth for a maximum of 18 months. Due to current DHCD HCV program preferences, youth assisted under the FUP-AOP cannot transition to its Section 8 HCV program at the end of the 18-month period. If program participants are not ready to assume the full costs of independence at the 18-month limit, DCF AOP staff will facilitate the transition of program participants at the end of this period to a more supportive setting.

19.4.10 Youth Transition to Success Program

PHA Policy-MTW

Using its MTW authority, DHCD designed and implemented a time-limited pilot program to provide continued support to and build upon the successes of youth currently participating in its Family Unification Program Aging Out of Foster care program that are facing the current 18 month expiration date.

For more details, See Exhibit 19-1: Youth Transition to Success Program Admin Plan.

19.5 HOUSING OPTIONS PROGRAM

19.5.1 Overview

The Housing Options Program (HOP) provides rental assistance and supportive services to disabled persons primarily in the greater Boston area who are homeless or at risk of homelessness. HOP is a collaborative effort of the DHCD and various Departments and offices under the Executive Office of Health and Human Services (EOHHS).[3] Participating EOHHS agencies commit funds to support the lead service agency, JRI Health, which provides all applicant referrals and coordination of services for program participants.

HOP is an integral part of a continuum of care that provides permanent housing for homeless persons with disabilities who are ready to live independently. HOP is targeted to homeless persons moving out of transitional housing in order to make beds available within the homeless service system. This unique program combines 345 Section 8 vouchers with supportive services.

- Priority 1: Homeless disabled persons in transitional housing programs
- Priority 2: Homeless disabled persons in shelters, streets, or places not meant for human habitation
- Priority 3: Otherwise homeless disabled persons

For the purposes of the HOP Administrative Plan, an agency that is directly responsible for the provision of supportive services to a HOP participant is referred to as a "vendor." The vendors involved in HOP currently include: DMH, DDSDS, DPH-BSAS, MRC, HomeStart, EOEA, MassHealth and JRI.

<u>Interagency Advisory Team</u>

The Interagency Advisory Team (IAT) meets as needed and consists of representatives of DHCD, participating EOHHS agencies, HomeStart, JRI Health (JRI), the Metropolitan Boston Housing Partnership (MBHP), MassHousing, and representatives of non-profit housing and service agencies working with homeless people with disabilities. The IAT is responsible for the management of support services funding, the development of HOP policies and procedures, and the general oversight of the program.

DMH, on behalf of all participating funding agencies, serves as the key agency responsible for the procurement and contracting with the Lead Service Agency (LSA). The LSA is responsible for the day-to-day HOP management.

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[3] Departments and offices under EOHHS include the Department of Developmental Services (DDS), the Department of Mental Health (DMH), the Department of Public Health (DPH), the Executive Office of Elder Affairs (EOEA), the Department of Veteran's Services (DVS), the Massachusetts Rehabilitation Commission (MRC), and the Department of Children and Families (DCF).

As the LSA, JRI's overall role is to provide clients with the most direct access to services and housing, and to facilitate successful tenancies. For the majority of HOP participants, JRI conducts outreach, manages referrals, initiates intake and assessment, conducts eligibility screenings, secures housing search and counseling services, and provides overall case coordination, follow-up, and monitoring. JRI works closely with the DHCD regional administering agency, MBHP, for housing referral, screening, administration, and placement. After securing housing placement, on-going stabilization services are provided by a variety of vendors depending on the nature of the disability(ies) and the geographic location selected by the program participant. JRI assures each participant continued access to services via regular contact with vendors providing direct service. During their tenancy, program participants have direct access to JRI to provide them with any assistance they may need in obtaining services or in changing vendors.

19.5.2 Eligibility

All HOP participants must meet each of the program eligibility criteria listed below.

Disability Status

Either the head of household or spouse must have a primary disabling diagnosis in order to be eligible for HOP. Eligible diagnoses include:

- Primary disability of chronic mental illness as defined by eligibility criteria for DMH and eligible to receive services from DMH
- Primary disability which is HIV related or has an AIDS diagnosis
- Primary disability of substance abuse, and receiving services from HomeStart or eligible to receive services from HomeStart
- Primary disability of developmental disability and eligible to receive services from DDS.
- Persons enrolled in the state's Money Follows the Person Demonstration program (MFP)
- Persons residing in a long term care facility and eligible for a MassHealth 1915(c) HCBS waiver but not eligible for MFP
- Persons residing in a long term care facility and not eligible for MFP or a HCBS waiver.
- Persons living in the community and eligible for and receiving services through a HCBS waiver.
- Otherwise disabled persons including people who meet the Section 8 definition of Disability and are not currently a client of any state agency, or eligible for the services of any state agency (referred to as otherwise disabled)

Homeless or At Risk of Homelessness

All applicants must be either homeless or at risk of homelessness as defined below. Substandard housing is included as a parameter for consideration as a homeless family.

Homeless

A "homeless family" includes any person (including a youth) or family that:
Lacks a fixed, regular, and adequate nighttime residence; and has a primary nighttime residence that is:

1. A supervised publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters, and transitional housing);
2. An institution that provides a temporary residence for persons intended to be institutionalized; or
3. A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.

Verification Requirements: Homeless

Homeless applicants who meet the criteria described in section entitled "Homeless" must provide certification of homeless status from a public or private facility that provides shelter for such households, or from the local police department or social service agency.

Applicants who are homeless due to residing in a transitional housing program must provide a letter from the transitional program's sponsoring agency documenting the applicant's participation and readiness to maintain an independent tenancy. If an applicant reaches the top of the waiting list prior to completing the transitional program they will be frozen upon selection from the waiting list until such time as they successfully complete the program or choose to leave the program. The applicant will then be issued the next available voucher if they are eligible.

Substandard Housing

An applicant is living in substandard housing if the unit:

- Is dilapidated;
- Does not have operable indoor plumbing;
- Does not have a usable flush toilet inside the unit for the exclusive use of the family;
- Does not have a usable shower or bathtub inside the unit for the exclusive use of the
- family;
- Does not have electricity or has inadequate or unsafe electrical service;
- Does not have a safe or adequate source of heat;
- Should, but does not have a kitchen; or
- Has been declared unfit for habitation by an agency or unit of government.

For purposes of meeting substandard criteria, "dilapidated" means the unit does not provide safe and adequate shelter, and in its present condition endangers the health, safety or well-

being of a family, or the unit has one or more critical defects, or a combination of intermediate defects in sufficient number or extent to require considerable repair or rebuilding. The defects may involve original construction, or they may result from continued neglect or lack of repair, or from serious damage to the structure.

The presence of lead paint in a building does not cause it to meet the definition of substandard housing.

Verification Requirements: Substandard Housing

Applicants living in substandard housing must provide certification from a unit or agency of government that the applicant's unit has one or more of the deficiencies listed above or the unit's condition is as described above.

At Risk of Homelessness

The family must meet all three of the following criteria to be considered “at risk of homelessness”.

1. The family is in imminent danger of losing housing, or has lost housing and is temporarily doubled up. A family is considered to be in imminent danger of losing their housing if the family will be evicted within a week from a private dwelling unit, no subsequent residence has been identified, and the family lacks the resources and support networks needed to obtain housing; and
2. Due to the health or environmental needs of the family there is no appropriate temporary shelter; and
3. Placement in another setting would endanger the health or safety of the family or the occupants of the shelter. Health or environmental needs of this type could apply to individuals with demanding medical needs, including: the elderly, the terminally ill, and individuals denied access to shelters due to a life-threatening illness or the need for a barrier-free environment.

Generally, transitional housing is considered by HUD to be of maximum 24-month duration. If an applicant is in transitional housing for a longer period, they must provide the PHA with the following additional information:

1. An explanation as to why they have been in transitional housing for an extended period; and
2. An explanation of when and under what circumstances they will lose the transitional housing.

Using this information, the PHA will make a determination as to the applicant’s homeless status.

The Massachusetts Alternative Housing Voucher Program (AHVP) is defined as a transitional housing program. Therefore, AHVP participants meet this preference.

Verification Requirements: Homeless and At Risk of Homelessness

Homeless applicants who meet the criteria described in section entitled "Homeless" must provide certification of homeless status from a public or private facility that provides shelter for such households, or from the local police department or social service agency.

Applicants who are homeless due to residing in a transitional housing program must provide a letter from the transitional program's sponsoring agency documenting the applicant's participation and readiness to maintain an independent tenancy. If an applicant reaches the top of the waiting list prior to completing the transitional program they will be frozen upon selection from the waiting list until such time as they successfully complete the program or choose to leave the program. The applicant will then be issued the next available voucher if they are eligible.

Homeless applicants who meet the criteria described in section entitled "At Risk of Homelessness, must provide the following:

- Documentation from an appropriate source (e.g. present or prior landlord, unit or agency of government, social service agency) that the applicant is in imminent danger of losing housing, or has lost housing and is temporarily doubled up; and

- Documentation from a physician or other licensed health professional that placement in another setting, such as a temporary shelter, would endanger the health or safety of the applicant or the occupants of the shelter.

- If homelessness is due to fire, and a member of the household caused or contributed to the fire due to negligence or an intentional act, the family is not eligible for a preference.

Need for Services

All applicants must demonstrate a need for the services provided through HOP and be willing to accept those services.

19.5.3 Outreach

The IAT assumes overall responsibility for directing outreach efforts. Each vendor conducts targeted outreach to transitional programs and shelters. Referrals from the general public are also accepted. JRI works with all applicants to ensure that they can conveniently access the program. JRI continually monitors outreach efforts to ensure that vendors are providing adequate assistance to clients in the preparation of the required application and necessary documentation.

19.5.4 Waiting List Management, Referrals & Selection

The 345 HOP subsidies are allocated, as determined by the IAT, with a vendor committed to providing supportive services to each disability group. It is the responsibility of the IAT to establish a subsidy allocation plan and amend it as necessary.

Vendor Waiting List Management

There is a waiting list for each disability group consisting of prescreening applications collected by each vendor. Each vendor is responsible for establishing the policies and procedures that govern the management of their waiting list. However, applicants who meet the criteria for HOP Priority 1 are given a ranking preference over those who meet the criteria for HOP Priority 2 or 3. Applications will be selected from the vendor waiting list to be placed in the JRI referral pool in order to maintain an adequate number of completed applications in the referral pool.

Referrals

All HOP referrals are assessed for program eligibility by a HOP vendor or a local service provider before being sent to JRI. This assessment includes an evaluation of eligibility for HOP (i.e., housing status, income guidelines, and disability verification) and the completion of an intake assessment form.

JRI is responsible for establishing and maintaining a referral pool of already screened, eligible applicants for whom a completed application[4] and related documentation have been received by JRI and are thus ready for referral to MBHP when a subsidy becomes available. This referral pool will be organized chronologically by date received, within the three priorities. Vendors may consult with JRI to determine how many referrals to keep in the referral pool based upon historical attrition of their clients from the program. Each vendor will attempt to maintain the agreed-upon number of completed HOP applications in the JRI referral pool at any given time. When a subsidy becomes available, an appropriate referral will be made from JRI to MBHP from the JRI referral pool.

MBHP will enter all JRI referrals onto DHCD's waiting list/admissions tracking system by date/time the referral is received.

Selection

When all eligibility verification is complete a subsidy is issued, all normal Section 8 procedures take place, beginning with a briefing session. Service providers are welcome to attend all Section 8 related functions with their clients and are encouraged to help them locate suitable and safe housing.

Selection of the Designated Vendor for an Available Subsidy

When a subsidy becomes available, JRI is responsible for designating which vendor may use this subsidy and notifying that vendor of the subsidy's availability. However, when a vendor becomes aware of a potential subsidy turnover they are responsible for notifying JRI immediately.

[4] For purposes of the HOP Administrative Plan, a completed application includes: a pre-screening application, intake assessment form, signed Program Participation Agreement, signed CORI release, letter from service provider documenting applicant's housing status, and birth certificate or immigration documentation, and income verification documentation (e.g., letter from Social Security office, employment pay stubs, etc.).

Selection when a Subsidy Becomes Available Upon Turnover

Within 5 business days of a voucher becoming available, MBHP notifies JRI by fax and phone of this availability. JRI is responsible for notifying the appropriate vendor of this availability. Within 4 business days of learning of the available voucher, JRI will review the HOP referral pool and determine the next appropriate applicant through the following process:

- JRI will review the Referral pool to determine if the designated vendor who will use the available subsidy has any applicants in the pool. If so, the oldest application will be forwarded to MBHP for review within 5 business days.

- If the designated vendor has no viable applicants in the JRI Referral pool, the designated vendor has 5 business days to submit a referral (i.e. pre-screened application) to JRI. After completing the referral, the designated vendor has 5 additional business days to submit that referral's completed application to the JRI Referral pool for review. JRI will forward this completed application to MBHP for review within 5 business days.

- If the designated vendor does not submit a completed application for an eligible candidate to JRI within the 10 business days specified above, then JRI will select the oldest application from the JRI Referral pool for any vendor who is 100% issued. JRI will forward this application to MBHP for review within 5 business days.

Selection of a Designated Vendor when the Subsidy is "On Loan"

If the available subsidy is on loan from another vendor, and that vendor is currently 100% issued and would like to obtain the subsidy, then the available subsidy is returned to the original vendor at turnover.

If the available subsidy is on loan from another vendor, and that vendor is not fully issued, the available subsidy may continue to be used by the borrowing vendor.

19.5.5 Support Services

JRI and the IAT guarantee that the various needs of HOP participants will be addressed. Services are coordinated through the members of the IAT with oversight and case coordination provided by JRI.

Initial Intake and Assessment

The vendor or local service agency making the referral is also responsible for conducting an initial intake and assessment during the prescreening process. If necessary, JRI may choose to conduct a subsequent interview to determine the availability of support services. This assessment may include a discussion of past tenancy-related problems and a review of available entitlements and support programs.

Housing Search

All selected participants will receive assistance with locating appropriate housing, initiating contact with property owners, and executing leases. This service is provided through an existing network of housing counseling contracts in the Greater Boston area. JRI is responsible for providing assistance with housing search for: MRC clients, persons living with HIV/AIDS, otherwise disabled persons, some DMH clients as agreed upon between DMH and JRI, and those persons with substance abuse issues through a subcontract with HomeStart. All other vendors, specifically DDS and the remaining DMH, are responsible for conducting their own housing search.

Housing Stabilization

Each vendor is responsible for providing housing stabilization services, such as budgeting, paying bills, lease compliance, and orientation to the community. JRI provides housing stabilization services to HOP participants living with HIV/AIDS, those who are otherwise disabled, and some DMH clients, as agreed upon between DMH and JRI. JRI also provides housing stabilization services to persons who have substance abuse issues through a subcontract with HomeStart. MRC and DDS, as well as the remaining DMH, are responsible for providing housing stabilization services to their consumers.

19.5.6 Appeals

MBHP is responsible for defending its eligibility decisions, pertaining to the person's eligibility for HOP Section 8 rental assistance. Section 8 informal review procedures will be utilized.

JRI and the participating HOP vendors are responsible for making their consumers aware of the grievance procedure employed by that vendor. These grievance procedures should detail a mechanism for defending service eligibility determinations including informal review procedures.

19.5.7 Portability

Initial Year In-State Restriction

HOP applicants will be restricted to leasing within the Commonwealth of Massachusetts for their initial year in the program (see 24 CFR 982.353). After the initial year, HOP participants are free to lease outside of the Commonwealth. When such an out-of-state lease occurs, the participant will no longer be considered part of the HOP program and the subsidy will be available to re-issue provided that the receiving agency absorbs the voucher.

Transfers

If a HOP applicant or participant moves out of MBHP's region, the receiving RAA will administer the HOP voucher for as long as the participant remains in their region. In order for JRI to coordinate services, MBHP and the receiving RAA must immediately report all transfers to JRI, as well as to DHCD on the quarterly report.

When the transferring participant terminates from HOP, the receiving RAA must inform MBHP and JRI.

19.5.8 Grant Compliance

As the official applicant and recipient of HUD funding for HOP, DHCD maintains ultimate accountability to HUD for the successful administration of HOP including grant implementation and enforcement, as well as the final resolution of procedural and policy-related matters not specifically defined in statute or regulation. DHCD reserves the right to periodically conduct reviews and audits of participant client files as related to eligibility and housing contracts.

Each participating HOP agency agrees to respond to requests for data and/or information in a timely manner.

Reduction or Termination of Subsidies

DHCD reserves the right to reduce or terminate the number of Section 8 HOP vouchers made available through the HOP program, under the following circumstances: 1) program outcomes are not satisfactory; 2) there is not a sufficient demonstrated need for the subsidies; 3) the program is not being administered efficiently nor effectively; or 4) other problematic program issues arise.

Evaluation & Follow-up

JRI and other venders should conduct follow-up evaluations on all clients housed through HOP. The follow-up evaluations review the level of services the client is receiving, his satisfaction and security in his home, and his ability to meet the terms of the lease, including the ability to financially maintain the unit. During the entire length of a participant's tenancy, he will have direct access to JRI to provide him with any assistance he may need in obtaining services or changing vendors.

JRI is responsible for ensuring that vendors or commissions conduct follow-up on their respective program participants to determine that they are receiving the appropriate level of services and if they are meeting the terms of the lease. JRI is also responsible for notifying the appropriate public or private agencies when services are not provided or are inadequate to meet the need of the client.

MBHP and JRI will participate in all required evaluations, and will be prepared to maintain additional data on HOP clients, as required by DHCD, HUD and/or participating EOHHS agencies.

19.6 GREATER PLYMOUTH AREA SUPPORTIVE HOUSING PROGRAM

19.6.1 Overview

The Greater Plymouth Area Supportive Housing Program (hereafter referred to as "GPASHP") provides 10 Section 8 vouchers to very low-income, homeless families with either a disabled parent or child. The GPASHP program is targeted to those families who can live independently within the community, but need case management and support services in order to achieve and maintain successful tenancies. The GPASHP program is a unique collaboration between DHCD, and the South Shore Housing Development Corporation (SSHDC). In addition to administering the rental subsidy, SSHDC will also provide case management and coordinate the support services. However, SSHDC will contract for outside inspections and independent rent reasonableness certification.

19.6.2 Eligibility

Homelessness

All applicants must meet HUD's definition of "homeless" as per Section 103 of the McKinney Act (42 U.S.C. 11302):

- An individual who lacks a fixed, regular, and adequate nighttime residence; and
- An individual who has a primary nighttime residence that is:
    - A supervised publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters, and transitional housing);
    - An institution that provides a temporary residence for individuals intended to be institutionalized; or
    - A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.

Disability Status

At least one person, either an adult or child, in a household must be disabled. See Exhibit 3-1: Detailed Definitions Related to Disabilities.

Receipt of SSI or Social Security Disability payments is a sufficient demonstration that an applicant is disabled and eligible for GPASHP. In the absence of such income, a qualified individual must confirm whether or not applicants meet HUD's definition.

Family Composition

Applicant families must include at least one dependent. For the purposes of the GPASHP program, a dependent is defined as a person, other than the family head of household or spouse, who is under the age of 18.

Need for Services

Applicant families must demonstrate a commitment to improving their quality of life and self-sufficiency skills through the use of the case management services provided through the GPASHP program by SSHDC.

19.6.3 Outreach

Initial Outreach

Initial outreach for GPASHP will be conducted by SSHDC through mailings to local Department of Transitional Assistance office staff, family shelter and transitional housing providers and social service staff affiliated with the Departments of Mental Health, Mental Retardation and Social Services.

Ongoing Outreach

SSHDC is responsible for conducting all on-going outreach for the GPASHP program, including but not limited to: creating outreach materials, recruiting applicants, screening applicants and providing housing placement services to program participants. SSHDC will work with all applicants to ensure access to the program and will continually monitor outreach efforts to ensure that there is adequate assistance to clients in the preparation of the required applications and necessary documentation.

19.6.4 Waiting List Management & Selection

Applicants must submit a completed pre-application to SSHDC in order to be placed on the GPASHP waiting list. Applicants who submit incomplete pre-applications will be notified of this fact by SSHDC and given the opportunity to resubmit their pre-application.

Waiting List Management

The GPASHP waiting list will be maintained as a subset of SSHDC's conventional Section 8 waiting list. The date and time of SSHDC's receipt of the completed pre-application from the applicant will be used when determining the applicant's position on the GPASHP waiting list.

Due to the limited number of GPASHP subsidies available, the number of applicants placed on the GPASHP waiting list will be restricted to 25. Once the maximum number has been reached, SSHDC will not accept any additional referrals and will not place additional applicants on the waiting list. All persons who submit a GPASHP pre-application who do not receive a space on the waiting list will be notified by SSHDC in writing of this fact and their GPASHP pre-application discarded.

SSHDC is responsible for periodically updating the GPASHP waiting list. This can be done by sending letters to applicants on the waiting list requesting that the applicant indicate that s/he is still interested in the GPASHP program. Applicants not responding to such updates will be dropped from the list.

Selection

Upon selection from the GPASHP waiting list SSHDC will conduct an eligibility screening, including: completion of a Section 8 application; income verification; homelessness verification; disability verification; family composition verification; citizenship review; and CORI check.

19.6.5 Support Services

SSHDC has primary responsibility for: the provision of ongoing services by directly providing the services or by establishing linkages with appropriate community agencies; and identifying and assisting consumers to access needed appropriate support services throughout the family's involvement in the GPASHP program.

Intake and Assessment

SSHDC is responsible for conducting an intake and assessment during the prescreening process. This assessment may include a discussion of past tenancy-related problems and a review of available entitlements and support programs.

Housing Search

Housing search services will be provided with the goals of securing appropriate housing and achieving successful tenancies. Housing search assistance will be directly provided by SSHDC or by an existing network of housing search programs, which operate in the south shore region.

All selected participants will receive housing search assistance in the form of: information and referral; housing counseling; identification of appropriate housing options; initiating contact with property owners; and executing leases. Referrals will be made to provide rental and moving assistance when necessary.

SSHDC must also provide applicants with housing search assistance that includes, at a minimum: a list of available units in the area. Applicants may access SSHDC's Housing Consumer Education Center (HCEC) which contains listings of available units, local newspapers, and a telephone for participants to use during housing search.

Housing Stabilization

SSHDC is responsible for directly providing or coordinating housing stabilization services needed by GPASHP participants, which include lease compliance and referral for supportive services, income benefits and other community resources. SSHDC will refer participants for support services provided by identified providers in the community.

19.6.6 Appeals

SSHDC is responsible for defending its decisions pertaining to the person's eligibility for GPASHP. Section 8 appeal procedures as set forth in CHAPTER 17.

19.6.7 Monitoring

Terminations and Turnover

SSHDC is responsible for tracking subsidy use. If a subsidy turns over, SSHDC is responsible for ensuring that this subsidy is re-issued to the next person on the GPASHP program waiting list. SSHDC is responsible for tracking the number and reasons for terminations of GPASHP Section 8 vouchers.

Refusal of GPASHP services is not grounds for termination of a GPASHP Section 8 subsidy.

Housing Quality

Housing quality and affordability will be evaluated annually by outside contractors hired by SSHDC. Contracted housing inspectors will conduct annual HQS inspections to ensure that clients are living in appropriate housing.

DHCD Program Oversight

DHCD reserves the right to waive any GPASHP eligibility criteria and/or GPASHP program policies, if needed. DHCD also reserves the right to periodically conduct reviews and audits of participant client files as related to eligibility and housing.

Reduction or Termination of Subsidies

DHCD reserves the right to reduce or terminate the number of Section 8 GPASHP vouchers made available through the GPASHP program under the following circumstances:

1) the program outcomes are not satisfactory; there is not a sufficient demonstrated need for the subsidies;

2) the program is not being administered efficiently nor effectively; or

3) other problematic program issues arise.

19.7 JOBLINK WELFARE TO WORK PROGRAM

DHCD is no longer accepting new applicants to the JOBLINK Welfare to Work Program. Turnover JOBlink vouchers will be issued to applicants on the waiting list.

19.8 TENANT-BASED VOUCHER PROGRAM FOR PERSONS WITH HIV/AIDS

The Tenant-Based Rental Assistance Program (TBRA) assists individuals and families with HIV/AIDS by providing rental assistance and supportive services. JRI Health, as the lead service agency, provides intake, assessment, housing search and critical linkages to other service providing agencies throughout the Commonwealth. Supportive services may include: assistance finding a suitable apartment; case management; substance abuse/relapse prevention support; coordinating home health services; home-based mental health support; housekeeping assistance; and help arranging respite care, day care and transportation. All applicants must be referred by the JRI Health staff.

19.8.1 Overview

This program utilizes 217 tenant-based Section 8 vouchers and is administered throughout the Commonwealth by DHCD's Section 8 regional administering agencies (RAAs). TBRA AIDS is an integral part of the Commonwealth's housing continuum that provides permanent housing for persons with disabilities.

The Department of Public Health uses Housing Opportunities for Persons with AIDS (HOPWA) funds to support a lead service agency, JRI Health, which provides intake, assessment, and linkages to other service providing agencies throughout the Commonwealth. Persons accepted into the program also receive supportive services from local AIDS service organizations, including housing search, case management, substance abuse and relapse prevention support, mental health support, housekeeping assistance, and assistance in arranging for respite care, day care, and transportation.

19.8.2 Eligibility

<u>Disability Status</u>

At least one person in a household must be disabled due to HIV or diagnosed with AIDS. JRI will determine through a physician's certification that a person meets the aforementioned eligibility criteria.

<u>Supportive Services</u>

All TBRA AIDS applicants must be able to utilize supports and/or services provided by local AIDS service organizations, which will screen applicants and conduct intake interviews.

19.8.3 Outreach

RAAs, JRI, and the local AIDS service organizations will all conduct outreach to local aids organizations and/or local substance abuse programs to identify eligible applicants for the TBRA AIDS program.

19.8.4 Waiting List Management & Selection

JRI will accept referrals from the local AIDS service organizations and others. JRI will place these referrals on a TBRA AIDS waiting list specific to each RAA and the corresponding geographic region.

When a TBRA AIDS voucher is available to issue, the RAA will contact JRI for a referral. The RAA will place the referral on the TBRA AIDS waiting list/admissions tracking system by the date and time the referral is received. Incomplete referrals will be returned to JRI.

19.8.5 Services

Housing Search

Either the local AIDS service organization or JRI, through the Community Housing Innovations Program (CHIP), will provide applicants with housing search assistance.

Each RAA must provide applicants with housing search assistance that includes, at a minimum: a list of available units in the area. Where available, applicants will have access to RAA's Resource Rooms, which contain listings of available units, a computer to access listing on the Internet, local newspapers, and telephone participants can use during housing search. In addition, the RAA will refer applicants to its regional Housing Consumer Education Center (HCEC) to assist in housing search.

19.8.6 Appeals

RAAs are responsible for defending its decisions pertaining to the person's eligibility for TBRA AIDS Section 8 vouchers. See CHAPTER 17.

JRI and the local AIDS service organizations are responsible for informing applicants of the grievance procedure employed by their respective agencies. These grievance procedures should detail a mechanism for defending service eligibility determinations including informal hearing procedures.

19.8.7 Portability

Initial Year In-State Restriction

TBRA applicants will be restricted to leasing within the Commonwealth of Massachusetts for their initial year in the program (see 24 CFR 982.353). After the initial year, TBRA participants are free to lease outside of the Commonwealth. When such an out-of-state lease occurs, the participant will no longer be considered part of the TBRA program and the subsidy will be available to re-issue provided that the receiving agency absorbs the voucher.

Transfers

If a TBRA AIDS applicant or participant moves out of the initial RAA's region, the applicant or participant must be absorbed by the receiving RAA with a TBRA AIDS voucher if one is

available. If a TBRA AIDS voucher is not available, the receiving RAA will temporarily add one TBRA AIDS voucher to its allocation. The initial RAA will simultaneously lose one TBRA AIDS voucher from its allocation. In order for JRI to coordinate services, the initial and receiving RAAs must immediately report all transfers to JRI, as well as to DHCD on the quarterly report.

When a TBRA AIDS voucher becomes available at the receiving RAA, the receiving RAA must inform the initial RAA and JRI. Both the initial and receiving RAAs will return to their original allocations.

19.8.8 Reduction or Termination of Subsidies

DHCD reserves the right to reduce or terminate the number of Section 8 TBRA AIDS vouchers made available through the TBRA AIDS program, under the following circumstances:

1) program outcomes are not satisfactory;

2) there is not a sufficient demonstrated need for the subsidies;

3) the program is not being administered efficiently nor effectively; or

4) other problematic program issues arise.

19.9 RAISING THE NEXT GENERATION

19.9.1 Overview

The Raising the Next Generation Program (hereinafter referred to as "RNG") provides 50 Section 8 vouchers to very low income persons responsible for raising grandchildren under the age of 18 in the Metropolitan Boston area. The RNG program is targeted to those families who can live independently within the community, but, due to their unique family composition, may need special support services, designed for both elderly persons and young children, in order to achieve and maintain successful tenancies. The RNG program is a unique collaboration between the DHCD, the agency that administers the rental subsidies, and Nuestra Communidad, the agency that coordinates and manages the support services. DHCD's Regional Administering Agencies (RAAs) for the Boston and Greater Boston regions are directly responsible for administering the Section 8 vouchers.

19.9.2 Eligibility

Family Composition

Dependents

Applicant families must include at least one dependent. For the purposes of the RNG program, a dependent is defined as a person, other than the family head of household or spouse, who is under the age of 18.

For the purposes of the RNG program, the dependent may not be the biological child of the head of household. Adoptive children will not be allowed except for those that are part of a Kinship adoption.[5] Foster children will not be allowed except for those that are kinship care placements within the Department of Children and Families system.

Custody of Dependent

To be an RNG eligible family, the head of household must have physical custody of a dependent, which will reside with the head of household. The custody must be of an indefinitely extending term. Custody will be established by:

- Permanent legal custody; or
- Court-appointed custody; or
- Documented and verified residence with the head of household for at least one year, or since birth (for children under the age of one year).

[5] Kinship Adoption is defined as a permanent kinship arrangement under which a relative has become the primary caregiver to a child by legal adoption.

Custody must be verified by:

1. *One* of the following forms of documentation:

- Probate court records
- Juvenile court records
- Adoption decree
- Records from the Massachusetts Department of Children and Families (DCF) regarding foster-adopt/adoption finalization
- Records from DCF regarding foster care/kinship placement

OR

2. *Two or more* forms of the following documentation:

- Massachusetts Department of Transitional Assistance records
- Social Security Administration records
- Massachusetts Department of Public Health records regarding Mass Health or Medical Security plan
- Tax records
- School records
- Letter from private adoption agency or attorney citing kinship-adoption finalization

Those applicant families that are comprised of three or more intact familial generations must be required to provide multiple pieces of documentation.

19.9.3 Outreach

Nuestra Communidad is primarily responsible for conducting all on-going outreach for the RNG program, including but not limited to: creating outreach materials, recruitment of applicants, receiving RNG pre-applications, screening applicants, entering data, making RNG referrals to MBHP, and providing housing referral or housing search and placement services to program participants.. In the event that Nuestra Communidad is unable to provide sufficient referrals MBHP will partner with other community based organizations to identify appropriate referrals.

19.9.4 Waiting List Management & Selection

Waiting List Management

The RNG waiting list will be maintained as a subset of MBHP's HCVP Section 8 waiting list/admissions tracking system and will be maintained by MBHP. The date and time of MBHP's receipt of the completed referral form from Nuestra Communidad will be used when determining the applicant's position on the RNG waiting list. Due to the limited number of RNG subsidies available, the number of referrals from Nuestra Communidad placed on the RNG waiting list will be restricted to 25.

Selection

Selection will be based on date and time of referral.

Upon selection from the RNG waiting list MBHP will conduct a Section 8 eligibility screening including: completion of a Section 8 application; income verification;; citizenship review; CORI check; and verification of family composition.

19.9.5 Appeals

MBHP is responsible for defending its decisions pertaining to the person's eligibility for RNG Section 8 rental assistance. See CHAPTER 17.

19.9.6 Portability

Initial Year In-State Restriction

RNG applicants will be restricted to leasing within the Commonwealth of Massachusetts for their initial year in the program (see 24 CFR 982.353). After the initial year, RNG participants are free to lease outside of the Commonwealth. When such an out-of-state lease occurs, the participant will no longer be tracked as part of the RNG program and the RNG voucher will be available to re-issue provided the receiving agency absorbs the voucher.

Transfers

If an RNG applicant or participant moves out of MBHP's region, the receiving RAA must absorb the participant with an HCVP voucher if one is available. When such an out-of-region lease occurs, the applicant or participant will no longer be tracked as part of the RNG program and the RNG voucher will be available to re-issue provided the receiving RAA absorbs the voucher.

19.9.7 Monitoring

Terminations

Terminations will be processed in accordance with HUD and DHCD requirements for the Section 8 HCVP as described in 24 CFR Section 982 Subpart (L) and this Administrative Plan.

Changes in Family Composition

After a subsidy is issued, Nuestra Communidad will inform MBHP of any known changes in the family's situation or composition, such as the permanent removal of child(ren) from the household.

If there is a change in family composition that makes the family ineligible for the RNG program, MBHP will make an effort to absorb the current voucher into its conventional Section 8 voucher portfolio. If MBHP is successful at absorbing this subsidy, a RNG voucher will be made available to another RNG eligible family. If there is no current subsidy available the participant will retain the RNG subsidy until a regular voucher becomes available.

DHCD Program Oversight

DHCD reserves the right to waive any RNG eligibility criteria and/or RNG program policies, if needed. DHCD also reserves the right to periodically conduct reviews and audits of participant client files as related to eligibility and housing.

Reduction or Termination of Subsidies

DHCD reserves the right to reduce or terminate the number of Section 8 RNG vouchers made available through the RNG program under the following circumstances: 1) the program outcomes are not satisfactory; there is not a sufficient demonstrated need for the subsidies; 2) the program is not being administered efficiently nor effectively; or 3) other problematic program issues arise.

19.10 VETERANS HOUSING VOUCHER PROGRAM

19.10.1 Overview

This program is administered in cooperation with the Department of Veterans Affairs (VA), and assists homeless veterans with disabilities and/or severe psychiatric and/or substance abuse disorders. Services may include: housing search assistance; community-based management services and outpatient health services. Not all applicants may receive services. Application is by referral only from the VA Medical Centers (VAMC), the Massachusetts Department of Veterans' Services, and the Department of Veteran's Services provider agencies.

The Veterans' Housing Voucher Program (hereinafter referred to as "VHVP") has a limited number of Section 8 vouchers available for very low-income, homeless veterans with disabilities or psychiatric or substance abuse disorders. The VHVP is an integral part of the Commonwealth's housing continuum that provides permanent housing for homeless persons. Effective October 2006 this program was expanded statewide.

19.10.2 Eligibility

Applicants must meet all of the following:

Veteran

An applicant must be an honorably discharged veteran.

Homeless

An applicant must have been either living in a shelter, in a transitional housing program, or on the street for at least 30 days.

Disability or Psychiatric or Substance Abuse Disorder

- An applicant must have a disability which can be verified in accordance with CHAPTER 7; or
- Applicants must be diagnosed with either a psychiatric or substance abuse disorder; and
- Applicants must be psychiatrically stable with no incidence of violence within the past year.

Verification of Eligibility

Veterans' service providers are responsible for ensuring that all referrals to the VHVP meet these eligibility criteria at the time of referral. Upon selection from the waiting list, the RAA will verify eligibility for all other Section 8 requirements. Due to the length of time an applicant may be on the waiting list, the RAA may need to reconfirm eligibility with the referring agency.

19.10.3 Outreach & Referrals

An RAA will conduct outreach to regional Veterans' Services Providers when vouchers are available and there are an insufficient number of applicants on the VHVP waiting list.

Admission to this program is by referral only from the Massachusetts Department of Veterans' Services, the VA Medical Centers, and Department of Veterans' Services provider agencies such as the Veterans Benefits Clearinghouse, Inc. and the New England Shelter for Homeless Veterans. These agencies must refer VHVP-eligible applicants to the appropriate regional DHCD RAA by submitting a "Referral Form/Certification of Eligibility". A complete list of veterans' services providers is posted on the Veterans' Services website (go to Mass.gov and click on Resident > Veterans > Housing > Shelter & Transitional> List of Providers).

19.10.4 Waiting List Management & Selection

A regional VHVP waiting list is maintained by each RAA. Applicants are placed on the VHVP waiting list by the date and time the referral is received. If a referral is received by FAX, the date/time that the FAX was received may be used when entering the applicant onto the waiting list. Incomplete referrals will be returned to the referring agency by the RAA. An applicant will not be placed on the VHVP waiting list until the referral form is complete.

Due to the limited number of VHVP subsidies available, the number of referrals placed on a regional waiting list will be restricted to 25. If the regional maximum has been reached, the RAA waiting list manager will return the referral form to the provider agency and will not place the applicant on the waiting list. If an RAA receives a referral for an applicant that lives outside of its region, the referral should be returned to the referring agency with instructions on where it should be sent.

If a VHVP voucher is available and there are no applicants on the VHVP waiting list the RAA may issue the voucher to the next eligible applicant on the RAAs HCVP waiting list. The RAA must track these vouchers and make a VHVP voucher available when a VHVP eligible applicant is referred.

<u>Housing Search</u>

The RAA will refer applicants to its regional Housing Consumer Education Center (HCEC) to assist in housing search. Where available, applicants will have access to the RAA's Resource Room which provides listings of available units, a computer to access listings on the Internet, local newspapers, and a telephone applicants can use during housing search.

19.10.5 Appeals

Appeal procedures will be utilized as set forth in CHAPTER 17.

19.10.6 Portability

Initial Year In-State Restriction

VHVP participants must reside in Massachusetts for their initial year in the program (see 24 CFR 982.353).

Transfers

If a VHVP applicant or participant moves out of the initial RAA's region, the applicant or participant must be absorbed by the receiving RAA with a VHVP voucher if one is available. If a VHVP voucher is not available, the receiving RAA will temporarily add one VHVP voucher to its allocation. The initial RAA will simultaneously lose one VHVP voucher from its allocation.

When a VHVP voucher becomes available at the receiving RAA, the receiving RAA must absorb the participant and inform the initial RAA. Both the initial and receiving RAAs will return to their original allocations. This procedure will prevent over-issuance of VHVP vouchers and will maintain regional allocations. The initial and receiving RAAs must report all VHVP transfers on the quarterly report.

19.10.7 Reduction Or Termination Of Subsidies

DHCD reserves the right to reduce or terminate the number of VHVP vouchers made available through the program under the following circumstances:

1) program outcomes are not satisfactory;

2) there is not a sufficient demonstrated need for the subsidies;

3) the program is not being administered efficiently or effectively; or

4) other problematic program issues arise.

19.11 BOSTON CONSENT DECREE

Now referred to as the Community Choice Initiative (CCI), this Consent Decree requires appropriate actions to be taken to outreach to the under-serviced program-eligible Black population in the City of Boston.

19.12 HOLYOKE CONSENT DECREE

This Consent Decree requires appropriate actions to be taken to outreach to the under-serviced program-eligible Hispanic population in the City of Holyoke.

19.13 FAMILY SELF-SUFFICIENCY PROGRAM

19.13.1 Overview

The Family Self Sufficiency Program (FSS) helps eligible families achieve economic independence and self-sufficiency over a five year period. The goal is to eliminate the participant's need for public assistance and enhance their ability to achieve homeownership, if desired. PHAs work with the public and private sectors to create a workforce enhancement program where participants receive training and counseling such as skill building, job training and educational opportunities, and referrals to other ancillary supports such as child care and transportation providers.

A five-year "Contract of Family Participation" is tailored for each participant. This contract outlines the participant's goals and describes the various work-related activities in which the participant agrees to participate. The participant is allowed to modify their goals as they gain both work experience and more perspective on their future.

As the participant's income and rent share increases, an escrow account is established by the PHA to set aside funds for the participant's use at the end of the program. Upon successful completion of the program, the participant can use these funds for any purpose, such as homeownership, starting a business, paying off loans, or going back to school. The participant is also able to access their escrow funds during the five year contract term as long as it is for work-related purposes, such as paying car insurance, buying a uniform or enrolling in a job-related course. Generally, midterm use of the escrow is limited, in order to ensure that funds are available for the participant when they have completed the program. The escrow funds are available to those participants who are employed and no longer have a need for public assistance. However, successful FSS graduates are still eligible to receive housing assistance.

The FSS Program is available only to current HCV program participants in good standing.

Each RAA administering the Section 8 Housing Choice Voucher program will establish and operate the Family Self-Sufficiency (FSS) Program in accordance with HUD regulations. The mission of the FSS program is to assist enrolled families by maintaining an FSS Program which provides case management and peer support, coordinates with local resources and services needed by FSS participants, and offers concrete incentives, such as the FSS escrow account, to encourage families to set and achieve their short and long term goals toward employment and economic self-sufficiency. The size of each RAA's FSS Program will be established by DHCD, with the overall state-wide program size to reach or exceed the HUD-approved program size of 679 participants; this program size represents DHCD's commitment to maintain program size and universal accessibility even though QWHRA legislation passed in 1998 provides the option for PHAs to reduce their mandatory program size. Each RAA will establish a coordinating committee representing local stakeholders and resource-providers to support the success of the program and its participants.

19.13.2 Outreach/Eligibility/Assessment/Enrollment

All families participating in the Section 8 Housing Choice Voucher program operated by the regional administering agencies (RAAs) under subcontract to DHCD are eligible to enroll in the

FSS program administered by the RAA for their region of residency. Participants in DHCD's JOBLink Welfare to Work Housing Voucher Program are strongly encouraged to enroll in FSS to increase the supports and benefits available to the family. Each RAA will establish procedures to ensure that eligible families are informed about the program, offered the opportunity to enroll on a voluntary basis, offered a thorough family and employment development assessment, and assisted in identifying employment and other self-sufficiency goals for the five-year participation period.

19.13.3 FSS Contract Of Participation and Individual Training And Service Plan

A family enrolls in the FSS Program, with all rights and responsibilities attached thereto, by entering into an FSS Contract of Participation with the RAA, by signing the Contract as set forth by the U.S. Department of Housing and Urban Development (HUD), and subject to all applicable regulations. As a required attachment to the FSS Contract of Participation, the family head of household also signs the FSS Individual Training and Service Plan (ITSP), using the HUD-approved format, which outlines the steps that the participant will take during the contract period to meet their goals and the program requirements of working toward, obtaining, and maintaining suitable employment and becoming independent of all forms of welfare assistance (as defined by HUD for the FSS program) at least twelve months prior to the end of their contract period. The FSS ITSP may by amended by mutual agreement between the participant and the FSS program, with such changes made in writing and signed, then becoming the required attachment to the FSS Contract of Participation. The FSS Program may assist other family members on an informal or formal basis, but they will not have an ITSP.

19.13.4 Program Benefits and Roles and Responsibilities

Each RAA will establish an FSS Escrow Account; with subsidiary ledgers to track FSS Escrow Account balances applicable to each participating family. FSS families are eligible for escrow account credits when the family's income increases due to increases in earned income that result in an increase in Total Tenant Payment (or, for voucher holders, an increase in the amount which is 30% of monthly adjusted income). Each annual or interim reexamination for an enrolled family will be examined to determine if the family will receive escrow credit. In keeping with all HUD regulations governing the FSS Escrow Account, the RAA will be responsible for depositing escrow credits and earned interest in proportion to the family's escrow balance on a regular basis, making interim disbursements to participants as appropriate, and providing account activity information to FSS participants. Interim escrow disbursements may only be made with RAA approval provided that:

- The family is in good standing;
- The RAA determines that the family has completed one or more interim goals specified in the FSS Contract of Participation;
- The family needs a portion of the FSS escrow account for purposes that are consistent with the goals established in the Contract of Participation including work-related, job training, education, credit repair and/or other activities that support a family's effort to achieve self-sufficiency.

FSS staff will provide technical assistance and support, information and referral, and program activities (such as workshops, peer groups meetings, recreational events, etc.) to participants throughout their FSS participation in order to assist the family in meeting their goals. It is to be expected that the types and level of assistance will vary over time, depending on each family's situation. The FSS Coordinator will establish program expectations around communication methods and frequency in order to maintain regular contact with participating families; beyond this, it is the role of the family to initiate contact if they feel that they need additional services, resources, or support.

In order to maintain good standing in the FSS Program, with all attending program benefits, the participating family must remain in compliance with all terms of the FSS Contract of Participation, which includes the ITSP and, as outlined in the FSS Contract of Participation, their residency lease. The RAA will establish procedures for addressing situations in which a family is not in compliance with the FSS Contract of Participation. Corrective actions could include termination of the family's FSS participation (including forfeiture of any escrow account). A family's participation in the Section 8 Housing Choice Voucher Program will not be terminated solely for failure to comply with the FSS Contract of Participation or FSS program requirements.

19.13.5 Relocating with FSS

As established in the FSS Contract of Participation, the family must live in Massachusetts at least twelve months from the effective date of the Contract. A family that is enrolled in the FSS Program through one RAA may relocate to another region within Massachusetts and immediately continue their participation and FSS Contract of Participation through the RAA in the new region throughout their contract period. A family that has resided in Massachusetts for at least one year after enrolling, and now seeks to relocate out-of-state may be eligible to transfer their FSS participation to the housing authority/agency in the new location, subject to the receiving authority's policies and in keeping with HUD regulations governing FSS participation transfers. FSS staff will assist the family in investigating their FSS options when considering a portability move in order that they family may make an informed choice at the time.

19.13.6 FSS Completion

An FSS family will successfully complete its participation, and be eligible to receive the amount in its FSS Escrow Account, less any amounts owed to the RAA or DHCD, when it has met the conditions established in the HUD FSS Program regulations. In most cases this will occur when the family is in good program standing, has come to the end of the contract period, and has met all goals outlined in the original or revised ITSP (including independence from welfare assistance for the prior twelve months). A family may request to be determined to have successfully completed their FSS participation prior to the end of their contract period, and if the RAA determines that they have met the requirements for successful completion they will be eligible to graduate and receive their escrow account funds.

In keeping with the FSS Program's goal to assist families over time, a family may receive post-graduation support from the FSS program if requested, subject to staff capacity and availability. A family may be eligible for re-enrollment in the FSS program, after successful or unsuccessful participation, with the RAA reserving the right to decline re-enrollment of a family that left or

was terminated due to prior non-compliance. The RAA may also require certain waiting periods prior to re-enrollment and/or being placed on a waiting list for FSS enrollment, especially if the RAAs program is at or above capacity, in order to ensure that families who have not yet had the opportunity to participate in FSS are afforded that opportunity.

19.13.7 Affirmatively Furthering Fair Housing

DHCD will administer its HUD Family Self-Sufficiency Program in accordance with all applicable Fair Housing and Equal Opportunity laws, HUD's Limited English Proficiency (LEP) guidelines, and in such a manner as to affirmatively further fair housing. DHCD will do this by taking the following steps as they relate to personnel, participants, and the overall operation of its FSS Program and associated activities:

1. DHCD administers its HCVP and related programs through a network of regional administering agencies. In selecting, contracting, and monitoring these agencies, DHCD will ensure that the subcontractors can meet their obligations to affirmatively further fair housing in their respective FSS Programs. Specifically, these subcontractors will be expected to:

- Operate in physical spaces (main office, satellite offices or other off-sites locations used for FSS purposes) which are accessible and comply with Americans with Disabilities Act (ADA) requirements.

- Facilitate effective communication with applicants, beneficiaries and members of the public through practices which ensure that interested persons (including those with impaired vision or hearing) can obtain information concerning the FSS Program, including but not limited to utilization of TDD/TTY equipment, providing key FSS materials in a variety of languages appropriate to its client base, and taking reasonable steps to provide or allow for interpreters as needed.

- Conduct employment search processes for available FSS staff positions which comply with all equal opportunity laws and affirmatively further fair housing, including, but not limited to advertising available positions widely in the community.

- Market the FSS Program to all eligible voucher-holders, including persons with disabilities and persons with limited English proficiency.

- Offer and/or respond to requests for reasonable accommodations in order to allow persons with disabilities to participate in the FSS Program.

- Support FSS applicants and participants in guaranteeing their rights to fair housing by providing them with information, materials, and referrals relevant to fair housing laws and protections, agencies, and discrimination complaint procedures (state and federal) annually and as requested.

- Comply with HUD and DHCD's reporting requirements regarding the PIC data system and HUD-50058 as a comparable form to meet OMB's Standards for the Collection of Racial and Ethnic Data.

2. DHCD will maintain records that these steps have been taken, and gauge their impact from, the following:

- Accessible Facilities: Addresses of facilities used for FSS purposes together with notation that they meet accessibility requirements.

- Effective Communications: Telephone numbers and names of trained operators of TDD/TTY equipment at each subcontractor; copies of key FSS documents in appropriate languages available at each subcontractor; copies of subcontractor policies and notices regarding provision and/or allowance of interpreters together with records of any such services requested by FSS applicants or participants and the response of the subcontractor to the request.

- Employment Search: copies of advertisements for available FSS staff positions; copies of subcontractors' equal employment opportunity policies and procedures.

- FSS Outreach: copies of materials, notices, or other FSS outreach materials together with distribution lists of the same.

- Reasonable Accommodations: copies of standard language used by subcontractors to offer formal or informal accommodations to FSS applicants and participants; copies of all written requests for reasonable accommodations as they relate to the FSS program together with written records of the subcontractor's responses.

- Fair Housing Information: copies of information, materials, and referrals relevant to fair housing laws and protections, agencies, and discrimination complaint procedures (state and federal) which have been provided to FSS participants by each subcontractor.

- Collection of Racial and Ethnic Beneficiary Data: DHCD ensures subcontractor compliance with HUD-50058 and PIC reporting requirements as a basic contractual obligation, therefore this information will not be maintained separately for this FSS purpose, but will be available for analysis as needed.

3. DHCD will require attendance by all subcontractors at meetings to be held at least once per calendar year to promote and review these policies and procedures to affirmatively further fair housing in its HCV FSS Program.

19.14 HUD-VETERANS AFFAIRS SUPPORTIVE HOUSING (VASH-HUD) PROGRAM

Note: VASH is a non-MTW program.

19.14.1 Overview

The HUD-VASH (VASH) program combines HUD Housing Choice Vouchers for homeless veterans and their families with case management and clinical services provided by the US Department of Veteran Affairs (VA) at its VA Medical Centers and their community based outreach centers (CBOC). PHAs are invited to administer VASH vouchers in partnership with a prescribed VAMC/CBOC (hereinafter referred to as VAMC.) The VAMCs refer homeless veterans to their partner PHA after the VAMC has determined that the veteran has met its criteria for independent living and the veteran has agreed to accept VAMC case management services for as long as their VASH case manager determines such assistance is required.

19.14.2 HUD Requirements

The vouchers issued under HUD-VASH are governed by 24 CFR 982 and other applicable HUD documents, with the exception of certain key requirements that HUD has waived. The controlling documents defining these modifications include Federal Register Notices dated May 6 and 19, 2008 and March 23, 2012; PIH Notices 2008-37 on reporting requirements; PIH 2009-11 on project-basing VASH vouchers, and any other documents, as they may be issued by HUD. HUD-VASH documents are located on HUD's VASH website.

19.14.3 MA Statewide VASH Working Group

DHCD convened a statewide VASH working group in the spring of 2008, shortly after Congress resuscitated the VASH program from an earlier iteration funded in the mid-1990s. (This VASH program administrative plan is not applicable to that program.) The working group includes multiple VASH stakeholders, including all MA participating VAMCs (including the Providence, RI VAMC, which handles communities in Bristol County and the Cape and Islands), VASH PHAs, VA staff, the Commonwealth's Department of Veterans Services (DVS), veterans' service providers and other participants. This group broadly disseminates information about the program to MA's various veteran constituencies. It serves as a forum for on-going discussions about the operation and challenges of the VASH program and as a clearinghouse for sharing information among the various stakeholders from both the VA and housing sectors. The working group developed and maintains an up-to-date brochure that lists all key contacts at both the VAMCs and PHAs.

19.14.4 Outreach

The VASH program is a targeted referral program. All veterans and their advocates seeking information on selection to the VASH program should be referred to a participating VAMC. RAAs responding to requests for information should attempt to identify where the veteran wants to live and make the referral to the participating VASH VAMC whose catchment area serves that community. Generally, VAMC catchment areas include communities that are located within approximately one hour of the VAMC. It is important to emphasize that the VAMC will not be able to refer a veteran to the appropriate DHCD RAA unless and until the VAMC has

accepted the veteran onto their VA-VASH program and determined that the veteran meets the VAMC medical and clinical determination of eligibility for a voucher

19.14.5 Referral to DHCD

DHCD serves as the central contact for all veteran referrals from the VAMCs. The VAMC will e-mail or fax all relevant information about the veteran, other than the veteran's social security number (for privacy and security reasons) to DHCD's VASH Coordinator. This policy assumes that the VAMC has verified the SSNs for homeless veterans and their family members by viewing an original document issued by a federal or state government agency, which contains the name of the individual and the SSN. Certificates of Release, Discharge from Active Duty forms or VA-verified Application for Health benefits may be used as verification of SSN for homeless veterans. Upon receipt of a VAMC referral, DHCD will enter the data about the participant into the DHCD VASH database, as well place the veteran on its statewide waiting list. DHCD will then refer the veteran to the appropriate RAA. Once the referral is made, the RAA will be asked to quickly arrange verification of the veteran's voucher eligibility status, issue the VASH voucher and perform a standard voucher briefing.

The DHCD VASH Coordinator will make every effort to notify the RAAs of VASH referrals within a maximum of two working days. The VAMC can informally notify the RAAs of pending referrals, so that RAA VASH staff can tentatively establish a date and time to screen for eligibility, voucher issuance and briefing. However, these activities cannot take place unless and until DHCD has received the referral information directly from the VAMC and formally notified the RAAs to proceed.

19.14.6 VASH Voucher Eligibility

After the VAMC has performed a clinical eligibility screening for the VASH program, has referred a veteran to DHCD's VASH Coordinator and the veteran's name has been entered onto the waiting list, the RAA will be asked to perform a HUD-VASH eligibility screen. HUD-VASH voucher eligibility is limited to only two criteria:

1) Income (up to 80% of AMI) for the household size; and,

2) Neither the veteran (nor any member of the veteran's household) is listed on a lifetime registry of sex-offenders. The RAA must issue a voucher to any referral that meets these two requirements. The RAA should use the Commonwealth's Sex Offender Registry Information (SORI), available on-line, to make the initial determination about this particular criterion. SORI data tends to be somewhat outdated; however, if it indicates that the veteran (or a member of the veteran's family) is not on this list, and the household is otherwise income eligible, a voucher must be issued. Immediately upon issuing the voucher, the RAA should perform a CORI check on the veteran and all members over 18 in the veteran's household. The CORI will have more up-to-date sex offender information. Results of the CORI –but not the actual CORI itself – should be shared with the veteran's case manager (see 19.14.8 Tenant Authorization to Release Information). The case managers have requested to learn about the CORI results in order to better tailor their treatment plan based upon any information that the veteran may not have shared with them and would be relevant. If the CORI indicates that the veteran meets the standard for placement on the life-time registry of sex offenders, the voucher will be

immediately terminated. If a member of the veteran's household is determined to meet the sex offender status, that person will not be allowed to remain with the household.

19.14.7 Voucher Issuances and Briefings

Whenever practical and feasible, the RAA should arrange with the VAMC to perform issuances and briefings in a group setting, on-site, at the VAMC. Often, the VAMC-VASH program utilizes group work with their veterans as part of their therapeutic treatment protocols. Performing the briefing in group settings builds on this work. It is an excellent opportunity for both the case managers and the veterans to engage with the RAA staff in understanding how the HCVP operates. As well, everyone has an opportunity to share in a question and answer session with RAA staff so that everyone is getting the same information. Performing this work at the VAMC also allows the case manager to access information to complete an eligibility screen that might not otherwise be brought to the RAA's office. The initial term for a VASH Voucher will be 120 days.

19.14.8 Tenant Authorization to Release Information

In addition to the HUD Authorization to Release form, the veteran should be asked to sign the VASH Tenant Authorization to Release Information form at the initial briefing and at each annual recertification. This form will allow the RAA to share information about all voucher-related activities related to the veteran with the veteran's case manager. As well, it allows the case manager to share information with the RAA about those matters that may have an impact on the veteran's housing status. The RAA and the case manager should work out an agreement about which notifications the case manager would like to receive at the beginning of the veteran's participation on the HUD-VASH program. For example, the case manager may determine that they would like copies of all notifications regarding scheduling inspections, changes in rent shares, annual recertification notifications, etc. The purpose of this requirement is to make sure that the case manager can anticipate if a housing-related notification might be misunderstood or confusing to their client, and they can intervene in advance to assure that the veteran can comply with whatever may be requested.

There will be circumstances where certain notices are generated by staff not working directly on the VASH program and the potential exists that the case manager may not receive a copy. The RAA Leased Housing Director and their VASH staff must pay careful attention to this requirement and identify a process to assure that these notices can be simultaneously delivered to both the veteran and their case manager.

19.14.9 Privacy Identifier

The RAA should discuss with their partner VAMC the VAMC's requirements for exchanging written/fax/e-mail information about a veteran of a private nature. On certain documents, some VAMCs refer to their veterans by the first initial of their last name and the last four digits of the veteran's social security number. This decision should be made jointly between the VAMC and the RAA.

19.14.10 Ineligible Housing Exception

HUD–VASH families will be permitted to live on the grounds of a VA facility in units developed to house homeless veterans. Therefore, 24 CFR 982.352(a)(5), which prohibits units on the physical grounds of a medical, mental, or similar public or private institution, is waived for that purpose only.

19.14.11 Initial Inspection

After the issuance of the VASH voucher, and upon receipt of a Request for Tenancy Approval(s) (RFTA), the RAA inspection staff should make every effort to fast track the inspection process. This may mean making some adjustments in the normal inspection schedule, for both initial and any required reinspections. DHCD wants to assure that this particular population of homeless veterans is afforded the opportunity to move into a suitable unit as soon as possible.

19.14.12 Portability

VASH veterans are free to move to other communities, both within MA and to other parts of the country, provided there is a VASH VAMC that will agree to accept the veteran onto their VA-VASH program. This decision is made exclusively by the VAMC, not the PHA.

Within MA – to another RAA

DHCD VASH veterans may move to any part of the Commonwealth, provided all parties agree that the VASH veterans will receive case management services from any of DHCD's partner VAMCs serving MA veterans (Bedford [Bedford VAMC, Lowell CBOC, Haverhill CBOC], Northampton [Pittsfield CBOC], Providence, R.I. [Hyannis CBOC], Boston [Causeway St. CBOC, and Brockton CBOC]), and the community to which they want to move is within a participating partner DHCD VAMC's catchment area. The appropriate RAA will assume all leasing activities and VASH reporting requirements. The issuing RAA must notify the DHCD VASH Coordinator, by e-mail with a copy to the receiving RAA, when a VASH veteran moves to another RAA, noting the effective date of the transfer and any other information required to comply with HUD and DHCD transfer reporting criteria.

Within MA – to another MA VASH PHA

DHCD VASH veterans may move to those parts of the Commonwealth not covered by a partner DHCD VAMC, provided the community they wish to relocate to is covered by another MA VAMC (or, Providence, R.I.) This VAMC must be willing to provide case management services and their respective partner PHA must be able to absorb the DHCD VASH veteran onto their VASH program.

Out-of-State

DHCD VASH veterans may only port out-of-state if the community where they want to relocate to is located in a region that is served by a VASH VAMC that has agreed to accept the veteran onto their VASH program and their partner VASH PHA has an available VASH voucher that will allow them to absorb DHCD's VASH veteran onto their respective VASH program. Likewise, for an out-of-state VASH veteran wishing to relocate into MA, the out-of-state VASH VAMC must determine which PHA administers VASH vouchers in MA, and what VAMC they have been

partnered with. (Some small numbers of communities in MA are not covered by any VASH VAMC program. Information in this regard can be obtained by contacting the HUD-VASH Coordinator at the VISN I office, 781-687-3436.) On DHCD's VASH program, it's appropriate VAMC partner will determine if they can accept the out-of-state VASH transfer onto their VASH program, and, if they do make this determination, they will contact DHCD's VASH Coordinator to implement the transfer process to the appropriate RAA. The Coordinator will advise the VAMC which RAA will manage the transfer.

If an out of state (or in-state, in some instances) VAMC asks a partner DHCD VAMC if they can provide case management services *and* a VASH voucher to one of their VASH voucher holders who wants to relocate to their catchment area, and the VAMC responds affirmatively, the VASH voucher must be absorbed. *This is a decision that the VAMC makes, not the RAA.* The RAA has to comply with all provisions found in HUD Notice PIH-2011-3 and FR 5596-N-01 for absorbing vouchers. The RAA will issue the VASH voucher only after they have received the following paperwork from the "issuing" VAMC's partner PHA: (a) HUD Form-52665 "Family Portability Information"; and (b) most recent PIC-50058 records. *The RAA is not permitted to issue the voucher until all the required documentation is received.* RAAs are reminded that they need to take care to record this action in PIC50058 accurately, as follows: When the receiving RAA completes the PIC-50058, the RAA must complete a Type "10" Issuance-of -Voucher and fill in Line 2n with "VASH." Thereafter, upon successful lease-up the action type that must be recorded on line 2a is "1" for a new admission (a family that is new to the HCV program) or "4" for a portability move-in (a family that was previously leased up in the jurisdiction of the initial PHA). The distinction between a "new admission" and a "portability move-in" is important for DHCD and HUD monitoring and review purposes. Again, care must be exercised to always have Line 2n populated with "VASH" to pinpoint this special program.

19.14.13 Reporting

PIC Reporting

All information about VASH veterans must be entered into line 2n on HUD's PIC50058 database for issuance-of-voucher, admission, reexaminations, and portability actions.

DHCD VASH Reporting

All RAAs administering VASH vouchers must maintain an up-to-date database of key activities of each veteran (attached.) This information should be shared with the VAMC and DHCD's VASH coordinator on a regular basis, and at a minimum, at the beginning of each fiscal year quarter.

19.14.14 Absence from Unit

A VASH participant may be absent from the unit for a maximum of six months, provided their case manager provides a written statement to the RAA indicating that this absence is required for therapeutic reasons and indicating a likely return date. A copy should also be sent to the veteran's landlord. This notice should not include any personal information about the circumstances necessitating this absence. During this period, the tenant must continue to pay his/her share of the rent and the RAA will do likewise.

Recertifications During an Absence from a Unit

If the veteran is scheduled for an annual recertification during an absence from the unit, the RAA should make sure to send the veteran's case manager all the required notifications *well in advance* of the required completion date. It will be the case manager's responsibility to obtain all the necessary documentation from the veteran in order to complete the recertification. In exceptional circumstances where this activity would not be possible, the RAA should recertify using the same information from the prior year, and make all adjustments retroactively upon the veteran's return to the unit.

19.14.15 Terminations and Appeals

VASH vouchers are only awarded when the VASH participant agrees to comply with case management services as provided through the VAMC. If the VAMC service provider has terminated the participant's case management services due to the VASH participant's failure to comply with VASH program requirements, then the rental subsidy voucher will also be terminated and the termination will not be reviewable by the RAA or DHCD. Each VAMC must establish a multistep process for terminating a participant from VASH, including a right to appeal the VAMC's determination before the VAMC finalizes the determination. At a minimum this multistep process must comply with the requirements of the HUD-VASH Operating Requirements published in Volume 77, Number 57 of the Federal Register on March 23, 2012, the supplement to the HUD-VASH Operating Requirements published in the Federal Register on May 6 and 19, 2008, and 24 CFR 982.554 or 982.555, as applicable. When the participant has exhausted all levels of the VAMC appeal process, the case manager must notify the RAA that the participant has been terminated from the VASH program. The RAA must then notify the participant that the RAA is mandated to terminate the VASH voucher effective thirty (30) days from the date of notification and the rental subsidy will stop at that time.

For terminations not initiated by the VAMC, VASH participants are subject to termination and appeal processes under the same conditions as all other HCVP participants. (For example, the RAA may initiate a termination for a program violation such as engaging in criminal activity, program fraud, or serious lease violations.) The provisions of CHAPTER 13 Section 13.2 Grounds for Termination of Assistance are applicable.

19.14.16 Deployment

Periodically, a VASH veteran may be deployed for active duty for a maximum 12-month period of time. The VASH voucher should be frozen for this period of time and the lease and contract terminated, unless the veteran will have remaining family residing in the household.
There may be some instances where the veteran may arrange for family or friends to care for their children, with full rights of guardianship. These arrangements will be approved by the case manager. The owner shall be notified of the temporary change in household composition. In these circumstances, temporary family or other approved persons serving in this capacity will be treated as analogous to a "live in aide" and their income will not be counted toward the household's overall income. When the veteran returns from the deployment, these persons will have no right to the voucher, unless the veteran elects to make them a full time member of the household and the owner also approves, in which case their income would be included.

When a veteran is deployed, their income will be increased. Immediately prior to the deployment, the veteran should re-verify their current household income, establishing their monthly rent contribution for the year they are deployed. If the veteran will have other family members residing in their unit while he or she is away, the veteran will still be responsible for their share of the rent. Because their increased income during the 12 month deployment will stop upon their return from active duty there will be no consideration of the increased deployment pay level for purposes of an interim reexamination. Accordingly, there will be no need to make an adjustment to the tenant rent share based on this deployment pay level increase. It will be necessary to perform the annual recertification of income when the veteran returns; however, DHCD will be flexible in the resetting of the annual reexamination calendar.

19.14.17 VASH Participant No Longer Needs Case Management

If the family no longer requires case management the family is still eligible for rental assistance under the VASH HCV program and there are no portability restrictions. Normal portability rules apply. When completing the HUD-50058, the family will continue to be coded "VASH" on line 2n unless the initial PHA issues the family a regular voucher, in which case the code will no longer apply.

PHA Policy
If case management is no longer needed and the family is in good standing the family will continue as a participant on the VASH program.

19.15 PROJECT-BASED ASSISTANCE FOR PERSONS LIVING WITH HIV/AIDS

19.15.1 Overview

The Project Based Rental Assistance for Persons Living with HIV/AIDS Program (hereinafter referred to as "PBRA AIDS") provides Section 8 housing assistance to very low-income persons, who are either HIV positive, have AIDS, or at high risk for HIV infection and would benefit from HIV related counseling and services. This program is administered only in Boston. PBRA AIDS is an integral part of the Commonwealth's housing continuum that provides permanent housing for persons with disabilities.

Project	Management	Aids Service Organization	Unit no. & size
Mass. Ave., Boston	Renwood PWA L.P.	AIDS Action	7 SRO
Edgewood, Roxbury	Renwood PWA L.P.	Dimock	1 3BR, 2 4BR
Walnut, Roxbury	Renwood PWA L.P.	Dimock	8 2BR

Local AIDS service organizations (ASOs) provide intake, assessment, and linkage to other service providing agencies throughout the Commonwealth. Persons accepted into the program also receive supportive services from the ASOs including case management, substance abuse and relapse prevention support, mental health support, housekeeping assistance, and assistance in arranging for respite care, day care, and transportation.

19.15.2 Eligibility

HIV/AIDS

At least one person in a household must be either HIV positive or diagnosed with AIDS. The ASO is responsible for determining that a person meets the aforementioned eligibility criteria.

Supportive Services

All PBRA AIDS applicants must be able to utilize supports and/or services provided by local ASOs, which will screen applicants and conduct intake interviews.

19.15.3 Ongoing Outreach

RAAs and the local ASOs will all conduct outreach to local aids organizations and/or local substance abuse programs to identify eligible applicants for the PBRA AIDS program.

19.15.4 Wait List Management & Selection

Each ASO will maintain the PBRA AIDS waiting list for their specific project site. When a vacancy becomes available the respective ASO will refer the applicant at the top of their waiting list to the respective RAA. The RAA will enter the referral onto DHCD's waiting list/admissions tracking system by the date and time the referral is received.

19.15.5 Appeals

RAAs are responsible for defending its decisions pertaining to the person's eligibility for the PBRA AIDS program. Section 8 appeal procedures will be utilized. See CHAPTER 17.

The ASOs are responsible for informing applicants of the grievance procedure employed by their respective agencies. These grievance procedures should detail a mechanism for defending service eligibility determinations including informal hearing procedures.

19.15.6 Grant Compliance

Each RAA must ensure that all PBRA AIDS units are filled by other eligible applicants upon turnover.

RAAs will participate in all required evaluations, and will be prepared to maintain additional data on these clients, as required by HUD and/or DHCD.

DHCD is responsible for coordinating all contracts and contacts with HUD regarding the PBRA AIDS Program.

19.16 EXPIRING USE PRESERVATION INITIATIVE

19.16.1 Overview

The Expiring Use Preservation Initiative is designed to ensure the long term affordability of expiring use developments. This initiative will apply only to certain expiring use developments for which HUD has designated DHCD as the Enhanced Voucher (EV) Contract Administrator and which meet the selection criteria specified in DHCD's Moving To Work Plan. Tenants living in these developments on the conversion date who are eligible to receive an Enhanced Voucher will be offered the choice of receiving either an Enhanced Voucher or a Project Based Voucher (PBV).

Enhanced Vouchers are administered pursuant to HUD's guidance on the use of such vouchers [Currently this guidance is found in PIH Notice 2001-41]. Using its MTW authority, DHCD will apply MTW operating flexibilities to Enhanced Vouchers one year after the voucher is issued provided that these operating flexibilities do not infringe on the protections applied to Enhanced Voucher households pursuant to HUD regulations and notices. Operating flexibilities that may be applied to Enhanced Vouchers include, but are not limited to, biennial recertifications, biennial inspections, rent simplification, and utility allowances. Until the Enhanced Voucher household either moves from the unit or is terminated from the program, they will continue to be subject to the Enhanced Voucher minimum rent policies, including the applicable provisions related to income decreases. Enhanced Voucher income limits will continue to apply to these households.

Tenants in Expiring Use Preservation developments that elect to receive a Project Based Voucher will generally be subject to DHCD's MTW rules; however, DHCD may establish specific policies related to subsidy standards and other areas that will be applicable only to PBV tenants in Expiring Use Preservation developments.

19.17 MOVING TO WORK FAMILY ECONOMIC STABILITY (FES) PROGRAM

19.17.1 Overview

The Family Economic Stability (FES) program serves families in Greater Boston, and is administered by Metropolitan Boston Housing Partnership (MBHP).

The policies and procedures set forth in this plan will achieve two important DHCD objectives:

- To clarify policies and procedures that have been modified over time without appropriate documentation in the administrative plan; and
- To ensure that the economic self-sufficiency goals of this program are met as required by the HUD Moving to Work statutory objectives.

The MTW Pilot programs were approved by HUD in 1998, and have been in place since then. In 2009 the program was changed slightly to strengthen program outcomes. A two year extension period was added, and the homeownership bonus payment was changed. While the original goals of the program—to ensure long-term success in the labor force; to promote and support housing choice for its target population, and to achieve greater cost effectiveness in administering housing assistance program—are still relevant, many of the original program design elements, particularly in the areas of participant support, no longer exist. Therefore, in the 2012 Moving to Work Annual Plan, DCHD requested and received permission to modify the program in order to better serve the participants.

The new program is change and outcome driven, and participants are expected to work closely with program staff on setting and meeting life goals. RAAs have greater flexibility in administering funds to match participants' needs, and greater responsibility to develop partnerships and linkages to supportive services to help participants meet their goals.

This administrative plan will be in effect as of March 1, 2014. All other administrative plans are no longer valid and should not be used for program guidance.

The program contains the following components:

- Rent Subsidy: flat subsidy; time limited – five years, no extensions; flexible amount based on family's goals
- Support Account: up to $1800 a year to support completion of Economic Stability Plan
- Escrow Account: up to $800 per year leveraged by individual savings during the term of the program

Additional features of this program include: a five year time limit on program participation, case management, and work and/or education requirements in order to maintain eligibility.

<u>Program Goals for Participants</u>

- Increased earned income
- Measurable career/employment progress
- Improved credit rating /financial literacy skills
- Increased asset base
- Developed a viable three year housing Stability Plan

19.17.2 Program Components

Rental Assistance

The rental subsidy for program participants is a flat subsidy. Participants who are enrolled full-time in an education or training program with a demonstrable outcome of self-sufficiency wages may receive a higher rental subsidy. The Hot Jobs 2013 report—a triennial survey of the Massachusetts labor market to identify career paths that lead to economic self-sufficiency—may be used as a reference when determining if a particular education or training program meets this criteria.

No portion of rent subsidy shall be saved other than the subsidy from the Stability Escrow Phase in Years 4 and 5. Participants must have a tenant share of rent no less $100 after rent subsidy is paid. RAAs must track the number of participants with a tenant share of $100.

Stability Escrow Phase

In years four and five a fixed portion of rental subsidy dollars will be redirected to an escrow account (resembling the escrow account for participants in the Family Self-Sufficiency Program). Tenant share of rent will increase and the difference in HAP will be deposited into an account maintained by the RAA. Participants must be tenants in good standing to accumulate escrow.

During years four and five of participation in the program, if a participant is still enrolled full-time in an education program and wishes to continue to receive a higher rent subsidy he/she may elect to do so for an additional 9 months, with the approval of DHCD.

Escrow Account:

Each participant is eligible to accrue up to $800 per year in escrow funds. These funds will be leveraged by deposits into savings accounts held by participants, and verified by staff using 3rd party documentation no older than 30 days. Each dollar of participant savings will leverage $4.00 dollars in escrow. These individual savings ($200 per year) must be in the account at the time of completion of the FES program in order to receive the full $800 per year. Total escrow available upon completion of the program is not to exceed $4000.

Escrow accounts are not required, but all participants should be strongly encouraged to open and maintain the required balance in the account. The $200 can be saved in a lump sum (such as through a portion of a tax return) or in regular deposits.

Support Account:

Participants are eligible for a supports budget of up to $1800 per year for expenses related to maintaining employment and continuing education goals as developed in their Economic Stability Plan. Use of the Support Account is not required; however, participants should be strongly encouraged to use the funds to off-set unexpected expenses. Participants must be tenants in good standing in order to access support funds

Participants cannot save unused support funds, so staff are urged to encourage participants to use these funds for the above purposes and unforeseen expenses. The support accounts are intended to facilitate savings, and allow for participants access to as much of the escrow funds as possible. Under certain circumstances, support funds may be accessed under the hardship policy to offset loss of earned income. See Hardship Policy section of this plan. Support funds cannot be used to pay rent arrearages.

DHCD has established the following guidance for the appropriate use of the supports budget. Appropriate uses for the supports budget include but are not limited to:

- Transportation (public transportation, private auto expenses, for working participant(s) and/or children);
- Work wardrobe or uniforms;
- English as a Second Language classes /Adult Basic Education/GED programs or testing;
- Training programs or expenses;
- College tuition or expenses;
- Expenses for professional credentials (licenses, certification, professional insurance, etc.); or
- Continuing education expenses.

For participants with children, support funds may also be used for child care, before or after-school care, summer camp, or other appropriate supports for their children, if these supports are needed to help the participant meet their program requirements.

19.17.3 Moving To Work Demonstration Project Authority, Contracts, and Termination

DHCD's MTW program is operated through the terms and conditions established in its Moving To Work Demonstration Agreement, and any amendments which may be added. DHCD, its subcontracted administering agencies, and MTW participants are bound by all MTW statutory and regulatory requirements regarding operation, modification, and/or termination/transition of this project. Funding for this program is subject to annual review, and dependent upon adequate federal funding for DHCD's entire HCVP portfolio. In addition, DHCD will monitor the program's effectiveness in its primary purpose -- helping participants meet their economic self-sufficiency goals.

19.17.4 Eligibility:

All participants must meet the following eligibility requirements in order to be enrolled in the program. Documentation of compliance with all eligibility requirements must be included in each participant file.

<u>Employment:</u>

- Working at least part-time;
- Imminently employed (offer has been made) and/or with recent work history (within the last 6 months); or
- Enrolled in a full-time job training program with placement and on-going employment assistance.

Demonstrated Commitment to Goals of Program:

- Commitment to work with a variety of service agencies to obtain the supports they identify as needing in order to move forward (One Family Scholars, Career Center Services, vocational counseling etc.) Participants will be required to complete a pre-program workshop prior to joining the program.

Live in Non-subsidized Housing:

RAAs must make a good faith effort to determine if participants are living in subsidized housing of any kind. RAA staff are expected to have a strong knowledge base of subsidized housing programs in their service area.

Income Eligible

75 percent of all participants must earn less than 30% of AMI. All other eligibility requirements of DHCD's HCV program apply to pilot participants as well. All participants must meet the "but for this assistance" threshold – i.e., all participants must require the rental assistance in order to move from "at –risk" and unstably housed to stable and able to actively address education/training deficits to improve their long term economic stability.

Regional Priorities

In Boston, priority is given to families living in homeless shelters. Participants leaving shelter to enroll in the FES program will lose their homeless status.

19.17.5 Outreach and Referrals

Each program site will be required to submit an outreach and referral plan to DHCD prior to enrolling participants in the program. This plan will document how the agency will reach as broad a base as possible to ensure open and available access to the program.

In addition to identifying participants who meet their respective geographic priorities, DHCD expects RAAs to reach out to community colleges, job training programs, community based organizations, faith-based institutions, immigrant services agencies, childcare providers, community health centers, and other widely accessed service providers.

19.17.6 Portability

Within MA

This program is a Moving to Work initiative of DHCD and thus has limited in-state mobility only. A participant who wishes to move to a different community within the service area of the RAA must be able to continue to meet the requirements of their Stability Plan, and the move must be approved by RAA staff prior to changing residences. Participants who move to the other MTW site, will join the new area's program, and be subject to all aspects of that program design, including different rent subsidy payments, support budget and service providers.

Participants wishing to move out of the administering agency's region may only do so with DHCD approval.

At no time can more than 10% of the program participants live outside of the RAA's region. Moving without advance permission of the RAA, except in the case of domestic violence, will result in being terminated from the FES program.

Out-of-State

A participant wishing to move out of state relinquishes all future rental and other financial assistance and support from DHCD. A participant leaving the program in good standing, as determined by DHCD, may be entitled to receive the funds in his or her escrow account leveraged through his or her savings. Good standing includes, but is not limited to, having met the appropriate Stability goals and being a tenant in good standing with his/her landlord.

19.17.7 Termination and Appeals

The RAA program staff will make termination decisions based on the participant's ongoing compliance with the Stability Plan.

- Participants who are not in compliance with their Program Plans will be notified in writing of the violation and will be asked to participate in a meeting with the RAA MTW Program staff to develop a corrective action plan with specific tasks for the participant;
- The participant will be given sixty (60) days to comply with the corrective action plan;
- Should the participant not comply with the corrective action plan there will be a termination meeting with the MTW staff and program director;
- The RAA will provide any participant terminated from the program with the opportunity to appeal this decision directly to DHCD, in order to assure that he or she receives maximum due process. The RAA should indicate that the client may appeal this decision directly to DHCD within fifteen days from the date of the notification. The client should be advised to include any written documentation supporting his/her appeal in their appeal request to DHCD;
- Once the RAA notifies the client the he/she has been terminated, the RAA is required to terminate the rental subsidy effective thirty days from the date of notification and the HAP subsidy will stop at that time;
- Upon receipt of a termination appeal from a client DHCD's hearing officer will request that RAA submit a statement briefly outlining the steps taken to provide the participant with adequate opportunity to maintain their participation;
- DHCD's Office of Chief Counsel will perform a paper review of any appeal under these circumstances and issue a determination as quickly as possible.
- DHCD will pay rent to the owner during the appeals process.

19.17.8 On-Going Considerations

Leasing

Each tenancy will be governed by a lease signed by the property owner and the participating individual. The lease should be the standard form used by the property owner, in compliance

with all applicable laws of the Commonwealth. The lease will have as an attachment the HUD Tenancy Addendum. A copy of the lease will be reviewed by the RAA staff prior to the execution of the abbreviated housing assistance payments contract between DHCD and the property owner that outlines the terms of payment of the rental subsidy, and the owner and DHCD's respective obligations. A copy of the lease and all attachments will be retained in the RAA file.

Required Annual Status Review Meeting

There are no annual or interim re-certifications in this program. Instead, participants meet with RAA staff at initial enrollment, and annually on that date during the program. At these meetings, participants are required to provide third-party verification that they are current on their rent, and will be required to present third-party verification of their income. The RAA will use EIV to verify all reported income. Participants are also required to show third-party documentation of their continued progress in meeting their Stability Plan goals, including, but not limited to, college transcripts, enrollment forms, and other documentation as deemed appropriate.

File Maintenance

RAAs will maintain files in accordance with all appropriate DHCD requirements. In addition, the following program specific documents must be maintained as well.

- Application and documentation of eligibility as defined in Section D
- Copies of documentation of savings account balances
- Copies of documentation for expenditures from support account
- Copies of checks from support accounts and uses of support funds

Rent Reasonableness

There will be no requirement for a "rent reasonableness" certification, nor will DHCD perform any rent reasonableness determinations. RAAs will provide the participant with the latest rent reasonableness data maintained by the housing agency for its Section 8 program, and will encourage the participant to take this information into consideration when selecting a unit.

Hardship Policy

During participation in the Family Economic Stability Program participants may request a hardship waiver if he/she experiences an unanticipated loss of income that is anticipated to last longer than 90 days. This request must be approved by prior to submitting it to DHCD for review. If the request is granted, any unused support funds available that year will be available to pay the tenant share of rent. The Hardship Policy does not allow the support account to be used for rent or utility arrearages. If the hardship occurs in years four or five then the rent subsidy can be restored to the higher level for a period of time not to exceed 90 days. If more than 90 days are needed the RAA must contact DHCD Program staff to discuss next steps with the participant.

Continued Participation

There is no right to survivorship in this program. The subsidy is issued to a head of household, who is an active participant in crafting and implementing the Stability Plan. If a participant leaves the program, either voluntarily or involuntarily, the support for the household is terminated.

Reporting and Program Evaluation

The RAA and its staff will participate in all required evaluations and will be prepared to maintain additional data on participants, as required by HUD and/or DHCD. Data collection tools and requirements may change over time, and the RAA is expected to work with DHCD to meet these requirements.

HQS Inspections

Biennial inspection policies apply to units leased under the Family Economic Stability Program.

CHAPTER 20 : EXHIBITS

Exhibit 2-1: Definition of a Person with A Disability Under Federal Civil Rights Laws
[24 CFR Parts 8.3 and 100.201]

A person with a disability, as defined under federal civil rights laws, is any person who:

- Has a physical or mental impairment that substantially limits one or more of the major life activities of an individual, or

- Has a record of such impairment, or

- Is regarded as having such impairment

The phrase "physical or mental impairment" includes:

- Any physiological disorder or condition, cosmetic or disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genito-urinary; hemic and lymphatic; skin; and endocrine; or

- Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

- The term "physical or mental impairment" includes, but is not limited to: such diseases and conditions as orthopedic, visual, speech and hearing impairments, cerebral palsy, autism, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, drug addiction and alcoholism.

- "Major life activities" includes, but is not limited to, caring for oneself, performing manual tasks, walking, seeing, hearing, breathing, learning, and/or working.

- "Has a record of such impairment" means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

- "Is regarded as having an impairment" is defined as having a physical or mental impairment that does not substantially limit one or more major life activities but is treated by a public entity (such as the PHA) as constituting such a limitation; has none of the impairments defined in this section but is treated by a public entity as having such an impairment; or has a physical or mental impairment that substantially limits one or more major life activities, only as a result of the attitudes of others toward that impairment.

The definition of a person with disabilities does not include:

- Current illegal drug users

- People whose alcohol use interferes with the rights of others

- Persons who objectively pose a direct threat or substantial risk of harm to others that cannot be controlled with a reasonable accommodation under the HCV program

The above definition of disability determines whether an applicant or participant is entitled to any of the protections of federal disability civil rights laws. Thus, a person who does not meet this disability is not entitled to a reasonable accommodation under federal civil rights and fair housing laws and regulations.

The HUD definition of a person with a disability is much narrower than the civil rights definition of disability. The HUD definition of a person with a disability is used for purposes of receiving the disabled family preference, the $400 elderly/disabled household deduction, the $480 dependent deduction, the allowance for medical expenses, or the allowance for disability assistance expenses.

The definition of a person with a disability for purposes of granting a reasonable accommodation request is much broader than the HUD definition of disability. Many people will not qualify as a disabled person under the HCV program, yet an accommodation is needed to provide equal opportunity.

Exhibit 3-1: Detailed Definitions Related to Disabilities

Person with Disabilities
[24 CFR 5.403]

The term *person with disabilities* means a person who has any of the following types of conditions:

- Has a disability, as defined in 42 U.S.C. Section 423(d)(1)(A), which reads:

Inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months; *or* In the case of an individual who has attained the age of 55 and is blind (within the meaning of "blindness" as defined in section 416(i)(1) of this title), inability by reason of such blindness to engage in substantial gainful activity, requiring skills or ability comparable to those of any gainful activity in which he has previously engaged with some regularity and over a substantial period of time.

- Has a developmental disability as defined in the Developmental Disabilities Assistance and Bill of Rights Act of 2000 [42 U.S.C.15002(8)].

- Has a physical, mental, or emotional impairment that is expected to be of long-continued and indefinite duration; substantially impedes his or her ability to live independently, and is of such a nature that the ability to live independently could be improved by more suitable housing conditions.

People with the acquired immunodeficiency syndrome (AIDS) or any conditions arising from the etiologic agent for AIDS are not excluded from this definition.

A person whose disability is based solely on any drug or alcohol dependence does not qualify as a person with disabilities for the purposes of this program.

For purposes of reasonable accommodation and program accessibility for persons with disabilities, the term person with disabilities refers to an individual with handicaps.

Developmental Disability

In General the term "developmental disability" means a severe, chronic disability of an individual that:

- (I) Is attributable to a mental or physical impairment or combination of mental and physical impairments;

- (II) Is manifested before the individual attains age 22;

- (III) Is likely to continue indefinitely;

- (IV) Results in substantial functional limitations in 3 or more of the following areas of major life activity:
    - Self-care
    - Receptive and expressive language
    - Learning
    - Mobility
    - Self-direction
    - Capacity for independent living
    - Economic self-sufficiency
- (V) Reflects the individual's need for a combination and sequence of special, interdisciplinary, or generic services, individualized supports, or other forms of assistance that are of lifelong or extended duration and are individually planned and coordinated.

Infants and Young Children

An individual from birth to age 9, inclusive, who has a substantial developmental delay or specific congenital or acquired condition, may be considered to have a developmental disability without meeting 3 or more of the criteria described in clauses (i) through (v) above if the individual, without services and supports, has a high probability of meeting those criteria later in life.

Individual with Handicaps
[24 CFR 8.3]

Individual with handicaps means any person who has a physical or mental impairment that substantially limits one or more major life activities; has a record of such an impairment; or is regarded as having such an impairment. The term does not include any individual who is an alcoholic or drug abuser whose current use of alcohol or drugs prevents the individual from participating in the program or activity in question, or whose participation, by reason of such current alcohol or drug abuse, would constitute a direct threat to property or the safety of others. As used in this definition, the phrase:

- Physical or mental impairment includes:
    - Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genito-urinary; hemic and lymphatic; skin; and endocrine; or

    - Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term physical or mental impairment includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech and hearing impairments, cerebral palsy, autism, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, drug addiction and alcoholism.

- Major life activities means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working.

- Has a record of such an impairment means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities

- Is regarded as having an impairment means:

    - Has a physical or mental impairment that does not substantially limit one or more major life activities but that is treated by a recipient as constituting such a limitation;

    - Has a physical or mental impairment that substantially limits one or more major life activities only as a result of the attitudes of others toward such impairment; or

    - Has none of the impairments defined in paragraph (1) of this section but is treated by a recipient as having such an impairment.

Exhibit 3-2: Definition of Institution of Higher Education
[20 U.S.C. 1001 and 1002]

Eligibility of Students for Assisted Housing Under Section 8 of the U.S. Housing Act of 1937; Supplementary Guidance;
Notice [Federal Register, April 10, 2006]

Institution of Higher Education shall have the meaning given this term in the Higher Education Act of 1965 in 20 U.S.C. 1001 and 1002.

Definition of ''Institution of Higher Education'' From 20 U.S.C. 1001

- (a) Institution of higher education. For purposes of this chapter, other than subchapter IV and part C of subchapter I of chapter 34 of Title 42, the term ''institution of higher education'' means an educational institution in any State that

(1) Admits as regular students only persons having a certificate of graduation from a school providing secondary education, or the recognized equivalent of such a certificate;

(2) Is legally authorized within such State to provide a program of education beyond secondary education;

(3) Provides an educational program for which the institution awards a bachelor's degree or provides not less than a 2-year program that is acceptable for full credit toward such a degree;

(4) Is a public or other nonprofit institution; and

(5) Is accredited by a nationally recognized accrediting agency or association, or if not so accredited, is an institution that has been granted preaccreditation status by such an agency or association that has been recognized by the Secretary for the granting of preaccreditation status, and the Secretary has determined that there is satisfactory assurance that the institution will meet the accreditation standards of such an agency or association within a reasonable time.

- (b) Additional institutions included. For purposes of this chapter, other than subchapter IV and part C of subchapter I of chapter 34 of Title 42, the term ''institution of higher education'' also includes—

(1) Any school that provides not less than a 1-year program of training to prepare students for gainful employment in a recognized occupation and that meets the provision of paragraphs (1), (2), (4), and (5) of subsection (a) of this section; and

(2) A public or nonprofit private educational institution in any State that, in lieu of the requirement in subsection (a)(1) of this section, admits as regular students persons who are beyond the age of compulsory school attendance in the State in which the institution is located.

- (c) List of accrediting agencies. For purposes of this section and section 1002 of this title, the Secretary shall publish a list of nationally recognized accrediting agencies or associations

that the Secretary determines, pursuant to subpart 2 of part G of subchapter IV of this chapter, to be reliable authority as to the quality of the education or training offered.

Definition of ‘‘Institution of Higher Education’’ From 20 U.S.C. 1002

- (a) Definition of institution of higher education for purposes of student assistance programs

(1) Inclusion of additional institutions. Subject to paragraphs (2) through (4) of this subsection, the term ‘‘institution of higher education’’ for purposes of subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42 includes, in addition to the institutions covered by the definition in section 1001 of this title—

(A) A proprietary institution of higher education (as defined in subsection (b) of this section);

(B) A postsecondary vocational institution (as defined in subsection (c) of this section); and

(C) Only for the purposes of part B of subchapter IV of this chapter, an institution outside the United States that is comparable to an institution of higher education as defined in section 1001 of this title and that has been approved by the Secretary for the purpose of part B of subchapter IV of this chapter.

(2) Institutions outside the United States

(A) In general. For the purpose of qualifying as an institution under paragraph (1)(C), the Secretary shall establish criteria by regulation for the approval of institutions outside the United States and for the determination that such institutions are comparable to an institution of higher education as defined in section 1001 of this title (except that a graduate medical school, or a veterinary school, located outside the United States shall not be required to meet the requirements of section 1001 (a)(4) of this title). Such criteria shall include a requirement that a student attending such school outside the United States is ineligible for loans made, insured, or guaranteed under part B of subchapter IV of this chapter unless—

(i) In the case of a graduate medical school located outside the United States—

(I)(aa) At least 60 percent of those enrolled in, and at least 60 percent of the graduates of, the graduate medical school outside the United States were not persons described in section 1091(a) (5) of this title in the year preceding the year for which a student is seeking a loan under part B of subchapter IV of this chapter; and

(bb) At least 60 percent of the individuals who were students or graduates of the graduate medical school outside the United States or Canada (both nationals of the United States and others) taking the examinations administered by the Educational Commission for Foreign Medical Graduates received a passing score in the year preceding the year for which a student is seeking a loan under part B of subchapter IV of this chapter; or

(II) The institution has a clinical training program that was approved by a State as of January 1, 1992; or

(ii) In the case of a veterinary school located outside the United States that does not meet the requirements of section 1001(a)(4) of this title, the institution's students complete their clinical training at an approved veterinary school located in the United States.

(B) Advisory panel

(i) In general. For the purpose of qualifying as an institution under paragraph (1)(C) of this subsection, the Secretary shall establish an advisory panel of medical experts that shall—

(I) Evaluate the standards of accreditation applied to applicant foreign medical schools; and

(II) Determine the comparability of those standards to standards for accreditation applied to United States medical schools.

(ii) Special rule if the accreditation standards described in clause (i) are determined not to be comparable, the foreign medical school shall be required to meet the requirements of section 1001 of this title.

(C) Failure to release information. The failure of an institution outside the United States to provide, release, or authorize release to the Secretary of such information as may be required by subparagraph (A) shall render such institution ineligible for the purpose of part B of subchapter IV of this chapter.

(D) Special rule. If, pursuant to this paragraph, an institution loses eligibility to participate in the programs under subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42, then a student enrolled at such institution may, notwithstanding such loss of eligibility, continue to be eligible to receive a loan under part B while attending such institution for the academic year succeeding the academic year in which such loss of eligibility occurred.

(3) Limitations based on course of study or enrollment. An institution shall not be considered to meet the definition of an institution of higher education in paragraph (1) if such institution—

(A) Offers more than 50 percent of such institution's courses by correspondence, unless the institution is an institution that meets the definition in section 2471 (4)(C) of this title;

(B) Enrolls 50 percent or more of the institution's students in correspondence courses, unless the institution is an institution that meets the definition in such section, except that the Secretary, at the request of such institution, may waive the applicability of this subparagraph to such institution for good cause, as determined by the Secretary in the case of an institution of higher education that provides a 2-or 4-year program of instruction (or both) for which the institution awards an associate or baccalaureate degree, respectively;

(C) Has a student enrollment in which more than 25 percent of the students are incarcerated, except that the Secretary may waive the limitation contained in this subparagraph for a nonprofit institution that provides a 2-or 4-year program of instruction (or both) for which

the institution awards a bachelor's degree, or an associate's degree or a postsecondary diploma, respectively; or

(D) Has a student enrollment in which more than 50 percent of the students do not have a secondary school diploma or its recognized equivalent, and does not provide a 2-or 4-year program of instruction (or both) for which the institution awards a bachelor's degree or an associate's degree, respectively, except that the Secretary may waive the limitation contained in this subparagraph if a nonprofit institution demonstrates to the satisfaction of the Secretary that the institution exceeds such limitation because the institution serves, through contracts with Federal, State, or local government agencies, significant numbers of students who do not have a secondary school diploma or its recognized equivalent.

(4) Limitations based on management. An institution shall not be considered to meet the definition of an institution of higher education in paragraph (1) if—

(A) The institution, or an affiliate of the institution that has the power, by contract or ownership interest, to direct or cause the direction of the management or policies of the institution, has filed for bankruptcy, except that this paragraph shall not apply to a nonprofit institution, the primary function of which is to provide health care educational services (or an affiliate of such an institution that has the power, by contract or ownership interest, to direct or cause the direction of the institution's management or policies) that files for bankruptcy under chapter 11 of title 11 between July 1, 1998, and December 1, 1998; or

(B) The institution, the institution's owner, or the institution's chief executive officer has been convicted of, or has pled nolo contendere or guilty to, a crime involving the acquisition, use, or expenditure of funds under subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42, or has been judicially determined to have committed fraud involving funds under subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42.

(5) Certification. The Secretary shall certify an institution's qualification as an institution of higher education in accordance with the requirements of subpart 3 of part G of subchapter IV of this chapter.

(6) Loss of eligibility. An institution of higher education shall not be considered to meet the definition of an institution of higher education in paragraph (1) if such institution is removed from eligibility for funds under subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42 as a result of an action pursuant to part G of subchapter IV of this chapter.

- (b) Proprietary institution of higher education

(1) Principal criteria. For the purpose of this section, the term ''proprietary institution of higher education'' means a school that—

(A) Provides an eligible program of training to prepare students for gainful employment in a recognized occupation;

(B) Meets the requirements of paragraphs (1) and (2) of section 1001 (a) of this title;

(C) Does not meet the requirement of paragraph (4) of section 1001 (a) of this title;

(D) Is accredited by a nationally recognized accrediting agency or association recognized by the Secretary pursuant to part G of subchapter IV of this chapter;

(E) Has been in existence for at least 2 years; and

(F) Has at least 10 percent of the school's revenues from sources that are not derived from funds provided under subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42, as determined in accordance with regulations prescribed by the Secretary.

(2) Additional institutions. The term ''proprietary institution of higher education'' also includes a proprietary educational institution in any State that, in lieu of the requirement in paragraph (1) of section 1001 (a) of this title, admits as regular students persons who are beyond the age of compulsory school attendance in the State in which the institution is located.

- (c) Postsecondary vocational institution.

(1) Principal criteria. For the purpose of this section, the term ''postsecondary vocational institution'' means a school that—

(A) Provides an eligible program of training to prepare students for gainful employment in a recognized occupation;

(B) Meets the requirements of paragraphs (1), (2), (4), and (5) of section 1001 (a) of this title; and

(C) Has been in existence for at least 2 years.

(2) Additional institutions. The term ''postsecondary vocational institution'' also includes an educational institution in any State that, in lieu of the requirement in paragraph (1) of section 1001 (a) of this title, admits as regular students persons who are beyond the age of compulsory school attendance in the State in which the institution is located.

Exhibit 4-1: Sample Letter : Important Notice Regarding Your Placement On The Waiting List

<<Date>>

<<Applicant Name>>
<<Applicant Number>>
<<Applicant Address>>

Dear <<Applicant Name>>:

This letter confirms receipt of your completed pre-application and placement on our waiting list. Please note that placement on the waiting list does not guarantee that you are eligible for assistance. A final determination of your eligibility will be made when your family is selected from the waiting list.

Outlined below is information regarding your placement on the waiting list as well as ongoing responsibilities to retain your placement on the waiting list. Please read this letter carefully as failure to provide required information and/or failure to respond to requested updates can result in removal of your name from the waiting list.

- Date and Time Pre-Application was received: <<Date and Time>>
- Program(s) Applied For: <<Program(s)>>
- Estimated Wait Time: <<Estimated Wait Time>>

You must immediately inform <<RAA >> of changes in family composition and contact information, including current residence, mailing address, and phone number. The changes must be submitted in writing. <<RAA >> will not provide notice that an address or other change was received and processed.

From time to time <<RAA >> will update the waiting list. You must respond to the update request in writing within the established response time stated in the update letter. If you fail to respond within the established response time, your family will be removed from the waiting list without further notice.

Applicants are selected from the waiting list according to preference and date and time of application. A preference is an admission priority given to families that meet the preference criteria. For example, <<RAA>> will offer an admission preference to any family that lives, works or who has a confirmed job offer within the geographical area covered by <<RAA >>.

<<RAA >> will not make any further effort to contact applicants after their names are removed from the waiting list. Applicants' names will be removed from the waiting list under the following circumstances:

- Failure to respond to a written request for information or updates;
- After becoming a participant in any of <<RAA >> HCV programs;
- If correspondence to the applicant is returned by the Postal Service for any reason.

If you or any member of your family is a person with a disability and needs assistance complying with the waiting list requirements, please contact our office to request a reasonable accommodation. If you wish to check your waiting list status you can go to <<INSERT

Location>> or contact us at <<Phone Number >>. Thank you for your interest in housing with <<RAA >>.

Sincerely,

<<RAA Staff Name and Title>>

Exhibit 5-1: Important Information For Section 8 Voucher Program Participants Who Want To Move Or Who Want To Give Up Their Section 8 Voucher

Part I: If You Want to Move with Your Section 8 Voucher:

If you want to move to another location with your Section 8 voucher, please read the following information.

What follows is a summary of your "mobility" rights as a participant in the Section 8 voucher program. This summary is not intended to substitute for a discussion with your program representative. If you want to move to another city or town with your Section 8 subsidy you should discuss your individual circumstances with your program representative as soon as you decide to move.

Where you Can Use Your Section 8 Voucher

If you have a Section 8 Voucher you can use it anywhere in the United States that has a public housing authority. Your program representative will contact any appropriate housing agency to arrange for your transfer.

Relocating to another Public Housing Agency's area

If you wish to move to a different community your program representative will first determine if you are income eligible in the community that you want to move to. They will advise you how to contact and request assistance from the new housing agency and will let the new agency know to expect you. The new housing agency will either issue you one of their own vouchers, or they will bill your current housing agency for your assistance. You will be required to follow the rules and policies of the new housing agency. Their rules may be somewhat different than the ones you are used to.

The current Public Housing Agency may refuse to issue another Voucher for a move to another unit, approve a new lease, or execute a new contract if:

1. You currently owe rent or other amounts to the Public Housing Agency or another Public Housing Agency in connection with Section 8.
2. As a current or previous participant on the Section 8 program, you have failed to pay back any Public Housing Agency for any amounts paid to an owner for rent or other amounts owed by you under your lease or for a vacant unit.
3. You have violated any Family obligation listed on your Voucher
4. You have engaged in drug related criminal activity or violent criminal activity.
5. You have breached certain repayment agreements with a Public Housing Agency
6. You have committed any fraud in connection with any federal housing program.
7. You were a participant in the Family Self Sufficiency Program and failed to comply with the terms of the family's contract of participation.

Preserve Eligibility and Move

If you want to move out of Massachusetts but do not know where you are going to live, you must notify the Public Housing Agency before leaving the unit you occupy. Provided you are still eligible for the Section 8 program, the Public Housing Agency may issue to you a new voucher which will maintain your eligibility for 90 days after you move from your subsidized unit. If you return to Massachusetts within 90 days you will still be able to use your voucher in Massachusetts. After 90 days your Section 8 voucher will expire, and then you must reapply for another Section 8 voucher and wait until your name reaches the top of the list.

NOTE: If you do not contact your program representative before you move and/or vacate your unit without giving the required notice to the owner, you will jeopardize your ability to retain your Section 8 eligibility for the 90 day period.

Part II: If You Want to Withdraw from the Section 8 Program/Give Up Your Voucher

What follows is important information about your rights as a Section 8 participant. This summary is not intended to be a substitute for a discussion with your program representative.

Note: If you voluntarily give up your Section 8 voucher (this is sometimes called withdrawing), you will be terminated from the Section 8 program. Once this happens, you will not be able to get your Section 8 voucher back.

In order to get assistance under the Section 8 program after you have given up your Section 8 subsidy, you will have to re-apply. The waiting list for applicants is often very long. As a result, it may take many months, or even years, before you could get another Section 8 voucher.

Before you give up your Section 8 voucher, you should know the following:

1. If you are thinking about giving up your Section 8 voucher because you want to move, you may be able to take your Section 8 voucher with you. Make sure you read Part I of this document.
2. If you are thinking about giving up your Section 8 voucher because you will not be able to use it soon enough (for example, because you need to enter the hospital for an extended period of time), you may be able to get your Section 8 subsidy "frozen".
3. If you are thinking about giving up your Section 8 voucher because your income is too high (for example, because you got married), you may be able to stay in the Section 8 program without receiving any subsidy for up to six months. If you again need a subsidy during that period (for example, because your income decreases), you may be able to get your subsidy reinstated.
4. If you are giving up your Section 8 voucher because you simply don't want to be in the Section 8 program, you can have your housing agency issue you a voucher good for sixty days, which may be extended for another thirty days, for a total of 90 days. If you change your mind before your voucher expires (that is, during the 60 - 90 days), you can use the voucher to look for housing. However, once the voucher expires, you will be out of the Section 8 program.

You should make sure that you are fully informed of your rights under the section 8 program before you give up your section 8 voucher.

Do not give up your section 8 voucher until you talk to your program representative and/or your nearest legal services organization to be sure you are fully informed.

CERTIFICATION OF RECEIPT

I hereby certify that I have received a copy of this document entitled, "Important Information for Section 8 Program Participants Who Want To Move Or Who Want to Give Up Their Section 8 Subsidy".

_____

Tenant/Head of Household Signature Date

_____

Tenant/Head of Household Printed Name

I hereby certify that the Tenant was provided with a copy of this document entitled, "Important Information for Section 8 Program Participants Who Want To Move Or Who Want to Give Up Their Section 8 Subsidy".

___ By mail ___ In person

Program Representative Signature Date

Program Representative Printed Name

Exhibit 6-1: Annual Income Inclusions
24 CFR 5.609

(a) Annual income means all amounts, monetary or not, which:

(1) Go to, or on behalf of, the family head or spouse (even if temporarily absent) or to any other family member; or

(2) Are anticipated to be received from a source outside the family during the 12-month period following admission or regular reexamination effective date; and

(3) Which are not specifically excluded in paragraph (c) of this section.

(4) Annual income also means amounts derived (during the 12-month period) from assets to which any member of the family has access.

(b) Annual income includes, but is not limited to:

(1) The full amount, before any payroll deductions, of wages and salaries, overtime pay, commissions, fees, tips and bonuses, and other compensation for personal services;

(2) The net income from the operation of a business or profession. Expenditures for business expansion or amortization of capital indebtedness shall not be used as deductions in determining net income. An allowance for depreciation of assets used in a business or profession may be deducted, based on straight line depreciation, as provided in Internal Revenue Service regulations. Any withdrawal of cash or assets from the operation of a business or profession will be included in income, except to the extent the withdrawal is reimbursement of cash or assets invested in the operation by the family;

(3) Interest, dividends, and other net income of any kind from real or personal property. Expenditures for amortization of capital indebtedness shall not be used as deductions in determining net income. An allowance for depreciation is permitted only as authorized in paragraph (b)(2) of this section. Any withdrawal of cash or assets from an investment will be included in income, except to the extent the withdrawal is reimbursement of cash or assets invested by the family. Where the family has net family assets in excess of $5,000, annual income shall include the greater of the actual income derived from all net family assets or a percentage of the value of such assets based on the current passbook savings rate, as determined by HUD;

(4) The full amount of periodic amounts received from Social Security, annuities, insurance policies, retirement funds, pensions, disability or death benefits, and other similar types of periodic receipts, including a lump-sum amount or prospective monthly amounts for the delayed start of a periodic amount (except as provided in paragraph (c)(14) of this section);

(5) Payments in lieu of earnings, such as unemployment and disability compensation, worker's compensation and severance pay (except as provided in paragraph (c)(3) of this section);

(6) Welfare assistance payments.

(i) Welfare assistance payments made under the Temporary Assistance for Needy Families (TANF) program are included in annual income only to the extent such payments:

(A) Qualify as assistance under the TANF program definition at 45 CFR 260.31[6]; and

(B) Are not otherwise excluded under paragraph (c) of this section.

(ii) If the welfare assistance payment includes an amount specifically designated for shelter and utilities that is subject to adjustment by the welfare assistance agency in accordance with the actual cost of shelter and utilities, the amount of welfare assistance income to be included as income shall consist of:

(A) The amount of the allowance or grant exclusive of the amount specifically designated for shelter or utilities; plus

(B) The maximum amount that the welfare assistance agency could in fact allow the family for shelter and utilities. If the family's welfare assistance is ratably reduced from the standard of need by applying a percentage, the amount calculated under this paragraph shall be the amount resulting from one application of the percentage.

(7) Periodic and determinable allowances, such as alimony and child support payments, and regular contributions or gifts received from organizations or from persons not residing in the dwelling;

(8) All regular pay, special pay and allowances of a member of the Armed Forces (except as provided in paragraph (c)(7) of this section)

(9) For section 8 programs only and as provided in 24 CFR 5.612, any financial assistance, in excess of amounts received for tuition, that an individual receives under the Higher Education Act of 1965 (20 U.S.C. 1001 et seq.), from private sources, or from an institution of higher education (as defined under the Higher Education Act of 1965 (20 U.S.C. 1002)), shall be considered income to that individual, except that financial assistance described in this paragraph is not considered annual income for persons over the age of 23 with dependent children. For purposes of this paragraph, “financial assistance” does not include loan proceeds for the purpose of determining income.

HHS DEFINITION OF "ASSISTANCE"

45 CFR: General Temporary Assistance for Needy Families

260.31 What does the term “assistance” mean?

[6] Text of 45 CFR 260.31 follows.

(a)(1) The term “assistance” includes cash, payments, vouchers, and other forms of benefits designed to meet a family’s ongoing basic needs (i.e., for food, clothing, shelter, utilities, household goods, personal care items, and general incidental expenses).

(2) It includes such benefits even when they are:

(i) Provided in the form of payments by a TANF agency, or other agency on its behalf, to individual recipients; and

(ii) Conditioned on participation in work experience or community service (or any other work activity under 261.30 of this chapter).

(3) Except where excluded under paragraph (b) of this section, it also includes supportive services such as transportation and child care provided to families who are not employed.

(b) [The definition of “assistance”] excludes:

(1) Nonrecurrent, short-term benefits that:

(i) Are designed to deal with a specific crisis situation or episode of need;

(ii) Are not intended to meet recurrent or ongoing needs; and

(iii) Will not extend beyond four months.

(2) Work subsidies (i.e., payments to employers or third parties to help cover the costs of employee wages, benefits, supervision, and training);

(3) Supportive services such as child care and transportation provided to families who are employed;

(4) Refundable earned income tax credits;

(5) Contributions to, and distributions from, Individual Development Accounts;

(6) Services such as counseling, case management, peer support, child care information and referral, transitional services, job retention, job advancement, and other employment-related services that do not provide basic income support; and

(7) Transportation benefits provided under a Job Access or Reverse Commute project, pursuant to section 404(k) of [the Social Security] Act, to an individual who is not otherwise receiving assistance.

Exhibit 6-2: Annual Income Exclusions[7]

24 CFR 5.609

(c) Annual income does not include the following:

(1) Income from employment of children (including foster children) under the age of 18 years;

(2) Payments received for the care of foster children or foster adults (usually persons with disabilities, unrelated to the tenant family, who are unable to live alone);

(3) Lump-sum additions to family assets, such as inheritances, insurance payments (including payments under health and accident insurance and worker's compensation), capital gains and settlement for personal or property losses (except as provided in paragraph (b)(5) of this section);

(4) Amounts received by the family that are specifically for, or in reimbursement of, the cost of medical expenses for any family member;

(5) Income of a live-in aide, as defined in Sec. 5.403;

(6) Subject to paragraph (b)(9) of this section, the full amount of student financial assistance paid directly to the student or to the educational institution;

(7) The special pay to a family member serving in the Armed Forces who is exposed to hostile fire;

(8) (i) Amounts received under training programs funded by HUD;

(ii) Amounts received by a person with a disability that are disregarded for a limited time for purposes of Supplemental Security Income eligibility and benefits because they are set aside for use under a Plan to Attain Self-Sufficiency (PASS);

(iii) Amounts received by a participant in other publicly assisted programs which are specifically for or in reimbursement of out-of-pocket expenses incurred (special equipment, clothing, transportation, child care, etc.) and which are made solely to allow participation in a specific program;

(iv) Amounts received under a resident service stipend. A resident service stipend is a modest amount (not to exceed $200 per month) received by a resident for performing a service for the PHA or owner, on a part-time basis, that enhances the quality of life in the development. Such

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[7] FR Notice 11/24/08 makes note of pending revisions to this regulation, namely the exclusion of any deferred disability benefits received in lump-sum or prospective monthly amounts from the Department of Veterans Affairs (VA). At the time of publication, 24 CFR 5.609 had yet to be updated.

services may include, but are not limited to, fire patrol, hall monitoring, lawn maintenance, resident initiatives coordination, and serving as a member of the PHA's governing board. No resident may receive more than one such stipend during the same period of time;

(v) Incremental earnings and benefits resulting to any family member from participation in qualifying State or local employment training programs (including training programs not affiliated with a local government) and training of a family member as resident management staff. Amounts excluded by this provision must be received under employment training programs with clearly defined goals and objectives, and are excluded only for the period during which the family member participates in the employment training program;

(9) Temporary, nonrecurring or sporadic income (including gifts);

(10) Reparation payments paid by a foreign government pursuant to claims filed under the laws of that government by persons who were persecuted during the Nazi era;

(11) Earnings in excess of $480 for each full-time student 18 years old or older (excluding the head of household and spouse);

(12) Adoption assistance payments in excess of $480 per adopted child;

(13) [Reserved]

(14) Deferred periodic amounts from supplemental security income and social security benefits that are received in a lump sum amount or in prospective monthly amounts.

(15) Amounts received by the family in the form of refunds or rebates under State or local law for property taxes paid on the dwelling unit;

(16) Amounts paid by a State agency to a family with a member who has a developmental disability and is living at home to offset the cost of services and equipment needed to keep the developmentally disabled family member at home; or

(17) Amounts specifically excluded by any other Federal statute from consideration as income for purposes of determining eligibility or benefits under a category of assistance programs that includes assistance under any program to which the exclusions set forth in 24 CFR 5.609(c) apply. A notice will be published in the Federal Register and distributed to PHAs and housing owners identifying the benefits that qualify for this exclusion. Updates will be published and distributed when necessary.

Sources of Income Excluded by Federal Statute from Consideration as Income for Purposes of Determining Eligibility or Benefits

(i) The value of the allotment provided to an eligible household under the Food Stamp Act of 1977 (7 U.S.C. 2017(b));

(ii) Payments to Volunteers under the Domestic Volunteer Services Act of 1973 (42 U.S.C. 5044(f)(1), 5058);

(iii) Payments received under the Alaska Native Claims Settlement Act (43 U.S.C. 1626(c));

(iv) Income derived from certain submarginal land of the United States that is held in trust for certain Indian tribes (25 U.S.C. 459e);

(v) Payments or allowances made under the Department of Health and Human Services' Low-Income Home Energy Assistance Program (42 U.S.C. 8624(f));

(vi) Income derived from the disposition of funds to the Grand River Band of Ottawa Indians (Pub. L. 94-540, 90 Stat. 2503-04);

(vii) The first $2000 of per capita shares received from judgment funds awarded by the Indian Claims Commission or the U.S. Claims Court, the interests of individual Indians in trust or restricted lands, including the first $2000 per year of income received by individual Indians from funds derived from interests held in such trust or restricted lands (25 U.S.C. 1407- 8);

(viii) Amounts of scholarships funded under Title IV of the Higher Education Act of 1965, including awards under Federal work-study programs or under the Bureau of Indian Affairs student assistance programs (20 U.S.C. 1087uu). For Section 8 programs, the exception found in [Section] 237 of Public Law 109-249 applies and requires that the amount of financial assistance in excess of tuition shall be considered income in accordance with the provisions codified at 24 CFR 5.609(b)(9), except for those persons with disabilities as defined by 42 U.S.C. 1437a(b)(3)(E) (Pub. L. 109-247);

(ix) Payments received from programs funded under Title V of the Older Americans Act of 1965 (42 U.S.C. 3056g);

(x) Payments received on or after January 1, 1989, from the Agent Orange Settlement Fund or any other fund established pursuant to the settlement in the In Re Agent Orange liability litigation, M.D.L. No. 381 (E.D.N.Y.) (Pub. L. 101-201 and 101-39);

(xi) Payments received under the Maine Indian Claims Settlement Act of 1980 (Public Law 96-420, 25 U.S.C. 1721) pursuant to 25 U.S.C. 1728(c);

(xii) The value of any child care provided or arranged (or any amount received as payment for such care or reimbursement for costs incurred for such care) under the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858q);

(xiii) Earned income tax credit (EITC) refund payments received on or after January 1, 1991 (26 U.S.C. 32(l));

(xiv) Payments by the Indian Claims Commission to the Confederated Tribes and Bands of Yakima Indian Nation or the Apache Tribe of Mescalero Reservation (Pub. L. 95-433);

(xv) Allowances, earnings and payments to AmeriCorps participants under the National and Community Service Act of 1990 (42 U.S.C. 12637(d));

(xvi) Any amount of crime victim compensation (under the Victims of Crime Act) received through crime victim assistance (or payment or reimbursement of the cost of such assistance) as determined under the Victims of Crime Act because of the commission of a crime against the applicant under the Victims of Crime Act (42 U.S.C. 10602);

(xvii) Allowances, earnings and payments to individuals participating in programs under the Workforce Investment Act of 1998 (29 U.S.C. 2931);

(xviii) Any amount received under the School Lunch Act and the Child Nutrition Act of 1966 (42 U.S.C. 1780(b)), including reduced-price lunches and food under the Special Supplemental Food Program for Women, Infants, and Children (WIC);

(xix) Payments, funds or distributions authorized, established, or directed by the Seneca Nation Settlement Act of 1990 (25 U.S.C. 1774f(b));

(xx) Payments from any deferred Department of Veterans Affairs disability benefits that are received in a lump sum amount or in prospective monthly amounts as provided by an amendment to the definition of annual income in the U.S. Housing Act of 1937 (42 U.S.C. 1437) by Section 2608 of the Housing and Economic Recovery Act of 2008 (Pub. L. 110-289, 42 U.S.C. 4501);

(xxi) Compensation received by or on behalf of a veteran for service- connected disability, death, dependency, or indemnity compensation as provided by an amendment by the Indian Veterans Housing Opportunity Act of 2010 (Pub. L. 111-269) to the definition of income applicable to programs authorized under the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4101) and administered by the Office of Native American Programs; and

(xxii) A lump sum or a periodic payment received by an individual Indian pursuant to the Class Action Settlement Agreement in the case entitled Elouise Cobell et al. v. Ken Salazar et al., United States District Court, District of Columbia, as provided in the Claims Resolution Act of 2010 (Pub. L. 111-291).

Exhibit 6-3: Treatment of Family Assets
24 CFR 5.603(b)

Net Family Assets

(1) Net cash value after deducting reasonable costs that would be incurred in disposing of real property, savings, stocks, bonds, and other forms of capital investment, excluding interests in Indian trust land and excluding equity accounts in HUD homeownership programs. The value of necessary items of personal property such as furniture and automobiles shall be excluded.

(2) In cases where a trust fund has been established and the trust is not revocable by, or under the control of, any member of the family or household, the value of the trust fund will not be considered an asset so long as the fund continues to be held in trust. Any income distributed from the trust fund shall be counted when determining annual income under Sec. 5.609.

(3) In determining net family assets, PHAs or owners, as applicable, shall include the value of any business or family assets disposed of by an applicant or tenant for less than fair market value (including a disposition in trust, but not in a foreclosure or bankruptcy sale) during the two years preceding the date of application for the program or reexamination, as applicable, in excess of the consideration received therefor. In the case of a disposition as part of a separation or divorce settlement, the disposition will not be considered to be for less than fair market value if the applicant or tenant receives important consideration not measurable in dollar terms.

(4) For purposes of determining annual income under Sec. 5.609, the term "net family assets" does not include the value of a home currently being purchased with assistance under part 982, subpart M of this title. This exclusion is limited to the first 10 years after the purchase date of the home.

Exhibit 6-4: Earned Income Disallowance for Persons with Disabilities – Non-MTW
24 CFR 5.617

Self-sufficiency incentives for persons with disabilities–Disallowance of increase in annual income

(a) Applicable programs. The disallowance of increase in annual income provided by this section is applicable only to the following programs: HOME Investment Partnerships Program (24 CFR part 92); Housing Opportunities for Persons with AIDS (24 CFR part 574); Supportive Housing Program (24 CFR part 583); and the Housing Choice Voucher Program (24 CFR part 982).

(b) Definitions. The following definitions apply for purposes of this section.

Disallowance. Exclusion from annual income.

Previously unemployed includes a person with disabilities who has earned, in the twelve months previous to employment, no more than would be received for 10 hours of work per week for 50 weeks at the established minimum wage.

Qualified family. A family residing in housing assisted under one of the programs listed in paragraph (a) of this section or receiving tenant-based rental assistance under one of the programs listed in paragraph (a) of this section.

(1) Whose annual income increases as a result of employment of a family member who is a person with disabilities and who was previously unemployed for one or more years prior to employment;

(2) Whose annual income increases as a result of increased earnings by a family member who is a person with disabilities during participation in any economic self-sufficiency or other job training program; or

(3) Whose annual income increases, as a result of new employment or increased earnings of a family member who is a person with disabilities, during or within six months after receiving assistance, benefits or services under any state program for temporary assistance for needy families funded under Part A of Title IV of the Social Security Act, as determined by the responsible entity in consultation with the local agencies administering temporary assistance for needy families (TANF) and Welfare-to-Work (WTW) programs. The TANF program is not limited to monthly income maintenance, but also includes such benefits and services as one-time payments, wage subsidies and transportation assistance-- provided that the total amount over a six-month period is at least $500.

(c) Disallowance of increase in annual income—

(1) Initial twelve month exclusion. During the cumulative twelve month period beginning on the date a member who is a person with disabilities of a qualified family is first employed or the family first experiences an increase in annual income attributable to employment, the responsible entity must exclude from annual income (as defined in the regulations governing the applicable program listed in paragraph (a) of this section) of a qualified family any increase

in income of the family member who is a person with disabilities as a result of employment over prior income of that family member.

(2) Second twelve month exclusion and phase-in. During the second cumulative twelve month period after the date a member who is a person with disabilities of a qualified family is first employed or the family first experiences an increase in annual income attributable to employment, the responsible entity must exclude from annual income of a qualified family fifty percent of any increase in income of such family member as a result of employment over income of that family member prior to the beginning of such employment.

(3) Maximum four year disallowance. The disallowance of increased income of an individual family member who is a person with disabilities as provided in paragraph (c)(1) or (c)(2) is limited to a lifetime 48 month period. The disallowance only applies for a maximum of twelve months for disallowance under paragraph (c)(1) and a maximum of twelve months for disallowance under paragraph (c)(2), during the 48 month period starting from the initial exclusion under paragraph (c)(1) of this section.

(d) Inapplicability to admission. The disallowance of increases in income as a result of employment of persons with disabilities under this section does not apply for purposes of admission to the program (including the determination of income eligibility or any income targeting that may be applicable).

Exhibit 6-5: The Effect of Welfare Benefit Reduction
24 CFR 5.615

Public housing program and Section 8 tenant-based assistance program: How welfare benefit reduction affects family income.

(a) Applicability. This section applies to covered families who reside in public housing (part 960 of this title) or receive Section 8 tenant-based assistance (part 982 of this title).

(b) Definitions. The following definitions apply for purposes of this section:
Covered families. Families who receive welfare assistance or other public assistance benefits ("welfare benefits") from a State or other public agency ("welfare agency") under a program for which Federal, State, or local law requires that a member of the family must participate in an economic self-sufficiency program as a condition for such assistance.

Economic self-sufficiency program. See definition at Sec. 5.603.

Imputed welfare income. The amount of annual income not actually received by a family, as a result of a specified welfare benefit reduction, that is nonetheless included in the family's annual income for purposes of determining rent.

Specified welfare benefit reduction.

(1) A reduction of welfare benefits by the welfare agency, in whole or in part, for a family member, as determined by the welfare agency, because of fraud by a family member in connection with the welfare program; or because of welfare agency sanction against a family member for noncompliance with a welfare agency requirement to participate in an economic self-sufficiency program.

(2) "Specified welfare benefit reduction" does not include a reduction or termination of welfare benefits by the welfare agency:

(i) at expiration of a lifetime or other time limit on the payment of welfare benefits;

(ii) because a family member is not able to obtain employment, even though the family member has complied with welfare agency economic self-sufficiency or work activities requirements; or

(iii) because a family member has not complied with other welfare agency requirements.

(c) Imputed welfare income.

(1) A family's annual income includes the amount of imputed welfare income (because of a specified welfare benefits reduction, as specified in notice to the PHA by the welfare agency), plus the total amount of other annual income as determined in accordance with Sec. 5.609.

(2) At the request of the PHA, the welfare agency will inform the PHA in writing of the amount and term of any specified welfare benefit reduction for a family member, and the reason for such reduction, and will also inform the PHA of any subsequent changes in the term or amount

of such specified welfare benefit reduction. The PHA will use this information to determine the amount of imputed welfare income for a family.

(3) A family's annual income includes imputed welfare income in family annual income, as determined at the PHA's interim or regular reexamination of family income and composition, during the term of the welfare benefits reduction (as specified in information provided to the PHA by the welfare agency).
(4) The amount of the imputed welfare income is offset by the amount of additional income a family receives that commences after the time the sanction was imposed. When such additional income from other sources is at least equal to the imputed

(5) The PHA may not include imputed welfare income in annual income if the family was not an assisted resident at the time of sanction.
(d) Review of PHA decision.

(1) Public housing. If a public housing tenant claims that the PHA has not correctly calculated the amount of imputed welfare income in accordance with HUD requirements, and if the PHA denies the family's request to modify such amount, the PHA shall give the tenant written notice of such denial, with a brief explanation of the basis for the PHA determination of the amount of imputed welfare income. The PHA notice shall also state that if the tenant does not agree with the PHA determination, the tenant may request a grievance hearing in accordance with part 966, subpart B of this title to review the PHA determination. The tenant is not required to pay an escrow deposit pursuant to Sec. 966.55(e) for the portion of tenant rent attributable to the imputed welfare income in order to obtain a grievance hearing on the PHA determination.

(2) Section 8 participant. A participant in the Section 8 tenant-based assistance program may request an informal hearing, in accordance with Sec. 982.555 of this title, to review the PHA determination of the amount of imputed welfare income that must be included in the family's annual income in accordance with this section. If the family claims that such amount is not correctly calculated in accordance with HUD requirements, and if the PHA denies the family's request to modify such amount, the PHA shall give the family written notice of such denial, with a brief explanation of the basis for the PHA determination of the amount of imputed welfare income. Such notice shall also state that if the family does not agree with the PHA determination, the family may request an informal hearing on the determination under the PHA hearing procedure.

(e) PHA relation with welfare agency.

(1) The PHA must ask welfare agencies to inform the PHA of any specified welfare benefits reduction for a family member, the reason for such reduction, the term of any such reduction, and any subsequent welfare agency determination affecting the amount or term of a specified welfare benefits reduction. If the welfare agency determines a specified welfare benefits reduction for a family member, and gives the PHA written notice of such reduction, the family's annual incomes shall include the imputed welfare income because of the specified welfare benefits reduction.

(2) The PHA is responsible for determining the amount of imputed welfare income that is included in the family's annual income as a result of a specified welfare benefits reduction as

determined by the welfare agency, and specified in the notice by the welfare agency to the PHA. However, the PHA is not responsible for determining whether a reduction of welfare benefits by the welfare agency was correctly determined by the welfare agency in accordance with welfare program requirements and procedures, nor for providing the opportunity for review or hearing on such welfare agency determinations.

(3) Such welfare agency determinations are the responsibility of the welfare agency, and the family may seek appeal of such determinations through the welfare agency's normal due process procedures. The PHA shall be entitled to rely on the welfare agency notice to the PHA of the welfare agency's determination of a specified welfare benefits reduction.

Exhibit 7-1: Summary of Documentation Requirements for Non-Citizens
[HCV GB, pp. 5-9 and 5-10]

All noncitizens claiming eligible status must sign a declaration of eligible immigrant status on a form acceptable to the PHA.

Except for persons 62 or older, all noncitizens must sign a verification consent form

Additional documents are required based upon the person's status.

Elderly Noncitizens

A person 62 years of age or older who claims eligible immigration status also must provide proof of age such as birth certificate, passport, or documents showing receipt of SS old-age benefits.

All other Noncitizens

Noncitizens that claim eligible immigration status also must present the applicable USCIS document.

Acceptable USCIS documents are listed below:

- Form I-551 Alien Registration Receipt Card (for permanent resident aliens)
- Form I-94 Arrival-Departure Record annotated with one of the following:
    - "Admitted as a Refugee Pursuant to Section 207"
    - "Section 208" or "Asylum"
    - "Section 243(h)" or "Deportation stayed by Attorney General"
    - "Paroled Pursuant to Section 221 (d)(5) of the USCIS"
- Form I-94 Arrival-Departure Record with no annotation accompanied by:
    - A final court decision granting asylum (but only if no appeal is taken);
    - A letter from a USCIS asylum officer granting asylum (if application is filed on or after 10/1/90) or from a USCIS district director granting asylum (application filed before 10/1/90);
    - A court decision granting withholding of deportation; or
    - A letter from an asylum officer granting withholding or deportation (if application filed on or after 10/1/90).

- Form I-766, Employment Authorization Card

- A receipt issued by the USCIS indicating that an application for issuance of a replacement document in one of the above listed categories has been made and the applicant's entitlement to the document has been verified; or

Other acceptable evidence. If other documents are determined by the USCIS to constitute acceptable evidence of eligible immigration status, they will be announced by notice published in the *Federal Register*

Exhibit 9-1: Grading System for Determining Unit Quality

DHCD requires that unit grades be entered into the Internet Based Inspection Audit Reporting System. It is required that RAAs document and maintain this information on file. All units are graded for the purpose of rent negotiation.

Features that speak to unit desirability are often personal in nature. For example, one client may agree to lease a unit because it is close the her doctor. DCHD will use only factors that drive the market rent of the unit in determining unit grade. DHCD requires all RAAs to adopt fair and consistent practices for grading units as accurately as possible.

DHCD strives to ensure that:

1. Units are safe, decent and sanitary and
2. Participating owners receive reasonable rent for these units.

The unit grading criteria outlined in this document provides guidance on factors that must be considered and which impact unit value. It is not necessary for any unit to meet all of the criteria in any category for it to be so graded, but a reasonable combination of some factors within each category, when fairly applied, will give an accurate reflection of the value of the unit. Not every possible factor could be listed, so it is important for inspectors to seek guidance from their Inspection Supervisor when it is needed.

Plus or minus grades may be used to more adequately fine tune the perceived value of the unit for rent negotiations when factors present are logically determined to fall between two differing unit grades. C- Grades are NOT to be considered or used (See C Grade). Similarly, A+ Grades are unnecessary as well.

In order to be considered for the Section 8 Project Based Assistance Voucher Program (PBA), units MUST meet criteria for Grade B+ at a minimum.

The final determination of the unit grade shall be the responsibility of the inspector.

DHCD UNIT GRADING CRITERIA

"A" Unit

- Unit/building interior, exterior and common areas are in excellent condition, newly or recently constructed or rehabbed with good quality materials and workmanship and provide an excellent thermal environment with direct heat sources in living/sleeping rooms.
- Appliances and fixtures are owner supplied and are new and/or of good quality. Tenant supplied appliances will not affect grade if owner supplied were offered and declined in favor of the tenant's own.
- Flooring is in excellent condition at move in.
- Unit has sufficient cabinets and closets and/or common area storage in an accessible basement or attic.
- There are no existing asbestos or lead based paint hazards and there is pro-active maintenance if either material is present.

- Electrical system and number of outlets per room demotes the need to use extension cords.
- Fire exits meet current standards (full door and stairway) and are properly maintained. Smoke detectors and carbon monoxide detectors are hard wired with battery back-up.
- Good roof water management prevents icing of stairways and prevents interior air quality issues relating to moisture and/or mold.
- There are no structural issues within the building or porches, and stairs, walkways, drive and parking areas are free of trip hazards.
- Has numerous extra amenities that clearly add to the desirability of the unit such as:

    - ✓ Off-street or designated parking
    - ✓ Additional bathrooms
    - ✓ Large or additional rooms
    - ✓ Washer/dryer hook up or laundry facility
    - ✓ Enclosed porch or patio/deck
    - ✓ Tenant access to pool, gym or other amenity
    - ✓ Modern and efficient climate control
    - ✓ On-site maintenance / security personnel or device
    - ✓ Has been adapted for persons with disabilities

- Obvious on-going maintenance of the unit and building as well as good tenant selection practices by the owner or management.
- No evident site and/or neighborhood conditions that could adversely impact the tenant considering family composition.

In general, required work is completed most often with one but not more than two re-inspections, considerate of seasonal repairs and/or weather. Owner is responsive to inspection comment items. Trash containment and pick up as well as snow removal is provided as needed. A- Grade may be considered for fine tuning the unit value for rent negotiations. A+ Grade is generally unnecessary.

"B" UNIT

- Unit/building is in good condition. Appliances, fixtures and other features are modern and fully functional.
- Recent renovation including interior, exterior and common area spaces with average quality materials does not substantially increase the overall value of the unit or building.
- Overall condition of the unit/building is above average and provides a better than average thermal environment (windows, direct heat sources in each living/sleeping room). If indirect heat sources are utilized, the owner is receptive to utilizing options such as louvered doors and/or ceiling fans if needed.
- Electrical system and number of outlets may preexist current standards but are adequate to demote the use of extension cords.
- Fire exits and smoke detectors may preexist current standards but are well maintained and are functional to meet the needs of the occupants considerate of the family composition. Carbon monoxide detectors are properly located and maintained.
- Any asbestos and/or lead based paint is proactively maintained.

- Unit/building is free of evidence of excess moisture, mold and/or interior air quality issues. (Older homes with stone/brick foundations may exhibit some limited water penetration in the basement at times.)
- Has at least one extra feature that adds to desirability (porch, yard, security system, near recreational area or other facility, extra-large rooms, adequate closets and/or storage).
- Could otherwise be an A unit except for the quality of renovation work and/or the need for more aggressive preventive maintenance by the owner. Perhaps would be an A unit if the appliances or utilities were owner supplied.
- Site conditions are adequate but some neighborhood conditions may exist but do not pose an imminent risk to the tenant/family.
- Owner may or may not occupy the property but posts emergency contact and is responsive. Services such as trash pick-up and snow removal is adequate.

B units are of above-average quality and are generally well maintained. (Example: Could be a C+ unit that has been adapted for a person with disabilities.) Often two or sometimes three re-inspections are required to complete required repairs, but rent withholds for inspection non-compliance are not routine. B+ or B- Grades may be used to more adequately fine tune the perceived value of the unit for rent negotiation.

B+ Grade: May be used when a reasonable combination of B factors and A Grade extra amenities are present. At minimum, this grade must be met for consideration for HCVP Project-Based assistance. Direct heat sources are required for B+ grade criteria.

"C" UNIT

- Unit is in average condition, but with normal wear and tear, two or more HQS fail items will likely occur within the inspection pass date and the next annual inspection.
- Appliances and unit features are dated but functional.
- The electrical system is adequate but lacking sufficient outlets to demote the use of extension cords.
- Fire exits and smoke detector systems are adequate and functional considerate of the family composition. Carbon monoxide detectors are properly located and maintained.
- Maintenance appears to be performed on an as-needed basis with little or no evidence of preventive maintenance. Tenant selection and screening may be minimal. The unit may not be well prepared between tenants.
- The thermal environment is average or somewhat below average with old windows and/or older, less efficient heating system likely to result in higher utility costs.
- If present, asbestos and/or lead based paint is not proactively maintained but owner will cooperate if required.
- The condition of porches, stairs and walkways may show signs of age and may require repairs.
- Common areas are often lacking sufficient lighting and cleaning.
- Trash containers may be lacking and the basement may contain excess debris and some old appliances that need to be discarded.
- The possibility of pest infestation exists.

- Gutters/downspouts may be lacking, damaged or missing and the roof may be nearing the end of its service life.
- Site and neighborhood conditions exist but do not directly impact the tenant/family and the owner is willing to or has taken preventive safety measures.

While some C Grade units appear sparse but solid, some others may appear to have once been beautiful apartments. In a lower end C unit the effects of tenant wear and tear are evident. It is likely that three or more re-inspections may be required and rent withholds are not uncommon. A C unit grade represents a solid average rental unit. C+ Grades may be used to fine tune the unit value for rent negotiations, but C- Grades may not be used as they are too prone to subjective compromises and frequently become a D Grade before the next annual inspection. Inspectors must give guidance to achieving at minimum a C Grade.

"D" UNIT

- Unit is in unsatisfactory condition and in need of renovation to be considered safe, decent and sanitary for lease to the program.
- Major building systems (roof, siding, plumbing, electrical, heat, etc.) are at the end of their service life and/or are suspect.
- Little or no ongoing maintenance of the property by the owner and multiple layers of poor quality repairs exist.
- Structural problems are apparent or progressing in the building or porches such as bowing, excess settlement or leaning, and/or masonry failure
- Air quality issues relating to lack of maintenance of lead based paint, unkeyed or failing plaster, asbestos or excess moisture and mold.
- Poor quality rehab, crossed utilities, questionable fire exits or other evidence of unprofessional rearrangement of the building.
- A poor quality thermal environment that will generate high utility costs to the tenant such as drafty old windows or poorly fit replacements, holes or rot in the exterior siding.
- Site and neighborhood conditions that present a risk to the tenant considering the family composition such as a lack of security, unsecured abandoned buildings, history or evidence of high crime, drug or gang activity, bullet holes and vagrants in the building.
- Deteriorated outbuildings, excessive amounts of debris in basement or on grounds and fire hazards.
- Owner-supplied utilities or water may have been shut off to the detriment of the tenants. (If possible, ask other occupants)
- Conditions that will likely result in a fail condition within the next ninety days that will ultimately affect the agency audit fail rate and create increased costs due to excess re-inspections.

DHCD does not authorize leasing of units that merit this grade. Owners are often uncooperative, and terminations often result putting the client under pressure to relocate. Rent requests often far exceed the value of the unit.

Inspection staff should give the owner clear guidance on what repairs are required for the building/unit to meet a grade C or better. It is important that this be done as politely and professionally as possible. Increased unit value may cover the cost of repairs over time. The goal is to help the owner maintain the value of the property, stabilize the tax base and maintain viable affordable housing resources.

Exhibit 13-1: Family Responsibilities Under The Section 8 Housing Choice Voucher Program

The family must follow the rules listed below in order to continue participating in the Section 8 Housing Choice Voucher Program. If anyone living in the home violates any of these obligations, the family may be terminated from the program.

1. Supply any information that <<RAA**>>** or HUD determines to be necessary, including evidence of citizenship or eligible immigration status, and information for use in a regularly scheduled reexamination or interim reexamination of family income and composition.

2. Disclose and verify social security numbers and sign and submit consent forms for obtaining information.

3. Ensure that all information provided by the family is true and complete.

4. Notify the Agency of any increases in earned income within 15 business days of the date of the change if the family's last interim reexamination resulted in a decrease in rent.

5. Notify the Agency of any increases in monetary and non-monetary income within 15 business days of the date of the change if the family reported zero income at their last regular or interim reexamination.

6. Notify the Agency of any increases in earned income within 15 business days of the date of the change if the family is paying minimum rent.

7. Notify the Agency of any changes in household income/expenses and/or changes in circumstances within 15 business days of the date of the change if the family has a financial hardship exemption from minimum rent.

8. Notify the Agency, within 15 business days, of the loss of earned income during an earned income disallowance.

9. Notify the Agency, in writing, within 15 business days, of the birth, adoption, or court awarded custody of a child.

10. Notify the agency, within 15 business days, if an adult family member (other than the head of household, co-head or spouse) with full time student status, ceases to be a full time student.

11. Request the Agency's written approval to add any other family member, live-in aide, foster child or foster adult as an occupant of the unit, and not move the individual into the unit prior to receiving owner and Agency approval.

12. Notify the Agency in writing within 15 business days if any family member, live-in aide, foster child or foster adult no longer lives in the unit.

13. Notify the Agency in writing if all family members will be absent from the unit for more than 30 days, at the start of such absence, and obtain Agency approval.

14. Notify the Agency and the owner in writing before moving out of the unit or terminating the lease. Notice to move requirements are specified in your lease.

15. Promptly give the Agency a copy of any owner eviction notice.

16. Provide access to inspect the unit at reasonable times and after reasonable notice. Provide the owner with access to the unit to complete required repairs.

17. Notify the RAA in advance and in writing if the owner/agent has agreed to provide access to the unit for an inspection.

18. Pay for utilities that the family is responsible for under the lease.

19. Supply and maintain any appliance that the family is required to provide under the lease.

20. Use the assisted unit for residence by the family. The unit must be the family's only residence. Supply any information or verification requested by the Agency relating to whether the family is residing in the unit or whether the family is absent from the unit.

The family must not:

21. Own or have any interest in the unit (other than in a cooperative, or the owner of a manufactured home leasing a manufactured home space).

22. Engage in profit making activities in the unit unless such activities are incidental to the primary use of the unit as a residence by the family.

23. Commit any serious or repeated violation of the lease.

24. Commit fraud, bribery, or any other corrupt or criminal act in connection with the program.

25. Participate in drug-related criminal activity or violent criminal activity or other criminal activity that threatens the health, safety or right to peaceful enjoyment of other residents and persons residing in the immediate vicinity, or threatens the health or safety of the owner, property management staff, or staff of the Agency.

26. Sublease, let or transfer the unit or assign the lease.

27. Receive another housing subsidy for the same unit or for a different unit under any other federal, state, or local housing assistance program.

28. Damage the unit or premises (other than damage from ordinary wear and tear) or permit any guest to damage the unit or premises.

29. Reschedule HQS inspections unless there good cause and documentation is provided to verify the good cause and/or fail to provide access to the unit for inspections after being provided with advance notice of the inspection. No show violations may result in termination of assistance.

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30. Threaten or use abusive language when communicating with Agency staff.

31. Receive Section 8 Housing Choice Voucher Program housing assistance while residing in a unit owned by a parent, child, grandparent, grandchild, sister or brother of any member of the family, unless the Agency has determined (and has notified the owner and the family of such determination) that approving rental of the unit, notwithstanding such relationships, would provide reasonable accommodation for a family member who is a person with disabilities.

32. Engage in abuse of alcohol in a way that threatens the health, safety, or right to peaceful enjoyment of the other residents and persons residing in the immediate vicinity of the premises or threatens the health or safety of the owner, property management staff, or staff of the Agency.

33. Engage in abuse of alcohol in a way that threatens the health, safety, or right to peaceful enjoyment of the other residents and persons residing in the immediate vicinity of the premises or threatens the health or safety of the owner, property management staff, or staff of the Agency.

If you have any questions about any of your obligations, please speak with your program representative.

I hereby certify that I understand the family obligations of the Section 8 Housing Choice Voucher Program and that a violation of these obligations may result in termination from the program.

_____ _____

Name Date

Exhibit 14-1: Owner Incentive Pilot Program

Berkshire Housing Development Corporation's (BHDC) Moving to Work (MTW) Owner Incentive Pilot Program Year 2 Administrative Plan
Effective 1/1/11-

I. Objective
Using its MTW authority, the Massachusetts Department of Housing and Community Development (DHCD) has approved a pilot program designed by BHDC to increase housing choice in Berkshire County, as well as to incentivize owners to rehabilitate their properties, provide handicap accessible units and maintain HCV units at high HQS grade levels. BHDC wishes to attract owners who are willing to "invest" in their properties and to maintain them at above average HQS standards. Specifically, program goals include the following:

- Increase the number of higher quality apartments under HAP contract
- Increase the number of units under HAP contract in underserved neighborhoods and communities (as defined by BHDC)
- Attract new owners to the HCVP
- Increase the number of handicap accessible apartments
- Turn foreclosed properties into affordable housing units

II. Program Description
The Owner Incentive Program (OIP) has a number of different financial incentives, each of which supports the objectives of the program. DHCD will offer financial incentives to owners who meet the criteria below AND who agree to lease to the same tenant or another HCV client in the subsequent year. Participation is capped at ten (10) units per owner per year, and the total program will not exceed 8% of BHDC's HCVP allocation (approximately 40 units). DHCD will cap the incentive received at $1,700 per unit. The program has been renewed for a twelve-month period and is subject to renewal or cancellation in future years at BHDC's discretion.

Financial Incentives & Related Criteria:

New Owners:
Each unit is eligible for one of the following awards:

- $900 for new owners who have not previously had units under HAP contract in the HCV program and who bring a "B" grade unit under HAP contract (see Attachment A for DHCD Unit Grading Criteria).

OR

- $1,200 for new owners who have not previously had units under HAP contract in the HCV program and who bring an "A" grade unit under HAP contract.

Each "A" or "B" unit is also eligible for:

- $500 for new owners who have not previously had units under HAP contract in the HCV program.

Existing Owners:
Each unit is eligible for one of the following awards:

- $900 for existing owners who bring a unit currently under HAP contract to a grade "B" from a "C."

OR

- $900 for existing owners who bring under HAP contract a “B” unit which has not previously been under HAP contract.

OR

- $1,200 for existing owners who bring a unit currently under HAP contract to a grade “A” from a “C”

OR

- $1,200 for existing owners who bring under HAP contract an “A” unit which has not previously been under HAP contract.

- Each unit may also be eligible for one of the following awards:

- $500 for existing owners who bring units which are new construction (new to the program) or complete substantial rehab (current or new to the program) to receive a grade “A” or “B.”

OR

- $500 for existing owner who installs accessibility features which are required by the current tenant and are pre-approved by BHDC (owner must spend a minimum of $1,500 for these improvements, see Attachment B for a list of eligible expenses).

OR

- $500 for existing owner who purchases a foreclosed property with an “A” or “B” unit which is subsequently brought under HAP contract. The owner must provide documentation to verify the foreclosure.

OR

- $500 for a unit in an underserved community or neighborhood (as defined by BHDC).

- Summary of Available Incentives

Incentive Type	Incentive Amount	Eligible?	
		New Owner	Existing Owner
New “A” Grade Unit	$1,200	X	X
New “B” Grade Unit	$900	X	X
Move from “C” or “B” Grade to “A” Grade (existing units only)	$1,200		X
Move from “C” Grade to “B” Grade (existing units only)	$900		X
New Owner Bonus*	$500	X	
New Construction Bonus*	$500		X
Substantial Rehab Bonus*	$500		X
Accessibility Bonus*	$500		X
Foreclosure Bonus*	$500		X
Underserved Community Bonus (only new units)*	$500		X

*Owners are eligible for a maximum incentive of $1700 per unit. Therefore, each unit is eligible for only one $500 Bonus.

All work must be completed with all applicable permits, inspections, and approvals.

Owners looking for additional funding sources for home modifications will be provided with a list of local, state and federal sources that may be accepting applications for specific improvements.

An agreement will be signed certifying that the incentive payments are not part of the monthly rent to owner. The rent reasonableness calculation for units involved in the program will not change, and will continue to be tied to a grade and a local rent comparable system.

BHDC reserves the right to change the amounts, terms, targeted areas or any criteria listed above during the program.

III. Compliance with Program Guidelines

BHDC will remain in compliance with the agency's Administrative Plan, and all other applicable DHCD and HUD regulations.

IV. Administrative Structure

The program will not require additional staffing, and will be administered by existing BHDC staff.

V. Implementation

Owner Recruitment:
BHDC will continue to solicit owners who are likely to contribute to the program in meeting its objective by participating in the Rental Housing Association of Berkshire County (RHABC) and provide existing owners with an update of the program. BHDC HQS inspectors may be able to assist in identifying owners or units that may qualify for the program.

Applications:
Applications will be available at the BHDC office during normal business hours. Applications may also be requested by phone or email, and will be sent by mail or by fax. Applications may be submitted by mail or in person. All program applications will be reviewed by the Director of Leased Housing.

There will be no waitlist kept for this program. If an application is submitted after the program is closed, the application will be returned to the owner and the owner may reapply if and when the program opens again.

There will be no appeal rights to BHDC or DHCD if an owner is denied participation in the program. Denial of an application would occur if the Owner does not meet the eligibility criteria, has the maximum number of units already participating in the program, or has a history of HQS non-compliance.

Program Participation:
Upon acceptance to the program, owners will submit a detailed work plan for each unit which has been accepted to the program. A baseline inspection will be conducted and photos taken of the existing unit condition. The work plan and a timeline will be finalized for each unit, and an agreement signed with the owner which outlines the obligations of the owner and BHDC.

Upon completion of the improvements to the unit, an inspection will be completed to verify the improvements and award a new grade to the unit. Owners receiving the accessibility bonus are required to provide BHDC an itemized list of costs associated with the improvements. BHDC reserves the right to inspect the unit at any point during program participation to ensure that the unit maintains the new HQS grade.

Payments:
Funds are to be committed within the first twelve (12) months of the program. The base payment of $900 or $1,200 will be made in quarterly installments beginning with the first HAP payment made for the unit after the post-improvement inspection has been made and provided the unit maintains the condition for which the award was originally made. The additional $500 payment (if applicable) will be made at the end of the twelve (12) month period, provided that the tenant remains in the unit or that another HCV client leases the unit. Payments will be terminated if at any time during the program the unit condition falls below the grade for which the reward was originally made.

VI. BHDC Priorities

No Priorities will be given for this program. Applications will be taken on a first come first serve basis until funds are depleted. BHDC will open and close the application process as needed to meet program objectives.

VII. Geographic Service Area

The program will be available throughout Berkshire County.

VIII. Coordination with Other Local Service Providers

BHDC maintains relationships with many Berkshire County Service agencies. In November 2009, BHDC will present the OIP to the Rental Housing Association of Berkshire County (RHABC), which currently consists of ninety-four (94) Berkshire County owners. BHDC staff will also be briefed on this program. In December of 2009, BHDC will also announce the program to its partner agencies and all owners who currently have units participating in the HCVP (approximately 290). BHDC also anticipates introducing the program at an Owner Fair.

The following is a list of agencies and/or organizations which will be notified of the program:

Family Support Agencies:

- Child Care of the Berkshire – Healthy Families
- Christian Center
- Family Life Support, Inc.
- Parenting Partnership Program
- Berkshire Center for Families & Children
- Great Barrington Family Center – Southern Berkshire Family Networks
- Event Start Program
- St. Stephen's Church Mission & Outreach Program

Various Service Providers:

- United Cerebral Palsy
- Meridian Associates (Mentally Handicapped Service Provider)
- Ad Lib, Inc. (Disabled Citizens Advocacy)

- Brien Center (Mental Health & Substance Abuse
- Counseling)
- Elder Services of Berkshire County

Local State Agencies:
- Department of Social Services
- Western MA Legal Services
- WIC
- Department of Transitional Assistance
- Department of Mental Health
- City of Pittsfield Community Development Office
- Rental Housing Association of Berkshire County

Housing Service Providers:
- Habitat for Humanity
- Berkshire County Regional Housing Authority
- Great Barrington Housing Authority
- Pittsfield Housing Authority
- North Adams Housing Authority
- Adams Housing Authority
- Stockbridge Housing Authority
- Our Friend's House Family Shelter

Employment Support Agencies & Businesses:
- Corporation for Public Management
- Berkshire Works (Dept. of Training & Employment)
- Mildred Elley Business School
- Mass Rehabilitation Commission

Utility Companies:
- Northeast Utilities
- Berkshire Gas

Local Banks:
- Greylock Federal Credit Union
- Adams Cooperative Bank
- Berkshire Bank
- Hoosac Bank
- Lee Bank
- Legacy Banks
- South Adams Savings Bank
- TD Banknorth
- Pittsfield Cooperative Bank

IX. Performance Standards/Program Evaluation

BHDC will establish baseline unit counts and conditions before implementation of the program. Data will be collected for all indicators upon completion of the program, and some metrics (unit retention, unit grade retention, number of new units brought on by new and existing owners)

will continue to be measured up to sixty (60) months after the start of the program. Data collection will be performed using existing data fields in the Trackers System. Success of the program will be determined by change in the number and/or percentage of:

- The number of units which have received a grade higher than the previous HQS inspection
- The number of units which were leased in a underserved community or neighborhood (as defined by BHDC)
- The number of units which were made handicap accessible
- The number of units which were purchased under foreclosure, rehabilitated and converted to affordable housing (proper documentation verifying foreclosure purchase will be required)
- How long participating units sustain their improved condition over the life of the HCVP contract

If the pilot program is successful, it may be expanded to other Regional Administering Agencies (RAAs) in Massachusetts. It may also serve as a model for HCV programs nationally to help improve the availability of quality rental units for HCVP participants.

Exhibit 17-1: DHCD Section 8 Utility Allowance Schedule - MTW

Regional Administering Agency: _____
Effective Date: _____

This utility allowance schedule is for tenant paid heat only. Utility allowances for other tenant paid utilities are not provided by the PHA.

	Smaller of the Unit Size or Voucher							
	O BR	1 BR	2 BR	3 BR	4 BR	5 BR	6 BR	7 BR
Utility Allowance								

Exhibit 17-2: Utility Survey Information and Schedules – Non-MTW

Department of Housing and Community Development
Utility Survey Information

Regional Administering Agency: _____ Date:_____

ELECTRIC COMPANIES			
☐ Copy of rate schedule attached		☐ Copy of rate schedule attached	
Company:		Company:	
Phone:	Cost:	Phone:	Cost:
Minimum Charge	$	Minimum Charge	$
1st _____ KwH		1st _____ KwH	
2nd _____ KwH		2nd _____ KwH	
3rd _____ KwH		3rd _____ KwH	

ELECTRIC COMPANIES			
☐ Copy of rate schedule attached		☐ Copy of rate schedule attached	
Company:		Company:	
Phone:	Cost:	Phone:	Cost:
Minimum Charge	$	Minimum Charge	$
1st _____ KwH		1st _____ KwH	
2nd _____ KwH		2nd _____ KwH	
3rd _____ KwH		3rd _____ KwH	

When more than one rate is applicable, explain your rationale for either using a single rate or a combined rate: _____

_____

Department of Housing and Community Development
Utility Survey Information

Regional Administering Agency: _____ Date:_____

GAS COMPANIES			
Copy of rate schedule attached? ☐ Yes ☐ No			
Company:		Phone:	
UNITS: ☐ THERM ☐ MCF ☐ CCF			
HEATING RATE (Nov.-April)	$/unit	NON-HEATING RATE (Nov Apr)	$/unit
Minimum Charge	$	Minimum Charge	$
1st _____ therm(s)		1st _____ therm(s)	
2nd _____ therm(s)		2nd _____ therm(s)	
3rd _____ therm(s)		3rd _____ therm(s)	
HEATING RATE (May-Oct.)	$/unit	NON-HEATING RATE (May-Oct.)	$/unit
1st _____ therm(s)		1st _____ therm(s)	
2nd _____ therm(s)		2nd _____ therm(s)	
3rd _____ therm(s)		3rd _____ therm(s)	

When more than one rate is applicable, explain your rationale for either using a single rate or a combined rate: _____

_____

_____

_____

_____

_____

Department of Housing and Community Development
Utility Survey Information

Regional Administering Agency: _____ Date:_____

HEATING OIL			
	Company	**Telephone**	**$/Gallon**
1.			
2.			
3.			
4.			
5.			
6.			

LIQUID PROPANE GAS			
	Company	**Telephone**	**$/Gallon**
1.			
2.			
3.			
4.			
5.			
6.			

When more than one rate is applicable, explain your rationale for either using a single rate or a combined rate: _____

_____

_____

_____

_____

_____

DHCD SECTION 8 (Non-MTW) Utility Allowance Schedule – Non-MTW

Regional Administering Agency: _____
Effective Date: _____

SINGLE FAMILY	0 BR	1 BR	2 BR	3 BR	4 BR	5 BR
MAIN SPACE HEATING						
Gas (therms)						
Oil (gallons)						
Electric (KwH)						
MAIN WATER HEATING						
Gas (therms)						
Oil (gallons)						
Electric (KwH)						
LPG (gallons)						
GENERAL ELECTRIC (KwH)						
COOKING						
Electric (KwH)						
Gas (therms)						
LPG (gallons)						
REFRIGERATOR						
Electric (KwH)						
GAS CUSTOMER CHARGE						
Two/Three FAMILY	0 BR	1 BR	2 BR	3 BR	4 BR	5 BR
MAIN SPACE HEATING						
Gas (therms)						
Oil (gallons)						
Electric (KwH)						
ROW/GARDEN	0 BR	1 BR	2 BR	3 BR	4 BR	5 BR
MAIN SPACE HEATING						
Gas (therms)						
Oil (gallons)						
Electric (KwH)						
MULTI FAMILY	0 BR	1 BR	2 BR	3 BR	4 BR	5 BR
MAIN SPACE HEATING						
Gas (therms)						
Oil (gallons)						
Electric (KwH)						

DHCD SECTION 8 UTILITY ALLOWANCE

AVERAGE MONTHLY CONSUMPTION DATA

SINGLE FAMILY	0BR	1BR	2BR	2.5 BR	3BR	4BR	5BR(1)
MAIN SPACE HEATING							
Gas (therms)	38	53	69	76	84	107	122
Oil (gals.)	33	46	59	66	72	92	105
Elec (kwh)	333	467	600	667	733	933	1067
MAIN WATER HEATING							
Gas (therms)	11	15	19	22	24	30	34
Oil (gals.)	7	9	12	13	15	19	21
Elec (kwh)	127	178	229	255	280	356	407
LPG (gals)	7	10	13	14	16	20	23
GENERAL ELECTRIC							
Elec (kwh)	148	207	266	296	325	414	473
COOKING							
Elec (kwh)	55	77	99	110	121	154	176
Gas (therms)	3	5	6	7	7	9	10
LPG	3	4	5	5	6	8	9
REFRIGERATOR							
Elec (kwh)	54	76	97	108	119	151	173

Exhibit 17-3: HUD-Approved Methodology Used By DHCD For Establishing The Utility Allowances – Non-MTW

EXECUTIVE
OFFICE OF
COMMUNITIES &
DEVELOPMENT

William F. Weld, Governor
Argeo Paul Cellucci, Lt. Governor
Mary L. Padula, Cabinet Secretary

M E M O R A N D U M

TO: Section 8 Regional Program Managers
James Canavan, Executive Director, CTI

FROM: Jennie L. Rawski, Program Specialist

SUBJECT: Revised Utility Consumption Data & Implementation of New Utility Allowances

DATE: April 8, 1994

I am enclosing for your use and information revised utility consumption data. Chapter 14 of EOCD's administrative plan, which addresses the utility allowance, is being revised. A copy will be sent to you when we receive HUD approval.

Instructions for Implementation

Your agency must obtain current local rate information and prepare new utility allowance schedules using the enclosed consumption data. The revised schedules, a list of the utility companies contacted, the date contacted, and the rates obtained must be submitted to my attention by May 4, 1993. EOCD will present these revised schedules to HUD. Forms are enclosed for your convenience. They are available on diskette for Word Perfect upon request.

Your agency should begin using the revised schedules for all recertifications and new contracts effective on or after August 1, 1994. After this year, revisions to your utility allowance schedules must take place in October to coincide with the change in the FMRs. When developing your schedules please note the following.

√Schedules must be based on unassisted rates.

√Do not apply the minimum monthly service charge to more than one category per fuel type as this may result in an inflated allowance. For electricity, the monthly service charge should be included in the General Electric category since that category will apply to all families where utilities are not included in the rent. For gas, I would suggest preparing your charts without including the monthly service charge in any category but rather as a single add-in. When it has been determined what combination of gas utilities a tenant is responsible for the minimum monthly service charge should be added in only once. A space has been added on the enclosed worksheet to reflects the gas customer charge.

Each regional administering agency must ensure that utility allowances are authorized based on the unit's actual bedroom size. This will necessitate that each agency establish procedures to improve coordination between program and inspection staff. For example, a family has a two bedroom certificate, but their unit, in addition to having two distinct bedrooms may have other rooms which could be used for sleeping. Therefore, the unit would qualify for a larger than two bedroom utility allowance. Jane McLeod, EOCD's Inspection Supervisor, will be developing guidelines and examples for inspectors on how to determine a unit's bedroom size. **Please ensure that your program staff is instructed to use the inspector's determination as to the number of bedrooms, not the certificate size for the purposes of establishing the utility allowance.**

EOCD recognizes that consumption patterns and rates in particular may vary by region. Therefore, each regional administering agency has the option of either using the consumption data established by EOCD or compiling their own data by surveying actual annual consumption within their area of operation. All agencies will use EOCD's revised data initially. If your agency chooses to develop regional consumption data, it shall follow the procedure as described in HUD Handbook 7420.7 Chapter 11 which is enclosed for your information. Agencies with uncommon fuel types, such as kerosene or wood, must develop their own consumption data for those fuel types in accordance with HUD procedures.

On an annual basis your agency must obtain updated rate information from the local utility companies and apply this information to the current consumption data to insure that families are receiving an adequate utility allowance. The revised schedules and billing data summary must be submitted to EOCD each year by September 1st.

If you have any questions, I may be reached at (617) 727-7130 x.640.

enclosures - 4

To verify that families are receiving an adequate utility allowance your agency must obtain data as required by HUD procedures at 7420.7 11-6.b. This section requires that billing data must be obtained for a minimum of 25 units of each unit size and structure type. Most utility companies are able to provide this information if they are given specific addresses.
EOCD expects that we will review and update the consumption data every three years.

M E M O R A N D U M

TO: Mary-Anne Morrison, Director

FROM: Jennie Rawski, Program Specialist

SUBJECT: Development of Revised Consumption Data & Implementation

DATE: February 28, 1994

EOCD's consumption data has not been reevaluated since 1990 largely because of the difficulty in obtaining the data for different structure types as HUD requires.[8] In the process of this revision, I considered consumption data available from three primary sources: the Massachusetts Department of Public Utilities (DPU), local utility companies, and the Federal Department of Energy Information. Of the three, I found that the Residential Energy Consumption Survey (RECS) published by the Energy Information Administration (EIA) of the U.S. Department of Energy was the only data source meeting HUD's criteria. The RECS data is well suited to the development of a utility allowance as it is a consumption survey; the data is collected directly from the household. The 1990 RECS (published in 1993) represents 94 million households in the 50 states and the District of Columbia.

The Federal Energy Information Administration conducts a Residential Energy Consumption Survey every three years. The last survey was conducted in 1990 and the 1993 survey is underway. The 1990 RECS for the New England Census Division[9], provides data on average consumption and expenditures for all households by a wide variety of characteristics including: structure type (single-family, mobile homes, and multifamily housing units)[10]; unit size (number of rooms and heated square feet); and fuel type (electricity, natural gas, fuel oil, and liquid propane gas (LPG)).

For each fuel type, the RECS provides consumption data for the following end-uses: main space heating, main water heating, appliances, and refrigerators. The RECS data does not isolate

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[8]HUD Handbook 7420.7, which dates from November 1979, requires PHA's to establish utility allowance schedules based on the typical cost of utilities in the PHA's locality. Also that three major variables; unit size, structure type, and fuel type, be considered in establishing the utility allowance schedules. The allowances must be applicable to **average** size units, under **average** conditions, using **average** consumption patterns.

[9]The New England Census Division includes: Maine, New Hampshire, Vermont, Massachusetts, Connecticut, and Rhode Island.

[10]Although the EIA obtained consumption data for additional structure types, it was not published in the 1990 report; however, I was able to obtain that data directly from the Energy End Use and Integrated Statistics Division of the EIA.

cooking as a separate end use but includes it in the appliances category.[11] Data is not provided where an energy source such as wood or kerosene is used in small quantities in the region. The 1990 RECS data is attached.

I used the RECS data to establish consumption rates by end-use for the average 2.5 bedroom dwelling: single-family, two/three family, garden/row house, and multi-family.[12] Consumption tables were then developed for other unit sizes by applying the factors for 0-5 bedroom units established in the instructions for the HUD Form-52667. The new consumption tables are attached.

For purposes of comparison I developed a table which compares EOCD's 1989 and 1993 consumption figures, HUD's utility consumption schedule from HUD Form-52667, and 1990 data from the Department of Public Utilities (DPU) on residential heating.[13] This table, "Comparison of Proposed and Existing Consumption Data" is attached for your information. The comparison indicates that actual consumption does not vary significantly over time. The increased use of energy-efficient appliances and advancements in construction technology may contribute to reduced consumption in certain areas.

Recommendations for Implementation

Because EOCD's administers a statewide Section 8 program, we must recognize that consumption patterns and rates in particular may vary by region. Therefore, each regional administering agency (RAA) will be given the option of either using the consumption data established by EOCD or compiling their own data by surveying actual annual consumption within their area of operation. We expect that all agencies will use EOCD's revised data initially. If an RAA chooses to develop regional consumption data, it will follow the procedure as described in HUD Handbook 7420.7.[14]

Because utility rates are subject to fluctuation, EOCD will require each RAA to obtain updated rate information on an annual basis. Rate information will be obtained from the local utility companies in each agency's area of operation. Each RAA will use this information to verify that Section 8 tenants are receiving an adequate utility allowance. However, it must be noted that any sample group of participants selected by EOCD's regional administering agencies for which data may be readily obtained, will reflect usage and consumption of low-income households as well as a subsidized rate.

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[11]If electricity is not used for cooking, a deduction of 110 kwh will be taken.

[12]From the RECS, a Single-family Attached unit translates to a Garden/Row unit; and a Multi-family (2-4 units) translates to a 2/3 Family unit.

[13]To ensure compatibility with the RECS survey, 1990 DPU data is used. The DPU data is for residential heating only and based on a conversation with the DPU, is assumed to include hot water heating.

[14]Consumption data must be obtained for a minimum of 25 units of each unit size and structure type as established in HUD Handbook 7420.7. Most utility companies are able to provide this information if they are given specific addresses.

Following HUD approval of the proposed consumption data and application of the current rates by EOCD's subgrantees, EOCD will submit all newly developed schedules to HUD. Revisions to the utility allowance schedules will not be resubmitted to HUD for approval unless requested.

EOCD will require each RAA to develop procedures to ensure that utility allowances are authorized based on the unit's actual bedroom size, and will require each RAA to establish procedures to improve coordination between program and inspection staff. The problem occurs when a family has a two bedroom certificate or voucher, but their unit, in addition to having two distinct bedrooms may have other rooms which could be used for sleeping. Therefore, the unit would qualify for a more than two bedroom utility allowance. To correct this problem, inspectors will be instructed as to what constitutes a separate sleeping area and will be provided with examples; and, program staff will be instructed to use the inspector's determination as to the number of bedrooms, **not** the certificate size.

EOCD should revise and update the consumption data every 3 years, as a new RECS become available. I have been informed by Joelle Davis at the EIA that the 1993 RECS survey is being expanded and will encompass and publish data on all of the unit types required by HUD.

Exhibit 17-4: Sample Notice to HCV Applicants and Tenants Regarding Violence Against Women Act (VAWA)

This sample notice was adapted from a notice prepared by the National Housing Law Project.
A federal law that went into effect in 2006 protects individuals who are victims of domestic violence, dating violence, sexual assault, and stalking. The name of the law is the Violence against Women Act, or "VAWA." This notice explains your rights under VAWA.

Protections for Victims

If you are eligible for a Section 8 voucher, the housing authority cannot deny you rental assistance solely because you are a victim of domestic violence, dating violence, sexual assault, or stalking.

If you are the victim of domestic violence, dating violence, sexual assault, or stalking, you cannot be terminated from the Section 8 program or evicted based on acts or threats of violence committed against you. Also, criminal acts directly related to the domestic violence, dating violence, sexual assault, or stalking that are caused by a member of your household or a guest can't be the reason for evicting you or terminating your rental assistance if you were the victim of the abuse.

Reasons You Can Be Evicted

You can be evicted and your rental assistance can be terminated if the housing authority or your landlord can show there is an *actual* and *imminent* (immediate) threat to other tenants or employees at the property if you remain in your housing. Also, you can be evicted and your rental assistance can be terminated for serious or repeated lease violations that are not related to the domestic violence, dating violence, sexual assault, or stalking committed against you. The housing authority and your landlord cannot hold you to a more demanding set of rules than it applies to tenants who are not victims.

Removing the Abuser from the Household

Your landlord may split the lease to evict a tenant who has committed criminal activity directly relating to domestic violence, dating violence, sexual assault, or stalking against an affiliated individual or other individual, while allowing the victim and other household members to stay in the assisted unit. Also, the housing authority can terminate the abuser's Section 8 rental assistance while allowing you to continue to receive assistance. If the landlord or housing authority chooses to remove the abuser, it may not take away the remaining tenants' rights to the unit or otherwise punish the remaining tenants. In removing the abuser from the household, your landlord must follow federal, state, and local eviction procedures.

Moving to Protect Your Safety

The housing authority may permit you to move and still keep your rental assistance, even if your current lease has not yet expired. The housing authority may require that you be current on your rent or other obligations in the housing choice voucher program. The housing authority may ask you to provide proof that you are moving because of incidences of abuse.

Proving That You Are a Victim of Domestic Violence, Dating Violence, Sexual Assault or Stalking

The housing authority and your landlord can ask you to prove or "certify" that you are a victim of domestic violence, dating violence, sexual assault, or stalking. The housing authority or your landlord must give you at least 14 business days (i.e., Saturdays, Sundays, and holidays do not count) to provide this proof. The housing authority and your landlord are free to extend the deadline. There are three ways you can prove that you are a victim:

- Complete the certification form given to you by the housing authority or your landlord. The form will ask for your name, the name of your abuser, the abuser's relationship to you, the date, time, and location of the incident of violence, and a description of the violence.

- Provide a statement from a victim service provider, attorney, or medical professional who has helped you address incidents of domestic violence, dating violence, sexual assault, or stalking. The professional must state that he or she believes that the incidents of abuse are real. Both you and the professional must sign the statement, and both of you must state that you are signing "under penalty of perjury."

- Provide a police or court record, such as a protective order.

If you fail to provide one of these documents within the required time, the landlord may evict you, and the housing authority may terminate your rental assistance.

Confidentiality

The housing authority and your landlord must keep confidential any information you provide about the violence against you, unless:

- You give written permission to the housing authority or your landlord to release the information.

- Your landlord needs to use the information in an eviction proceeding, such as to evict your abuser.

- A law requires the housing authority or your landlord to release the information.

If release of the information would put your safety at risk, you should inform the housing authority and your landlord.

VAWA and Other Laws

VAWA does not limit the housing authority's or your landlord's duty to honor court orders about access to or control of the property. This includes orders issued to protect a victim and orders dividing property among household members in cases where a family breaks up.
VAWA does not replace any federal, state, or local law that provides greater protection for victims of domestic violence, dating violence, sexual assault, or stalking.

For Additional Information

For help and advice on escaping an abusive relationship, call the National Domestic Violence Hotline at 1-800-799-SAFE (7233) or 1-800-787-3224 (TTY).

Definitions

For purposes of determining whether a tenant may be covered by VAWA, the following list of definitions applies:
VAWA defines *domestic violence* to include felony or misdemeanor crimes of violence committed by any of the following:

- A current or former spouse of the victim
- A person with whom the victim shares a child in common
- A person who is cohabitating with or has cohabitated with the victim as a spouse
- A person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies
- Any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction

VAWA defines *dating violence* as violence committed by a person (1) who is or has been in a social relationship of a romantic or intimate nature with the victim AND (2) where the existence of such a relationship shall be determined based on a consideration of the following factors:

- The length of the relationship
- The type of relationship
- The frequency of interaction between the persons involved in the relationship

VAWA defines *sexual assault* as any nonconsensual sexual act proscribed by Federal, tribal, or State law, including when the victim lacks capacity to consent (42 U.S.C. 13925(a)).

VAWA defines *stalking* as (A)(i) to follow, pursue, or repeatedly commit acts with the intent to kill, injure, harass, or intimidate another person OR (ii) to place under surveillance with the intent to kill, injure, harass, or intimidate another person AND (B) in the course of, or as a result of, such following, pursuit, surveillance, or repeatedly committed acts, to place a person in reasonable fear of the death of, or serious bodily injury to, or to cause substantial emotional harm to (i) that person, (ii) a member of the immediate family of that person, or (iii) the spouse or intimate partner of that person.

Exhibit 17-5: Sample Notice to HCV Owners and Managers Regarding the Violence Against Women Act (VAWA)

This sample notice was adapted from a notice prepared by the National Housing Law Project.

A federal law that went into effect in 2006 protects individuals who are victims of domestic violence, dating violence, sexual assault, and stalking. The name of the law is the Violence against Women Act, or "VAWA." This notice explains your obligations under VAWA.

Protections for Victims

You cannot refuse to rent to an applicant solely because he or she is a victim of domestic violence, dating violence, sexual assault, or stalking.

You cannot evict a tenant who is the victim of domestic violence, dating violence, sexual assault, or stalking based on acts or threats of violence committed against the victim. Also, criminal acts directly related to the domestic violence, dating violence, sexual assault, or stalking that are caused by a household member or guest cannot be cause for evicting the victim of the abuse.

Permissible Evictions

You can evict a victim of domestic violence, dating violence, sexual assault, or stalking if you can demonstrate that there is an *actual and imminent* (immediate) threat to other tenants or employees at the property if the victim is not evicted. Also, you may evict a victim for serious or repeated lease violations that are not related to the domestic violence, dating violence, sexual assault, or stalking. You cannot hold a victim of domestic violence, dating violence, sexual assault, or stalking to a more demanding standard than you hold tenants who are not victims.

Removing the Abuser from the Household

You may bifurcate (split) the lease to evict a tenant who has committed criminal activity directly relating to domestic violence, dating violence, sexual assault, or stalking against an affiliated individual or other individual, while allowing the victim and other household members to stay in the unit. If you choose to remove the abuser, you may not take away the remaining tenants' rights to the unit or otherwise punish the remaining tenants. In removing the abuser from the household, you must follow federal, state, and local eviction procedures.

Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking

If a tenant asserts VAWA's protections, you can ask the tenant to certify that he or she is a victim of domestic violence, dating violence, sexual assault, or stalking. You are not required to demand official documentation and may rely upon the victim's statement alone. If you choose to request certification, you must do so in writing and give the tenant at least 14 business days to provide documentation. You are free to extend this deadline. A tenant can certify that he or she is a victim by providing any one of the following three documents:

- A completed, signed HUD-approved certification form. The most recent form is HUD-50066. This form is available at the housing authority or online at http://www.hud.gov/offices/adm/hudclips/.

- A statement from a victim service provider, attorney, or medical professional who has helped the victim address incidents of domestic violence, dating violence, sexual assault, or stalking. The professional must state that he or she believes that the incidents of abuse are real. Both the victim and the professional must sign the statement under penalty of perjury.

- A police or court record, such as a protective order.

If the tenant fails to provide one of these documents within 14 business days, you may evict the tenant if authorized by otherwise applicable law and lease provisions.

Confidentiality

You must keep confidential any information a tenant provides to certify that he or she is a victim of domestic violence, dating violence, sexual assault, or stalking. You cannot enter the information into a shared database or reveal it to outside entities unless:

- The tenant provides written permission releasing the information.

- The information is required for use in an eviction proceeding, such as to evict the abuser.

- Release of the information is otherwise required by law.

The victim should inform you if the release of the information would put his or her safety at risk.

VAWA and Other Laws

VAWA does not limit your obligation to honor court orders regarding access to or control of the property. This includes orders issued to protect the victim and orders dividing property among household members in cases where a family breaks up.
VAWA does not replace any federal, state, or local law that provides greater protection for victims of domestic violence, dating violence, sexual assault, or stalking.

Additional Information

- HUD Notice PIH 2006-42 contains detailed information regarding VAWA's certification requirements. The notice is available at http://www.hud.gov/offices/adm/hudclips/.
- For a discussion of VAWA's housing provisions, see the preamble to the final VAWA rule, which is available at http://www.gpo.gov/fdsys/pkg/FR-2010-10-27/pdf/2010-26914.pdf.

Definitions

For purposes of determining whether a tenant may be covered by VAWA, the following list of definitions applies:
VAWA defines *domestic violence* to include felony or misdemeanor crimes of violence committed by any of the following:

- A current or former spouse of the victim

- A person with whom the victim shares a child in common
- A person who is cohabitating with or has cohabitated with the victim as a spouse
- A person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies
- Any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction

VAWA defines *dating violence* as violence committed by a person (1) who is or has been in a social relationship of a romantic or intimate nature with the victim AND (2) where the existence of such a relationship shall be determined based on a consideration of the following factors:

- The length of the relationship
- The type of relationship
- The frequency of interaction between the persons involved in the relationship

VAWA defines *sexual assault* as any nonconsensual sexual act proscribed by Federal, tribal, or State law, including when the victim lacks capacity to consent (42 U.S.C. 13925(a)).

VAWA defines *stalking* as (A)(i) to follow, pursue, or repeatedly commit acts with the intent to kill, injure, harass, or intimidate another person OR (ii) to place under surveillance with the intent to kill, injure, harass, or intimidate another person AND (B) in the course of, or as a result of, such following, pursuit, surveillance, or repeatedly committed acts, to place a person in reasonable fear of the death of, or serious bodily injury to, or to cause substantial emotional harm to (i) that person, (ii) a member of the immediate family of that person, or (iii) the spouse or intimate partner of that person.

Exhibit 18-1: 24 CFR 982 Regulations That DO NOT Apply to PBV

Project-based-voucher regulations at 24 CFR 983.2(b) and (c)state that all tenant based voucher regulations at 24 CFR 982 apply to the PBV program with the certain exceptions.

The following is a list of the parts of the tenant-based rule that do not apply to the PBV program WITH NOTED EXCEPTIONS (i.e. these particular sections DO apply and are displayed in italics). Where tenant based voucher regulations apply, they may be superseded by approved MTW policies.

1. GENERAL provisions of 24 CFR 982 that DO NOT apply:

- Voucher issuance
- Portability
- Special housing types like shared housing, cooperative housing, manufactured home space rental and the homeownership option.

2. SPECIFIC provisions of 24 CFR 982 that DO NOT apply:

2.1 SUBPART E: ADMISSION TO TENANT BASED PROGRAM

These two sections do not apply:

- 982.202(b)(2): prohibition on basing selection where family will live

- 982.204(d): prohibition on basing selection on family or unit size

2.2 SUBPART G: LEASING A UNIT

Nothing in Subpart G applies except for:

(i) 982.310 Owner termination of tenancy applies; but, to the extent it differs from 24 CFR 983.257, the latter governs (i.e. good cause definition is more restricted on PBV; termination from an “excepted” unit for failure to complete a supportive services requirement is permitted on PBV)

(ii) 982.312 Absence from unit applies, but to the extent if differs from 24 CFR 983.256(g), the latter governs (i.e. HAP contract is not terminated if family is absent for longer than maximum period permitted on PBV).

(iii) 982.316 Live-in aid applies.

2.3 SUBPART H: WHERE FAMILY CAN LIVE AND MOVE

Nothing in Subpart H applies.

2.4 SUBPART I: DWELLING UNIT: HQS, SUBSIDY STANDARDS, INSPECTION AND MAINTENACE

These sections do not apply:

- 982.401(j) Lead based paint performance. (Lead based paint requirements @ 983.101(c)(2) apply instead. These requirements are stricter. Except for SRO, ESRO or units in a building that has been designated exclusively for occupancy by the elderly and/or persons with a disability, all units receiving PBV assistance must be in compliance with the MA lead law during the term of the contract, regardless of the age of the occupants. Compliance is satisfied by submission of a current valid Letter of Compliance issued by a Massachusetts licensed lead paint inspector or a building permit that verifies construction after December 31, 1977. Letters of Compliance issued prior to July 1, 1988 do not satisfy current federal lead regulations and are not acceptable for participation in the PBV program.)

- 982.402 (a)(3) Family unit size

- 982.402(c)Effect of family unit size, maximum subsidy

- 982.402(d) Size of unit occupied by family.

- 982.403 Terminating HAP contract when unit is too small

- 982.405(a) HQS Inspections

- 982.406 Enforcement of HQS.

2.5 SUBPART J: HAP CONTRACT AND OWNER RESPONSIBILITY

This one section does not apply:

982.455 Automatic termination of HAP contract.

2.6 SUBPART K: RENT AND HOUSING ASSISTANCE PAYMENT

Nothing in Subpart K applies except for:

(i) 982.503 Payment standard schedule; however, provisions authorizing a higher payment standard for reasonable accommodation does not apply.

(ii) 982.516 Family Income and Composition, regular and interim examinations

(iii) 982.517 Utility Allowance Schedule.

2.7 SUBPART M: SPECIAL HOUSING TYPES

- 982.603 SRO Lease and HAP contract

- 982.607 Congregate Housing Lease and HAP contract

- 982.611 Group Home Lease and HAP contract

- 982.613 (c)(2) Payment standard for person in Group Home
- 982.615 through 618 Shared Housing
- 982.619 Cooperative Housing
- 982.622 through 624 Manufactured home space rental
- 982.625 through 641 Homeownership option

Exhibit 18-2: Selection Criteria for DHCD Development Programs

Twice yearly, the Division of Housing Development (DHD) issues a NOFA for sponsors seeking funding for rental housing development projects. Applicants are required to submit proposals via a One-Stop application package and those materials are reviewed by DHD staff with the support of contract architects. Deals seeking HIF, FCF and/or CBH funding also are reviewed by Community Economic Development Assistance Corporation (CEDAC) staff. Proposals are reviewed according to selection criteria, generally outlined in the Commonwealth's Qualified Allocation Plan and award decisions are made based on these reviews, along with the availability of funds. Often, projects must apply several times before receiving an award. Mass Housing Investment Corporation (MHIC) designed, owns and operates this OneStop system for the Commonwealth's development programs. The QAP and all other related selection criteria are published on the Division's website. The One-Stop application package is available at: www.onestopapp.com

Linking DHCD's PBVs with these development projects makes it possible for the division to meet their LIHTC goal of setting aside 10% of the units for households with incomes at or below 30% or area median income and to achieve the same outcomes for the other DHCD-funded development programs.

Low Income Housing Tax Credits (LIHTC)

LIHTC Description

The Low Income Housing Tax Credit program is a federal program overseen by the U.S. Department of the Treasury through the Internal Revenue Service (IRS). The program is administered in all 50 states by state allocating agencies. The tax credit program was first implemented in 1987 and has supported the construction or rehabilitation of over 1.5 million rental units since that time. Each allocating agency receives a certain amount of credit annually to award to eligible projects. The allocating agency in Massachusetts is the Department of Housing and Community Development (DHCD). Two other agencies – MassHousing and MassDevelopment – are sub allocators of certain types of credit on behalf of DHCD. The sponsor of a rental project submitted for a tax credit allocation has the ability to sell the credits to an investor and use the sale to generate equity for the project.

The tax credit program supports the construction or rehabilitation of multifamily rental housing for individuals or households whose incomes are less than 60% of area median income. Rents in tax credit projects are established to be affordable to such households.

DHCD's current tax credit portfolio consists of 450 projects with over 30,000 units located throughout the state. The Department monitors the projects regularly to verify physical stability and ensure that the proper income levels are being served.

LIHTC Funding Competitions

Each state is required to publish selection criteria for projects annually in a public document called the Qualified Allocation Plan. In accordance with this requirement, DHCD publishes its selection criteria and holds two funding competitions each year to award the credit. Other DHCD rental sources such as HOME are made available during the same competitions.

LIHTC Evaluation and Selection Criteria

During its funding competitions, DHCD selects tax credit projects based on criteria such as: appropriateness of site; design and proposed scope of work; overall cost and amount of subsidy; target income levels; capacity of development team; marketability and feasibility of a project.

LIHTC Selection Team

Projects seeking LIHTC alone or in combination with other DHCD rental resources are reviewed and unwritten by the LIHTC staff with the support of contract architects.

HOME Investment Partnerships Program (HOME)

HOME Description

HOME is a federally-funded program that assists in the production and preservation of affordable housing for low and moderate-income families and individuals. The program funds a broad range of activities including new construction and acquisition and rehabilitation of existing properties.

HOME Funding Competitions

DHCD makes HOME funding available through the One-Stop NOFA issued twice yearly. For-profit and non-profit developers, non-profit organizations designated as Community Housing Development Organizations (CHDOs) and municipalities in cooperation with for-profit or non-profit developers are eligible to apply for funding. All rental projects are awarded funds on a competitive basis.

HOME Evaluation and Selection Criteria

A number of selection criteria are taken into consideration when determining which projects will receive funding. An applicant must demonstrate that the project has: a strong overall concept, competent development team, suitable site and design, and is financially feasible. The scope of rehabilitation or construction is a factor, as well as the total development cost for properties included in the proposal. There must be a demonstrated need for the project in the target neighborhood and evidence of local support. Furthermore, a project's readiness to proceed and the developer's form of site control are evaluated during a project's review.

HOME Selection Team

Applicants may seek HOME funds in conjunction with other DHCD resources, with the exception of DHCD Housing Stabilization Funds (HSF). If a project is seeking both HOME monies and Low Income Housing Tax Credits (LIHTC), then the LIHTC staff will take the lead during the project's review and underwriting process. For projects not seeking LIHTC, the HOME and Housing Stabilization Fund teams partner in the review and rely on input from contract architects.

Housing Stabilization Fund (HSF)

HSF Description

The Housing Stabilization Fund (HSF) is a state funded bond program that assists in the production and preservation of affordable rental projects that serve both families and individuals with annual incomes at or below 80% of the area median income.

HSF Funding Competitions

DHCD makes HSF funding available through the One-Stop NOFA twice yearly. For-profit and non-profit developers, local housing authorities and municipalities in cooperation with for-profit or non-profit developers are eligible to apply for funding. All projects are awarded funds on a competitive basis.

HSF Selection and Evaluation Criteria

A number of selection criteria are taken into consideration when determining which projects will receive funding. An applicant must demonstrate that the project has: a strong overall concept, competent development team, suitable site and design, and is financially feasible. The scope of rehabilitation or construction is a factor, as well as the total development cost for properties included in the proposal. There must be a demonstrated need for the project in the target neighborhood and evidence of local support. Furthermore, a project's readiness to proceed and the developer's form of site control are evaluated during a project's review.

HSF Selection Team

Applicants may seek HSF funds in conjunction with other DHCD resources, with the exception of DHCD HOME funds. If a project is seeking both HSF monies and Low-Income Housing Tax Credits (LIHTC), then the LIHTC staff will take the lead during the project's review and underwriting process. For projects not seeking LIHTC, the Housing Stabilization Fund and HOME teams partner in the review and rely on input from contract architects.

Facilities Consolidation Fund (FCF)

FCF Description

FCF is a state bond-financed program that funds community-based housing for clients of the Department of Mental Health (DMH) and Department of Mental Retardation (DMR). Only non-profit housing development agencies are eligible to apply. FCF contributes a maximum of 50% of total project development costs, with a recommended limit of $500,000 per project.

Loans are structured as 0%, deferred payment loans with a 30-year term. DHCD may extend the loan period for an additional 10 years if the property continues to be used for DMR or DMH-approved purposes. Loans are subject to deed restrictions and title transfer agreements as provided for in loan documents, including a promissory note, mortgage and land use restriction.

FCF Funds Made Available on an On-going Basis

All housing must be pre-approved by DMR or DMH. These agencies provide services to residents, and all residents are DMH or DMR clients. (N.B. DHCD has advised DMH and DMR that no PHA can accept PBA projects that require applicants to be clients of a particular organization or have a particular disability in order to be eligible for selection. The basis for selection must be in accordance with 983.251(d). See Section 31.6.16 for details. Projects are underwritten for economic feasibility by DHCD's technical assistance partner, the Community Development Economic Assistance Corporation (CEDAC).

DHCD makes FCF funding available continuously. Applicants must complete a pre-application and, if approved, submit a One Stop Housing Application to both DHCD and CEDAC.

FCF Selection and Evaluation Criteria

FCF loans may use for the reasonable and necessary hard and soft costs to develop an eligible project, including costs of acquisition, construction, architecture/engineering, environmental testing and remediation, insurance, taxes, surveys and permits, development consultants, legal services, financing, relocation, title and recording, inspection services, marketing and rent-up, and developer overhead and fees.

FCF Selection Team

DHD and CEDAC staff review these rolling applications and makes selection recommendations.

Housing Innovations Fund (HIF)

HIF Description

HIF is a state bond-financed program that assists in the production and preservation of affordable "innovative" housing for low and moderate-income families and individuals. HIF projects typically involve a substantial level of supportive services for residents, including single person occupancy (SRO) housing, senior housing, and various kinds of transitional housing for homeless people, veterans, victims of domestic violence and recovering substance abusers. The program funds a broad range of activities including the hard and soft costs of acquisition, renovation and new construction. HIF loans are for 30 years and the maximum amount is typically $500,000 or up to 50% of the projects total development cost (TDC). 50% of residents in HIF projects must be low income (80% AMI or less), and 25% must be extremely low income.

HIF Funding Competitions

DHCD makes HIF funding available through the One-Stop NOFA twice yearly. Only non-profit developers are eligible for HIF. Projects are awarded funds on a competitive basis.

HIF Evaluation and Selection Criteria

A number of selection criteria are taken into consideration when determining which projects will receive funding. An applicant must demonstrate that the project has an HIF-eligible purpose,

a competent development team, suitable site and design, and is financially feasible. The project must from have secured or be able to secure funding from other sources. The adequacy of the scope of rehabilitation or construction is considered, as well as the total development cost. The appropriateness, quality and continuing availability of supportive services must be a demonstrated. Finally, the project's readiness to proceed is evaluated.

HIF Selection Team

Applicants typically seek HIF funds in conjunction with other DHCD resources. If a project is seeking HIF in combination with Low Income Housing Tax Credits (LIHTC), HOME or HSF funds, then those program's staff typically take the lead during the project's review and underwriting process.

DHCD subcontracts with the Community Economic Development Assistance Corporation (CEDAC) to provide technical assistance, underwriting review and loan closing services for HIF.

Community Based Housing (CBH)

CBH Description

CBH is a state bond-financed program that provided 0% deferred loans for housing for disabled people who are institutionalized or at risk of institutionalization. Clients of the Department of Mental Health (DMH) and the Department of Mental Retardation (DMR) are not eligible for CBH units (because they are eligible for the state-financed FCF, see above). Clients must be certified by the Massachusetts Executive Office of Health and Human Services (EOHHS) through its lead agency for CBH, the Massachusetts Rehabilitation Commission (MRC). (N.B. DHCD has advised EOHHS and MRC that no PHA can accept PBA projects that exclude applicants who happen to be clients of a particular organization or have a particular disability. However, the final rule @ 983.251(c) permits site-specific waiting lists for each individual PBV project and DHCD has included a tenant selection preference targeted to households living in institutions or at risk of institutionalization in its PBV Administrative Plan @ 31.6.16.4.)

Only non-profit housing development agencies, or entities controlled by non-profits, are eligible to receive these loans. CBH contributes a maximum of 50% of the total project development costs, with a limit of $75,000 per project. Typically, a few (2-8) CBH units are included in a larger rental development.

CBH loans are structured as 0% deferred payment loans with a minimum 30-year term. DHCD may extend the loan period in 10 year increments if the property continues to be used for approved purposes. Loans are subject to deed restrictions and title transfer agreements as provided for in the loan documents, including a promissory note, mortgage and land use restriction.

CBH Funds Made Available On an On-Going Basis

At present, DHCD makes CBH funds available continuously and also through its biannual rental housing funding rounds. In any case, applicants must submit a complete One Stop Housing Application to both DHCD and CEDAC.

All housing units must be pre-approved by MRC. Various state and private agencies provide services to residents, although not all residents require services to maintain a tenancy in a CBH unit.

CBH Selection and Evaluation Criteria

All CBH projects are evaluated for threshold eligibility, financial feasibility, readiness to proceed, appropriateness for the intended resident population, and quality of available support service plans.

Applicants typically seek CBH funds in conjunction with other DHCD resources through the biannual rental housing funding rounds. If a project is seeking funds in combination with LIHTC, HOME, FCF or HSF funds, then those program's staff typically take the lead during the project's review and underwriting process.

DHCD subcontracts with CEDAC to provide technical assistance, underwriting review and loan closing services for CBH.

Exhibit 18-3: Subsidy Layering Review Checklist for Projects Using Section 8 PBV

_____Project Name and Location:

_____Narrative Description of Project, including:

- _____Total number of units
- _____Type of unit, bedroom distribution
- _____Portion and type of units receiving assistance, compliance with partial assistance requirements

_____Sources of Funds:

- _____Each Source Listed Separately with Details
  - _____Principle
  - _____Interest Rate
  - _____Amortization Term

_____Uses of Funds:

- _____Detailed Breakdown of Project Costs, including hard and soft cost items

_____Commitment Letters from All Sources of Financing Disclosing Significant Terms

_____Tax Credit Allocation Commitment Letter from State Housing Finance Agency

- _____Amount of Credits Reserved, or
- _____IRS Form 8609

_____Historic Tax Credits (as applicable)

- _____Amount of Credit

_____Equity Investment Commitment Letter

- _____Amount of Investment
- _____Equity Contribution Schedule showing amount and timing

_____Bridge Loan Details (as applicable)

_____Appraisal Report establishing the “as is” value of the property before construction or rehabilitation, and without consideration of any financial implications of tax credits or project-based assistance.

_____Operating Proforma showing projected project income, expenses and cash flow for at least fifteen years out

_____PHA Approval of PBA Voucher Assistance for Project

_____Standard Disclosure and Perjury Statement, Identity of Interest Statement

_____Form HUD-2880

_____Initial Contract Rents

_____PHA letter confirming gross contract rents with applicable tenant utility allowances

Exhibit 18-4: Davis-Bacon Requirements

www.access.gpo.gov/davisbacon

Monitoring D-B consists of downloading the current wage and fringe benefit rates from the above-referenced web address for all trades people and apprentices who will be employed by the GC, and all subcontractors, and establishing a D-B enforcement file. Each week the GC is responsible for submitting to the RAA a certified wage report, preferably on Form WH-347. All the wage reports and any other documents pertinent to the D-B compliance must be kept in the D-B enforcement file.

In the event that a complaint of non-compliance with D-B is lodged with the HUD Labor Relations Office (LRO), it will request a complete copy of the enforcement file as part of its investigation, so it is important that this file always be kept current. Should the RAA interviews with employees indicate a possible problem with reported versus actual wages paid, the RAA must first bring this to the attention of the GC in writing. If the apparent discrepancy is not resolved to the satisfaction of the RAA then the RAA must report it in writing to the LRO, with a copy to DHCD. A copy of the discrepancy letter mailed to the GC, along with a copy of any response, must accompany the report.

The LRO does not require that the GC use form WH-347, provided that all the same information is included on the GC's own form. If the GC elects not to use WH-347, which has the certification language on the back, then the GC must either use the Payroll Certification form WH-348, or attach to the payroll report a copy of the back of WH-347 or use the exact word for word language that it contains to certify the payroll separately. (Forms are available at www.hudclips.org/subscriber/html/forms.htm)

The payroll report(s) must list all employees, both those directly employed by the GC and all those working for subcontractors. If form WH-347 is not used by the GC, the format used must contain all the information listed on that form. These reports should be numbered sequentially starting with number One (1) for the first week of construction and continuing each week until the project is completed and accepted for HAP by the RAA. This sequential numbering relieves the GC of the responsibility to submit a "no work" payroll for any period of temporary work stoppage.

At the start of construction the RAA must visit the site and insure that the poster- Notice to Employees - (form WH-1321) and the-Project Wage Rate Sheet- are prominently displayed in a place where all employees are likely to see them and where they are protected from the elements. The RAA should interview a representative number of employees of each contractor on-site at this initial visit using form HUD-11 to confirm wage rates, fringe benefits and overtime over 40 hours

Periodically during the course of the construction, the RAA should visit the site to monitor that the work is being done in a manner that will insure compliance with HQS and to interview some employees to insure that they are receiving the amounts shown on the certified weekly payroll(s). Again, the RAA may request DHCD assistance with these tasks.

At completion of the work, and certification by the owner that it was completed in accordance with HQS and all the AHAP requirements and that the owner complied with labor and equal opportunity requirements, the RAA may accept the units for HAP contract. In addition to these required documentations, the RAA must get a copy of the certificate of occupancy and if applicable the lead compliance documentation. Upon final HQS inspection by the RAA to insure that all the PBV units are in compliance with HQS and additional DHCD standards, the HAP contract may be executed. In a rehab project where there are in-place tenants or returning from temporary relocation tenants, these must be certified as program eligible prior to HAP execution.

Exhibit 19-1: Youth Transition to Success Program Admin Plan

Overview

The Youth Transiti0n to Success Program (YTTSP) is a collaborative effort between Department of Housing and Community Development (DHCD) and the Department of Children and Families (DCF). The YTTSP targets:

DCF-referred youth who have successfully completed the FUP AOP voucher program and have demonstrated an ongoing commitment to completing their education and/or training in order to improve their economic opportunities.

The policies and procedures set forth in this plan will achieve two important DHCD program objectives: to ensure a seamless transition from the FUP AOP voucher to the YTTSP ; and to ensure that the economic self-sufficiency goals of this program are met as required by the HUD Moving to Work statutory obligations.

The FUP Youth Transition to Success program was included in DHCD's 2010 Moving to Work Annual plan and approved by HUD.

Program Components:

- Rent Subsidy Features
- Time Limited – 36 months
- Based on Regional Costs (six regions)
- Stepped down each year
- Escrow Account – up to $800 per year leveraged by individual savings
- Support Account – up to $500 per year available to support the completion of Transition Plan Goals
- On-going support from DCF Adolescent Outreach Program

Rental Assistance

YTTSP rental assistance will be a flat subsidy determined by DHCD based on regional housing costs. Each year, the monthly rental stipend will be reduced by 15%. All subsidy terms to be reviewed with participants and DCF workers at the time of referral to the program. A YTTSP participant may choose to lease a unit that is less expensive than the subsidy amount, in which case he/she will not be required to pay a tenant share of rent. The tenant will be responsible for all utility costs.

When a participant enrolls in the program rents will be determined for all three years of participation. They will based on FMRs at the start of the 36 month program.

Escrow Account

Each YTTSP participant is eligible to accrue up to $800 per year in escrow funds. These funds will be leveraged by deposits into savings accounts held by YTTSP participants, and verified by DCF staff using 3rd party documentation no older than 30 days. Each dollar of participant

savings will leverage four dollars in escrow. These individual savings ($200 per year) must be in the account at the time of completion of the YTTSP program in order to receive the full $800 per year. Total escrow available upon completion of the program is not to exceed $2400. Escrow accounts are not required, but all participants should be strongly encouraged to open and maintain the required balance in the account. The $200 can be saved in a lump sum (such as through a portion of a tax return) or in monthly deposits of $16.00 per month.
Each year, following the annual meeting with participants, RAAs will request the amount of escrow dollars YTTSP participants have earned, and deposits those funds into the Escrow account for that participant. Participants will accrue interest on these funds during the program.

Support Account

YTTSP participants are eligible for a supports budget of up to $500 per year for expenses related to maintaining employment and continuing education goals as developed in the DCF Transition Plan. Use of the Support Account is not required, but participants should be strongly encouraged to use the funds to off-set unexpected expenses.

Any unused support funds will be recaptured by DHCD, so DCF and RAA staff are urged to encourage YTTSP participants to use these funds for the above purposes and unforeseen expenses. The support accounts are intended to facilitate savings, and allow for YTTSP participants access to as much of the escrow funds as possible. Under certain circumstances, support funds may be accessed under the hardship policy to offset loss of earned income. See Hardship Policy section of this plan. Support funds cannot be used to pay rent arrearages.

DHCD establishes the following guidance for the appropriate use of the supports budget to assist the participant in making good decisions in consultation with their DCF Outreach worker. Appropriate uses for the supports budget include but are not limited to: transportation (public transportation, private auto expenses, for working participant(s) and/or children), work wardrobe or uniforms, English as a Second Language classes /Adult Basic Education/GED programs or testing, training programs or expenses, college tuition or expenses, expenses for professional credentials (licenses, certification, professional insurance, etc.) or continuing education expenses. For YTTSP participants with children, support funds may also be used for child care, before- or after-school care, summer camp, or other appropriate supports for their children. All checks will be made payable to the vendors.

Moving To Work Demonstration Project Authority, Contracts, and Termination

DHCD's MTW program is operated through the terms and conditions established in its Moving To Work Demonstration Agreement, and any amendments which may be added. DHCD, its subcontracted administering agencies, and MTW participants are bound by all MTW statutory and regulatory requirements regarding operation, modification, and/or termination/transition of this project. Funding for this program is subject to annual review, and dependent upon adequate federal funding for DHCD's entire HCVP portfolio. In addition, DHCD and DCF will monitor the program's effectiveness in its primary purpose -- helping participants meet their economic self-sufficiency goals.

Eligibility

This is a targeted referral program, only youth referred by DCF are eligible for YTTSP. Further, since DCF services are required for participation in this program, participation in the program ends upon his/her 23rd birthday, when DCF services end.

A YTTSP eligible youth is one that DCF has certified as meeting all three of these requirements

1) A participant in good standing at the time of referral – no tenancy violations, current on rent; and
2) Income eligible as defined by Section 8 low-income limits; and
3) Working 12-20 hours per week and;

Meet one of the following criteria:

- Enrolled in a job training program;
- Matriculated in a post-secondary degree program and attending school full-time; or
- Matriculated in a post-secondary degree program and attending school part-time;

Outreach and Referrals

DCF Outreach staff will work with all FUP AOP youth during their 18 month participation in the FUP AOP program to maximize the number of youths able to access the YTTSP. Youth should be encouraged and supported by DCF to enroll in a training or education program that will qualify them for YTTSP, and allow them to continue their work towards economic self-sufficiency for the maximum amount of time – up to 54 months (18 months FUP AOP and 36 months YTTSP) of combined program support.

DCF Central Office Adolescent Support Services Director will ensure that referred applicants are YTTSP eligible and then forward the Referral Form/Certificate of Eligibility (Form attached at the end of this section) to the appropriate regional RAA.

DCF will refer applicants to RAAs no less than three months before the expiration of the FUP AOP voucher.

When verification of eligibility is complete the RAA will conduct an applicant briefing and complete the required program participation documents. DCF Outreach staff will be required to attend all YTTSP related RAA meetings with their clients and help them find and maintain suitable and safe housing.

Portability

Within MA

The YTTSP is a Moving to Work initiative of DHCD and thus has in-state mobility only. A participant who wishes to move to a different community within Massachusetts must be able to continue to meet the requirements of their DCF Outreach Transition Plan, and the move must be approved by DCF and submitted in writing to the RAA by DCF staff prior to changing residences.

Out-of-State

A youth wishing to move out of state relinquishes all future rental and other financial assistance and support from DHCD. A participant leaving the program in good standing, as determined by DCF, will be entitled to receive the funds in his or her escrow account leveraged through his or her savings.

Termination

DCF Outreach will make termination decisions based on the participant's ongoing compliance with the DCF Outreach Transition Plan/contract.

a. DCF Outreach will be responsible for defending termination decisions, pertaining to compliance with DCF Outreach Transition Plans/contracts. Transition Plans will include lease compliance and all tenancy related issues. Youth will be notified in writing of the violation and will be asked to participate in a meeting with a DCF Program Worker and Supervisor to develop a corrective action plan with specific tasks for the participant;
b. The youth will be given 60 days to comply with the corrective action plan;
c. Should the youth not comply with the corrective action plan there will be a termination meeting with the DCF Director of Adolescent Support Services and/or other staff;
d. The DCF Director of Adolescent Support Services may extend the timeframe of the corrective action plan or may approve the termination of the youth from the program. Written notice of the Director's decision will be provided to the youth, DHCD, and the RAA within 10 business days of the meeting;
e. YTTSP requires the client to be in good standing with DCF and in compliance with their Transition Plan, termination by DCF will result in termination from the program;
f. Once the RAA receives notification from DCF that the client has been terminated, the RAA is required to terminate the rental subsidy effective thirty days from the date of notification and the HAP subsidy will stop at that time.

On-going Considerations

Leasing

Each tenancy assisted by YTTSP will be governed by a lease signed by the property owner and the participating individual. The lease should be the standard form used by the property owner, in keeping with all applicable laws of the Commonwealth. The lease will have as an attachment an YTTSP Tenancy Addendum. A copy of the lease will be reviewed by the RAA staff prior to the execution of the abbreviated housing assistance payments contract between DHCD and the property owner that outlines the terms of payment of the rental subsidy, and the owner and DHCD's respective obligations. A copy of the lease and all attachments will be retained in the RAA file.

Annual Status Review Meeting

There are no annual or interim recertifications in YTTSP. Instead, YTTSP participants will meet with RAA staff, accompanied by DCF Outreach staff, at initial enrollment, and at the start of years two and three. At these meetings, participants will be required to provide third party verification that they are current on their rent and will be required to present third party verification of their income. The RAA will use EIV to verify all reported income. Participants will also be required to show third party documentation of their continued progress in meeting their Transition Plan goals, including not limited to, college transcripts, enrollment forms, and other documentation as deemed appropriate.

File Maintenance

RAAs will maintain files in accordance with all appropriate DHCD requirements. In addition, the following program specific documents must be maintained as well.

- Referral Form from DCF
- Copies of documentation of savings account balances
- Copies of documentation for expenditures from support account
- Copies of checks from support accounts

Rent Reasonableness

There will be no requirement for a "rent reasonableness" certification, nor will DHCD perform any rent reasonableness determinations. However, DHCD considers assisting youth with making sound housing choices that weigh location, affordability and safety is a critical element of life skills training provided by DCF. RAA will provide the participant with the latest rent reasonableness data maintained by the housing agency for its Section 8 program, and will encourage the participant to take this information into consideration when selecting a unit. The participant will be able to select the unit which best fits its budget and needs, including proximity to employment, childcare, transportation, and support systems.

Hardship Policy

During participation in YTTSP participants may request a hardship waiver if he/she experiences an unanticipated loss of income that is anticipated to last longer than 90 days. This request must be approved by DCF Outreach Program prior to submitting it to DHCD for review. If the request is granted, any unused support funds available that year will be available to pay the tenant share of rent. The Hardship Policy does not allow the support account to be used for rent or utility arrearages.

Continued Participation

There is no right to survivorship in the YTTSP. The subsidy is issued to a head of household who is an active client of DCF Outreach Program based on his or her successful completion of the FUP AOP program. When a participant leaves the YTTSP either voluntarily or involuntarily, the support for the household is terminated.

Reporting and Program Evaluation

The RAA and DCF Outreach will participate in all required evaluations and will be prepared to maintain additional data on participants as required by HUD and/or DCF.
The goal of the Youth Transition to Success Program is to provide DCF Outreach-referred youth, who have demonstrated an on-going commitment to improving their economic self-sufficiency with additional time, support, and asset development opportunities to further or complete their goals. Accordingly, DHCD, DCF and HUD require that the benchmarks, outcomes and reporting requirements reflect this goal.

HQS Inspections

Biennial inspection policies apply to units leased under the Youth Transition to Success Program.

Benchmarks

DHCD anticipates that up to 8 participants per year will be referred to this program. All successful participants will demonstrate improvement in their educational and/or employment levels. All successful participants will develop strong tenancy histories. Three additional years of DCF Outreach Program case management support will also strengthen participants' financial management skills.

DCF will monitor changes in educational attainments, increases in income, improved credit scores, and improved access to employment related benefits such as health care, retirement savings accounts, and employer sponsored training programs. These changes will be reported to the RAAs on a quarterly/monthly basis for entry into Tracker.

Outcomes

- 85% of participants enrolled in post-secondary education at the time of enrollment in YTTSP will continue or complete their education during the program
- 80% of working participants will increase their earned income
- 70% will establish and/or maintain savings accounts with balances sufficient to leverage maximum of escrow ($600 savings/$2400 escrow)